

1                                   A bill to be entitled  
 2       An act relating to property and casualty insurance;  
 3       amending s. 215.555, F.S.; providing exceptions to  
 4       definitions; providing application of exceptions to  
 5       definitions; amending s. 624.407, F.S.; revising the  
 6       amount of surplus funds required for domestic insurers  
 7       applying for a certificate of authority after a certain  
 8       date; amending s. 624.408, F.S.; revising the minimum  
 9       surplus that must be maintained by certain insurers;  
 10      authorizing the Office of Insurance Regulation to reduce  
 11      the surplus requirement under specified circumstances;  
 12      amending s. 626.852, F.S.; limiting the scope of adjuster  
 13      licensure; amending s. 626.854, F.S.; providing  
 14      limitations on the amount of compensation that may be  
 15      received by a public adjuster for a reopened or  
 16      supplemental claim; providing statements that may be  
 17      considered deceptive or misleading if made in any public  
 18      adjuster's advertisement or solicitation; providing a  
 19      definition for the term "written advertisement"; requiring  
 20      that a disclaimer be included in any public adjuster's  
 21      written advertisement; providing requirements for such  
 22      disclaimer; requiring certain persons who act on behalf of  
 23      an insurer to provide notice to the insurer, claimant,  
 24      public adjuster, or legal representative for an onsite  
 25      inspection of the insured property; authorizing the  
 26      insured or claimant to deny access to the property if  
 27      notice is not provided; requiring the public adjuster to  
 28      ensure prompt notice of certain property loss claims;

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29 providing that an insurer be allowed to interview the  
30 insured directly about the loss claim; prohibiting the  
31 insurer from obstructing or preventing the public adjuster  
32 from communicating with the insured; requiring that the  
33 insurer communicate with the public adjuster in an effort  
34 to reach an agreement as to the scope of the covered loss  
35 under the insurance policy; prohibiting a public adjuster  
36 from restricting or preventing persons acting on behalf of  
37 the insured from having reasonable access to the insured  
38 or the insured's property; prohibiting a public adjuster  
39 from restricting or preventing the insured's adjuster from  
40 having reasonable access to or inspecting the insured's  
41 property; authorizing the insured's adjuster to be present  
42 for the inspection; prohibiting a licensed contractor or  
43 subcontractor from adjusting a claim on behalf of an  
44 insured if such contractor or subcontractor is not a  
45 licensed public adjuster; providing an exception; creating  
46 s. 626.70132, F.S.; requiring that notice of a claim,  
47 supplemental claim, or reopened claim be given to the  
48 insurer within a specified period after a windstorm or  
49 hurricane occurs; providing a definition for the terms  
50 "supplemental claim" or "reopened claim"; providing  
51 applicability; amending s. 627.062, F.S.; deleting an  
52 obsolete provision; prohibiting the Office of Insurance  
53 Regulation from, directly or indirectly, impeding the  
54 right of an insurer to acquire policyholders, advertise or  
55 appoint agents, or regulate agent commissions for property  
56 and casualty insurance; deleting obsolete provisions

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

V

57 relating to legislation enacted during the 2003 Special  
 58 Session D of the Legislature; amending s. 627.0629, F.S.;  
 59 deleting obsolete provisions; deleting a requirement that  
 60 the Office of Insurance Regulation propose a method for  
 61 correlating discounts, credits, and other rate  
 62 differentials for hurricane mitigation to the uniform home  
 63 grading scale by a certain date; deleting a requirement  
 64 that the Financial Services Commission adopt rules  
 65 correlating discounts, credits, and other rate  
 66 differentials for hurricane mitigation to the uniform home  
 67 grading scale by a certain date; conforming provisions to  
 68 changes made by the act; amending s. 627.4133, F.S.;  
 69 authorizing an insurer to cancel policies after 45 days'  
 70 notice if the Office of Insurance Regulation determines  
 71 that the cancellation of policies is necessary to protect  
 72 the interests of the public or policyholders; creating s.  
 73 627.43141, F.S.; providing definitions; requiring the  
 74 delivery of a "Notice of Change in Policy Terms" under  
 75 certain circumstances; specifying requirements for such  
 76 notice; specifying actions constituting proof of notice;  
 77 authorizing policy renewals to contain a change in policy  
 78 terms; providing that receipt of payment by an insurer is  
 79 deemed acceptance of new policy terms by an insured;  
 80 providing that the original policy remains in effect until  
 81 the occurrence of specified events if an insurer fails to  
 82 provide notice; providing intent; amending s. 627.7011,  
 83 F.S.; requiring that an insurer pay the actual cash value  
 84 of an insured loss for a dwelling, less any applicable

85 deductible, under certain circumstances; requiring that a  
 86 policyholder enter into a contract for the performance of  
 87 building and structural repairs in order to receive  
 88 payment; requiring that an insurer pay certain remaining  
 89 amounts; restricting insurers and contractors from  
 90 requiring advance payments for certain repairs and  
 91 expenses; providing an exception to requiring advance  
 92 payments; requiring an insurer to pay the replacement  
 93 costs if a total loss occurs; amending s. 627.70131, F.S.;  
 94 specifying application of certain time periods to initial  
 95 or supplemental property insurance claim notices and  
 96 payments; providing legislative findings with respect to  
 97 2005 statutory changes relating to sinkhole insurance  
 98 coverage and statutory changes in this act; amending s.  
 99 627.706, F.S.; authorizing an insurer to limit coverage  
 100 for catastrophic ground cover collapse and sinkhole loss  
 101 coverage to the principal building; allowing insurers to  
 102 inspect property before issuing sinkhole loss coverage;  
 103 revising definitions; defining the term "structural  
 104 damage"; placing a 3-year statute of repose on claims for  
 105 sinkhole coverage; repealing s. 627.7065, F.S., relating  
 106 the establishment of a sinkhole database; amending s.  
 107 627.707, F.S.; revising provisions relating to the  
 108 investigation of sinkholes by insurers; providing a time  
 109 limitation for demanding sinkhole testing by a  
 110 policyholder and entering into a contract for repairs;  
 111 requiring the policyholder to incur the costs of certain  
 112 analyses and services; providing for reimbursement of

113 costs incurred by the policyholder; requiring all repairs  
 114 to be completed within a certain time; providing  
 115 exceptions; prohibiting rebates to policyholders from  
 116 persons performing repairs; voiding coverage if a rebate  
 117 is received; requiring policyholders to refund rebates  
 118 from persons performing repairs to insurers; providing a  
 119 criminal penalty on a policyholder for accepting rebates  
 120 from persons performing repairs; limiting a policyholder's  
 121 liability for reimbursement of the costs related to  
 122 certain analyses and services; amending s. 627.7073, F.S.;  
 123 revising provisions relating to inspection reports;  
 124 requiring an insurer to file a neutral evaluator's report  
 125 and other specific information; requiring the policyholder  
 126 to file certain reports as a precondition to accepting  
 127 payment; requiring certain filing and recording costs to  
 128 be borne by a policyholder; specifying that a  
 129 policyholder's recording of a report does not legally  
 130 affect title or create certain causes of action relating  
 131 to real property; amending s. 627.7074, F.S.; revising  
 132 provisions relating to neutral evaluation; requiring  
 133 evaluation in order to make certain determinations;  
 134 requiring that the neutral evaluator be allowed access to  
 135 structures being evaluated; providing grounds for  
 136 disqualifying an evaluator; allowing the Department of  
 137 Financial Services to appoint an evaluator if the parties  
 138 cannot come to agreement; revising the timeframes for  
 139 scheduling a neutral evaluation conference; authorizing an  
 140 evaluator to enlist another evaluator or other

141 professionals; providing a time certain for issuing a  
 142 report; providing that the evaluator is an agent of the  
 143 department for the purposes of immunity from suit;  
 144 requiring the department to adopt rules; amending s.  
 145 627.711, F.S.; allowing insurer to independently verify  
 146 mitigation forms from additional sources; amending s.  
 147 631.54, F.S.; revising the definition of a covered claim;  
 148 providing severability; providing effective dates.

149

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

151

152 Section 1. Paragraph (d) of subsection (2) of section  
 153 215.555, Florida Statutes, is amended to read:

154 215.555 Florida Hurricane Catastrophe Fund.—

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

156 (d) "Losses" means direct incurred losses under covered  
 157 policies, including ~~which shall include losses for~~ additional  
 158 living expenses not to exceed 40 percent of the insured value of  
 159 a residential structure and ~~or~~ its contents and shall exclude  
 160 ~~loss adjustment expenses.~~ The term "Losses" does not include:

161 1. Losses for fair rental value, loss of rent or rental  
 162 income, or business interruption losses;

163 2. Losses under liability coverages;

164 3. Property losses that are proximately caused by any  
 165 peril other than a covered event, including, but not limited to,  
 166 fire, theft, flood or rising water, or a windstorm that does not  
 167 constitute a covered event;

168 4. Amounts paid as the result of a voluntary expansion of

169 coverage by the insurer, including, but not limited to, a waiver  
 170 of an applicable deductible;

171 5. Amounts paid to reimburse a policyholder for  
 172 condominium association or homeowners' association loss  
 173 assessments or under similar coverages for contractual  
 174 liabilities;

175 6. Amounts paid as bad faith awards, punitive damage  
 176 awards, or other court-imposed fines, sanctions, or penalties;

177 7. Amounts in excess of the coverage limits under the  
 178 covered policy; or

179 8. Allocated or unallocated loss adjustment expenses.

180 Section 2. The amendments made by this act to s. 215.555,  
 181 Florida Statutes, apply first to the Florida Hurricane  
 182 Catastrophe Fund reimbursement contract that takes effect on  
 183 June 1, 2011.

184 Section 3. Section 624.407, Florida Statutes, is amended  
 185 to read:

186 624.407 Surplus Capital funds ~~required~~; new insurers.—

187 (1) To receive authority to transact any one kind or  
 188 combinations of kinds of insurance, as defined in part V of this  
 189 chapter, an insurer applying for its original certificate of  
 190 authority in this state after November 10, 1993, ~~the effective~~  
 191 ~~date of this section~~ shall possess surplus as to policyholders  
 192 at least ~~not less than~~ the greater of:

193 (a) ~~Five million dollars~~ For a property and casualty  
 194 insurer, \$5 million, or \$2.5 million for any other insurer;

195 (b) For life insurers, 4 percent of the insurer's total  
 196 liabilities;

197 (c) For life and health insurers, 4 percent of the  
 198 insurer's total liabilities, plus 6 percent of the insurer's  
 199 liabilities relative to health insurance; ~~or~~

200 (d) For all insurers other than life insurers and life and  
 201 health insurers, 10 percent of the insurer's total liabilities;  
 202 or

203 (e) Notwithstanding paragraph (a) or paragraph (d), for a  
 204 domestic insurer that transacts residential property insurance  
 205 and is:

206 1. Not a wholly owned subsidiary of an insurer domiciled  
 207 in any other state, \$15 million.

208 2. ~~however, a domestic insurer that transacts residential~~  
 209 ~~property insurance and is~~ A wholly owned subsidiary of an  
 210 insurer domiciled in any other state, ~~shall possess surplus as~~  
 211 ~~to policyholders of at least~~ \$50 million.

212 (2) Notwithstanding subsection (1), a new insurer may not  
 213 be required, but no insurer shall be required under this  
 214 subsection to have surplus as to policyholders greater than \$100  
 215 million.

216 (3)~~(2)~~ The requirements of this section shall be based  
 217 upon all the kinds of insurance actually transacted or to be  
 218 transacted by the insurer in any and all areas in which it  
 219 operates, whether or not only a portion of such kinds of  
 220 insurance are ~~to be~~ transacted in this state.

221 (4)~~(3)~~ As to surplus as to policyholders required for  
 222 qualification to transact one or more kinds of insurance,  
 223 domestic mutual insurers are governed by chapter 628, and  
 224 domestic reciprocal insurers are governed by chapter 629.



225           ~~(5)(4)~~ For the purposes of this section, liabilities do  
 226 ~~shall~~ not include liabilities required under s. 625.041(4). For  
 227 purposes of computing minimum surplus as to policyholders  
 228 pursuant to s. 625.305(1), liabilities ~~shall~~ include liabilities  
 229 required under s. 625.041(4).

230           ~~(6)(5)~~ The provisions of this section, as amended by  
 231 chapter 89-360, Laws of Florida ~~this act~~, ~~shall~~ apply only to  
 232 insurers applying for a certificate of authority on or after  
 233 October 1, 1989 ~~the effective date of this act~~.

234           Section 4. Section 624.408, Florida Statutes, is amended  
 235 to read:

236           624.408 Surplus ~~as to policyholders~~ required; current new  
 237 ~~and existing~~ insurers.-

238           (1)~~(a)~~ To maintain a certificate of authority to transact  
 239 any one kind or combinations of kinds of insurance, as defined  
 240 in part V of this chapter, an insurer in this state must ~~shall~~  
 241 at all times maintain surplus as to policyholders at least ~~not~~  
 242 ~~less than~~ the greater of:

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

245           ~~(b)2.~~ For life insurers, 4 percent of the insurer's total  
 246 liabilities.~~†~~

247           ~~(c)3.~~ For life and health insurers, 4 percent of the  
 248 insurer's total liabilities plus 6 percent of the insurer's  
 249 liabilities relative to health insurance.~~† or~~

250           ~~(d)4.~~ For all insurers other than mortgage guaranty  
 251 insurers, life insurers, and life and health insurers, 10  
 252 percent of the insurer's total liabilities.

253 (e)5. For property and casualty insurers, \$4 million,  
 254 except for property and casualty insurers authorized to  
 255 underwrite any line of residential property insurance.

256 (f)(b) For residential any property insurers not and  
 257 easualty insurer holding a certificate of authority before July  
 258 1, 2011 on December 1, 1993, \$15 million. the

259 (g) For residential property insurers holding a  
 260 certificate of authority before July 1, 2011, and until June 30,  
 261 2016, \$5 million; on or after July 1, 2016, and until June 30,  
 262 2021, \$10 million; on or after July 1, 2021, \$15 million.

263 (h) The office may reduce the surplus requirement in  
 264 paragraphs (f) and (g) if the insurer is not writing new  
 265 business, has premiums in force of less than \$1 million per year  
 266 in residential property insurance, or is a mutual insurance  
 267 company. following amounts apply instead of the \$4 million  
 268 required by subparagraph (a)5.:

269 1. On December 31, 2001, and until December 30, 2002, \$3  
 270 million.

271 2. On December 31, 2002, and until December 30, 2003,  
 272 \$3.25 million.

273 3. On December 31, 2003, and until December 30, 2004, \$3.6  
 274 million.

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

276 (2) For purposes of this section, liabilities do ~~shall~~ not  
 277 include liabilities required under s. 625.041(4). For purposes  
 278 of computing minimum surplus as to policyholders pursuant to s.  
 279 625.305(1), liabilities ~~shall~~ include liabilities required under  
 280 s. 625.041(4).

281           (3) This section does not require an ~~No insurer shall be~~  
 282 ~~required under this section~~ to have surplus as to policyholders  
 283 greater than \$100 million.

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

286           Section 5: Subsection (7) is added to section 626.852,  
 287 Florida Statutes, to read:

288           626.852 Scope of this part.—

289           (7) Notwithstanding any other provision of law, a person  
 290 providing claims adjusting services solely to institutions  
 291 servicing or guaranteeing mortgages shall be exempt from  
 292 licensure as an adjuster for services provided to the mortgage  
 293 institution with regards to policies covering the mortgaged  
 294 properties.

295           Section 6. Effective June 1, 2011, subsection (11) of  
 296 section 626.854, Florida Statutes, is amended to read:

297           626.854 "Public adjuster" defined; prohibitions.—The  
 298 Legislature finds that it is necessary for the protection of the  
 299 public to regulate public insurance adjusters and to prevent the  
 300 unauthorized practice of law.

301           (11) (a) If a public adjuster enters into a contract with  
 302 an insured or claimant to reopen a claim or ~~to~~ file a  
 303 supplemental claim that seeks additional payments for a claim  
 304 that has been previously paid in part or in full or settled by  
 305 the insurer, the public adjuster may not charge, agree to, or  
 306 accept any compensation, payment, commission, fee, or other  
 307 thing of value based on a previous settlement or previous claim  
 308 payments by the insurer for the same cause of loss. The charge,

309 compensation, payment, commission, fee, or other thing of value  
 310 may be based only on the claim payments or settlement obtained  
 311 through the work of the public adjuster after entering into the  
 312 contract with the insured or claimant. Compensation for the  
 313 reopened or supplemental claim may not exceed 20 percent of the  
 314 reopened or supplemental claim payment. The contracts described  
 315 in this paragraph are not subject to the limitations in  
 316 paragraph (b).

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

320 1. Ten percent of the amount of insurance claim payments  
 321 made by the insurer for claims based on events that are the  
 322 subject of a declaration of a state of emergency by the  
 323 Governor. This provision applies to claims made during the  
 324 period of 1 year after the declaration of emergency. After that  
 325 year, 20 percent of the amount of insurance claim payments made  
 326 by the insurer.

327 2. Twenty percent of the amount of ~~all other~~ insurance  
 328 claim payments made by the insurer for claims that are not based  
 329 on events that are the subject of a declaration of a state of  
 330 emergency by the Governor.

331  
 332 The provisions of subsections (5)-(13) apply only to residential  
 333 property insurance policies and condominium unit owner  
 334 ~~association~~ policies as defined in s. 718.111(11).

335 Section 7. Effective January 1, 2012, section 626.854,  
 336 Florida Statutes, as amended by this act, is amended to read:

337           626.854 "Public adjuster" defined; prohibitions.—The  
 338 Legislature finds that it is necessary for the protection of the  
 339 public to regulate public insurance adjusters and to prevent the  
 340 unauthorized practice of law.

341           (1) A "public adjuster" is any person, except a duly  
 342 licensed attorney at law as exempted under hereinafter in s.  
 343 626.860 ~~provided~~, who, for money, commission, or any other thing  
 344 of value, prepares, completes, or files an insurance claim form  
 345 for an insured or third-party claimant or who, for money,  
 346 commission, or any other thing of value, acts ~~or aids in any~~  
 347 ~~manner~~ on behalf of, or aids an insured or third-party claimant  
 348 in negotiating for or effecting the settlement of a claim or  
 349 claims for loss or damage covered by an insurance contract or  
 350 who advertises for employment as an adjuster of such claims. The  
 351 term, ~~and~~ also includes any person who, for money, commission,  
 352 or any other thing of value, solicits, investigates, or adjusts  
 353 such claims on behalf of a ~~any such~~ public adjuster.

354           (2) This definition does not apply to:

355           (a) A licensed health care provider or employee thereof  
 356 who prepares or files a health insurance claim form on behalf of  
 357 a patient.

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

360           (3) A public adjuster may not give legal advice or. ~~A~~  
 361 ~~public adjuster may not~~ act on behalf of or aid any person in  
 362 negotiating or settling a claim relating to bodily injury,  
 363 death, or noneconomic damages.

364           (4) For purposes of this section, the term "insured"

365 includes only the policyholder and any beneficiaries named or  
 366 similarly identified in the policy.

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

372 (6) A public adjuster may not directly or indirectly  
 373 through any other person or entity initiate contact or engage in  
 374 face-to-face or telephonic solicitation or enter into a contract  
 375 with any insured or claimant under an insurance policy until at  
 376 least 48 hours after the occurrence of an event that may be the  
 377 subject of a claim under the insurance policy unless contact is  
 378 initiated by the insured or claimant.

379 (7) An insured or claimant may cancel a public adjuster's  
 380 contract to adjust a claim without penalty or obligation within  
 381 3 business days after the date on which the contract is executed  
 382 or within 3 business days after the date on which the insured or  
 383 claimant has notified the insurer of the claim, by phone or in  
 384 writing, whichever is later. The public adjuster's contract must  
 385 ~~shall~~ disclose to the insured or claimant his or her right to  
 386 cancel the contract and advise the insured or claimant that  
 387 notice of cancellation must be submitted in writing and sent by  
 388 certified mail, return receipt requested, or other form of  
 389 mailing that ~~which~~ provides proof thereof, to the public  
 390 adjuster at the address specified in the contract; provided,  
 391 during any state of emergency as declared by the Governor and  
 392 for ~~a period of~~ 1 year after the date of loss, the insured or

393 claimant has ~~shall have~~ 5 business days after the date on which  
 394 the contract is executed to cancel a public adjuster's contract.

395 (8) It is an unfair and deceptive insurance trade practice  
 396 pursuant to s. 626.9541 for a public adjuster or any other  
 397 person to circulate or disseminate any advertisement,  
 398 announcement, or statement containing any assertion,  
 399 representation, or statement with respect to the business of  
 400 insurance which is untrue, deceptive, or misleading.

401 (a) The following statements, made in any public  
 402 adjuster's advertisement or solicitation, are considered  
 403 deceptive or misleading:

404 1. A statement or representation that invites an insured  
 405 policyholder to submit a claim when the policyholder does not  
 406 have covered damage to insured property.

407 2. A statement or representation that invites an insured  
 408 policyholder to submit a claim by offering monetary or other  
 409 valuable inducement.

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

413 4. A statement or representation, or use of a logo or  
 414 shield, that implies or could mistakenly be construed to imply  
 415 that the solicitation was issued or distributed by a  
 416 governmental agency or is sanctioned or endorsed by a  
 417 governmental agency.

418 (b) For purposes of this paragraph, the term "written  
 419 advertisement" includes only newspapers, magazines, flyers, and  
 420 bulk mailers. The following disclaimer, which is not required to

421 be printed on standard size business cards, must be added in  
 422 bold print and capital letters in typeface no smaller than the  
 423 typeface of the body of the text to all written advertisements  
 424 by a public adjuster:

425 "THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD  
 426 A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU  
 427 ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU  
 428 MAY DISREGARD THIS ADVERTISEMENT."

429  
 430 (9) A public adjuster, a public adjuster apprentice, or  
 431 any person or entity acting on behalf of a public adjuster or  
 432 public adjuster apprentice may not give or offer to give a  
 433 monetary loan or advance to a client or prospective client.

434 (10) A public adjuster, public adjuster apprentice, or any  
 435 individual or entity acting on behalf of a public adjuster or  
 436 public adjuster apprentice may not give or offer to give,  
 437 directly or indirectly, any article of merchandise having a  
 438 value in excess of \$25 to any individual for the purpose of  
 439 advertising or as an inducement to entering into a contract with  
 440 a public adjuster.

441 (11) (a) If a public adjuster enters into a contract with  
 442 an insured or claimant to reopen a claim or to file a  
 443 supplemental claim that seeks additional payments for a claim  
 444 that has been previously paid in part or in full or settled by  
 445 the insurer, the public adjuster may not charge, agree to, or  
 446 accept any compensation, payment, commission, fee, or other  
 447 thing of value based on a previous settlement or previous claim  
 448 payments by the insurer for the same cause of loss. The charge,



449 compensation, payment, commission, fee, or other thing of value  
 450 may be based only on the claim payments or settlement obtained  
 451 through the work of the public adjuster after entering into the  
 452 contract with the insured or claimant. Compensation for the  
 453 reopened or supplemental claim may not exceed 20 percent of the  
 454 reopened or supplemental claim payment. The contracts described  
 455 in this paragraph are not subject to the limitations in  
 456 paragraph (b).

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

460 1. Ten percent of the amount of insurance claim payments  
 461 made by the insurer for claims based on events that are the  
 462 subject of a declaration of a state of emergency by the  
 463 Governor. This provision applies to claims made during the  
 464 period of 1 year after the declaration of emergency. After that  
 465 year, 20 percent of the amount of insurance claim payments made  
 466 by the insurer.

467 2. Twenty percent of the amount of insurance claim  
 468 payments made by the insurer for claims that are not based on  
 469 events that are the subject of a declaration of a state of  
 470 emergency by the Governor.

471 (12) Each public adjuster must ~~shall~~ provide to the  
 472 claimant or insured a written estimate of the loss to assist in  
 473 the submission of a proof of loss or any other claim for payment  
 474 of insurance proceeds. The public adjuster shall retain such  
 475 written estimate for at least 5 years and shall make the ~~such~~  
 476 estimate available to the claimant or insured and the department

477 upon request.

478 (13) A public adjuster, public adjuster apprentice, or any  
 479 person acting on behalf of a public adjuster or apprentice may  
 480 not accept referrals of business from any person with whom the  
 481 public adjuster conducts business if there is any form or manner  
 482 of agreement to compensate the person, ~~whether~~ directly or  
 483 indirectly, for referring business to the public adjuster. A  
 484 public adjuster may not compensate any person, except for  
 485 another public adjuster, ~~whether~~ directly or indirectly, for the  
 486 principal purpose of referring business to the public adjuster.

487 (14) A company employee adjuster, independent adjuster,  
 488 attorney, investigator, or other persons acting on behalf of an  
 489 insurer that needs access to an insured or claimant or to the  
 490 insured property that is the subject of a claim must provide at  
 491 least 48 hours' notice to the insured or claimant, public  
 492 adjuster, or legal representative before scheduling a meeting  
 493 with the claimant or an onsite inspection of the insured  
 494 property. The insured or claimant may deny access to the  
 495 property if the notice has not been provided. The insured or  
 496 claimant may waive the 48-hour notice.

497 (15) A public adjuster must ensure prompt notice of  
 498 property loss claims submitted to an insurer by or through a  
 499 public adjuster or on which a public adjuster represents the  
 500 insured at the time the claim or notice of loss is submitted to  
 501 the insurer. The public adjuster must ensure that notice is  
 502 given to the insurer, the public adjuster's contract is provided  
 503 to the insurer, the property is available for inspection of the  
 504 loss or damage by the insurer, and the insurer is given an

505 opportunity to interview the insured directly about the loss and  
 506 claim. The insurer must be allowed to obtain necessary  
 507 information to investigate and respond to the claim.

508 (a) The insurer may not exclude the public adjuster from  
 509 its in-person meetings with the insured. The insurer shall meet  
 510 or communicate with the public adjuster in an effort to reach  
 511 agreement as to the scope of the covered loss under the  
 512 insurance policy. This section does not impair the terms and  
 513 conditions of the insurance policy in effect at the time the  
 514 claim is filed.

515 (b) A public adjuster may not restrict or prevent an  
 516 insurer, company employee adjuster, independent adjuster,  
 517 attorney, investigator, or other person acting on behalf of the  
 518 insurer from having reasonable access at reasonable times to an  
 519 insured or claimant or to the insured property that is the  
 520 subject of a claim.

521 (c) A public adjuster may not act or fail to reasonably  
 522 act in any manner that obstructs or prevents an insurer or  
 523 insurer's adjuster from timely conducting an inspection of any  
 524 part of the insured property for which there is a claim for loss  
 525 or damage. The public adjuster representing the insured may be  
 526 present for the insurer's inspection, but if the unavailability  
 527 of the public adjuster otherwise delays the insurer's timely  
 528 inspection of the property, the public adjuster or the insured  
 529 must allow the insurer to have access to the property without  
 530 the participation or presence of the public adjuster or insured  
 531 in order to facilitate the insurer's prompt inspection of the  
 532 loss or damage.

533       (16) A licensed contractor under part I of chapter 489, or  
 534 a subcontractor, may not adjust a claim on behalf of an insured  
 535 unless licensed and compliant as a public adjuster under this  
 536 chapter. However, the contractor may discuss or explain a bid  
 537 for construction or repair of covered property with the  
 538 residential property owner who has suffered loss or damage  
 539 covered by a property insurance policy, or the insurer of such  
 540 property, if the contractor is doing so for the usual and  
 541 customary fees applicable to the work to be performed as stated  
 542 in the contract between the contractor and the insured.

543       (17) The provisions of subsections (5)-(16) ~~(5)-(13)~~ apply  
 544 only to residential property insurance policies and condominium  
 545 unit owner policies as defined in s. 718.111(11).

546       Section 8. Effective June 1, 2011, section 626.70132,  
 547 Florida Statutes, is created to read:

548       626.70132 Notice of windstorm or hurricane claim.—A claim,  
 549 supplemental claim, or reopened claim under an insurance policy  
 550 that provides personal lines residential coverage, as defined in  
 551 s. 627.4025, for loss or damage caused by the peril of windstorm  
 552 or hurricane is barred unless notice of the claim, supplemental  
 553 claim, or reopened claim was given to the insurer in accordance  
 554 with the terms of the policy within 3 years after the hurricane  
 555 first made landfall or the windstorm caused the covered damage.  
 556 For purposes of this section, the term "supplemental claim" or  
 557 "reopened claim" means any additional claim for recovery from  
 558 the insurer for losses from the same hurricane or windstorm  
 559 which the insurer has previously adjusted pursuant to the  
 560 initial claim. This section does not affect any applicable

561 limitation on civil actions provided in s. 95.11 for claims,  
 562 supplemental claims, or reopened claims timely filed under this  
 563 section.

564 Section 9. Section 627.062, Florida Statutes, is amended  
 565 to read:

566 627.062 Rate standards.—

567 (1) The rates for all classes of insurance to which the  
 568 provisions of this part are applicable may ~~shall~~ not be  
 569 excessive, inadequate, or unfairly discriminatory.

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

571 (a) Insurers or rating organizations shall establish and  
 572 use rates, rating schedules, or rating manuals that ~~to~~ allow the  
 573 insurer a reasonable rate of return on the ~~such~~ classes of  
 574 insurance written in this state. A copy of rates, rating  
 575 schedules, rating manuals, premium credits or discount  
 576 schedules, and surcharge schedules, and changes thereto, must  
 577 ~~shall~~ be filed with the office under one of the following  
 578 procedures ~~except as provided in subparagraph 3.:~~

579 1. If the filing is made at least 90 days before the  
 580 proposed effective date and ~~the filing~~ is not implemented during  
 581 the office's review of the filing and any proceeding and  
 582 judicial review, ~~then~~ such filing is ~~shall be~~ considered a "file  
 583 and use" filing. In such case, the office shall finalize its  
 584 review by issuance of a notice of intent to approve or a notice  
 585 of intent to disapprove within 90 days after receipt of the  
 586 filing. The notice of intent to approve and the notice of intent  
 587 to disapprove constitute agency action for purposes of the  
 588 Administrative Procedure Act. Requests for supporting

589 information, requests for mathematical or mechanical  
 590 corrections, or notification to the insurer by the office of its  
 591 preliminary findings does ~~shall~~ not toll the 90-day period  
 592 during any such proceedings and subsequent judicial review. The  
 593 rate shall be deemed approved if the office does not issue a  
 594 notice of intent to approve or a notice of intent to disapprove  
 595 within 90 days after receipt of the filing.

596 2. If the filing is not made in accordance with ~~the~~  
 597 ~~provisions of~~ subparagraph 1., such filing must ~~shall~~ be made as  
 598 soon as practicable, but within ~~no later than~~ 30 days after the  
 599 effective date, and is ~~shall be~~ considered a "use and file"  
 600 filing. An insurer making a "use and file" filing is potentially  
 601 subject to an order by the office to return to policyholders  
 602 those portions of rates found to be excessive, as provided in  
 603 paragraph (h).

604 ~~3. For all property insurance filings made or submitted~~  
 605 ~~after January 25, 2007, but before December 31, 2010, an insurer~~  
 606 ~~seeking a rate that is greater than the rate most recently~~  
 607 ~~approved by the office shall make a "file and use" filing. For~~  
 608 ~~purposes of this subparagraph, motor vehicle collision and~~  
 609 ~~comprehensive coverages are not considered to be property~~  
 610 ~~coverages.~~

611 (b) Upon receiving a rate filing, the office shall review  
 612 the ~~rate~~ filing to determine if a rate is excessive, inadequate,  
 613 or unfairly discriminatory. In making that determination, the  
 614 office shall, in accordance with generally accepted and  
 615 reasonable actuarial techniques, consider the following factors:

616 1. Past and prospective loss experience within and without

617 | this state.

618 |       2. Past and prospective expenses.

619 |       3. The degree of competition among insurers for the risk

620 | insured.

621 |       4. Investment income reasonably expected by the insurer,

622 | consistent with the insurer's investment practices, from

623 | investable premiums anticipated in the filing, plus any other

624 | expected income from currently invested assets representing the

625 | amount expected on unearned premium reserves and loss reserves.

626 | The commission may adopt rules using reasonable techniques of

627 | actuarial science and economics to specify the manner in which

628 | insurers ~~shall~~ calculate investment income attributable to ~~such~~

629 | classes of insurance written in this state and the manner in

630 | which ~~such~~ investment income is ~~shall be~~ used to calculate

631 | insurance rates. Such manner must ~~shall~~ contemplate allowances

632 | for an underwriting profit factor and full consideration of

633 | investment income which produce a reasonable rate of return;

634 | however, investment income from invested surplus may not be

635 | considered.

636 |       5. The reasonableness of the judgment reflected in the

637 | filing.

638 |       6. Dividends, savings, or unabsorbed premium deposits

639 | allowed or returned to Florida policyholders, members, or

640 | subscribers.

641 |       7. The adequacy of loss reserves.

642 |       8. The cost of reinsurance. The office may ~~shall~~ not

643 | disapprove a rate as excessive solely due to the insurer having

644 | obtained catastrophic reinsurance to cover the insurer's

645 | estimated 250-year probable maximum loss or any lower level of  
 646 | loss.

647 | 9. Trend factors, including trends in actual losses per  
 648 | insured unit for the insurer making the filing.

649 | 10. Conflagration and catastrophe hazards, if applicable.

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

654 | 12. A reasonable margin for underwriting profit and  
 655 | contingencies.

656 | 13. The cost of medical services, if applicable.

657 | 14. Other relevant factors that affect ~~which impact upon~~  
 658 | the frequency or severity of claims or ~~upon~~ expenses.

659 | (c) In the case of fire insurance rates, consideration  
 660 | must ~~shall~~ be given to the availability of water supplies and  
 661 | the experience of the fire insurance business during a period of  
 662 | not less than the most recent 5-year period for which such  
 663 | experience is available.

664 | (d) If conflagration or catastrophe hazards are considered  
 665 | ~~given consideration~~ by an insurer in its rates or rating plan,  
 666 | including surcharges and discounts, the insurer shall establish  
 667 | a reserve for that portion of the premium allocated to such  
 668 | hazard and ~~shall~~ maintain the premium in a catastrophe reserve.  
 669 | ~~Any~~ Removal of such premiums from the reserve for purposes other  
 670 | than paying claims associated with a catastrophe or purchasing  
 671 | reinsurance for catastrophes must be approved by ~~shall be~~  
 672 | ~~subject to approval of~~ the office. Any ceding commission



673 received by an insurer purchasing reinsurance for catastrophes  
 674 must ~~shall~~ be placed in the catastrophe reserve.

675 (e) After consideration of the rate factors provided in  
 676 paragraphs (b), (c), and (d), the office may find a rate ~~may be~~  
 677 ~~found by the office~~ to be excessive, inadequate, or unfairly  
 678 discriminatory based upon the following standards:

679 1. Rates shall be deemed excessive if they are likely to  
 680 produce a profit from Florida business which ~~that~~ is  
 681 unreasonably high in relation to the risk involved in the class  
 682 of business or if expenses are unreasonably high in relation to  
 683 services rendered.

684 2. Rates shall be deemed excessive if, among other things,  
 685 the rate structure established by a stock insurance company  
 686 provides for replenishment of surpluses from premiums, if ~~when~~  
 687 the replenishment is attributable to investment losses.

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

692 4. A rating plan, including discounts, credits, or  
 693 surcharges, shall be deemed unfairly discriminatory if it fails  
 694 to clearly and equitably reflect consideration of the  
 695 policyholder's participation in a risk management program  
 696 adopted pursuant to s. 627.0625.

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

701 of risks.

702 6. A rate shall be deemed unfairly discriminatory as to a  
 703 risk or group of risks if the application of premium discounts,  
 704 credits, or surcharges among such risks does not bear a  
 705 reasonable relationship to the expected loss and expense  
 706 experience among the various risks.

707 (f) In reviewing a rate filing, the office may require the  
 708 insurer to provide, at the insurer's expense, all information  
 709 necessary to evaluate the condition of the company and the  
 710 reasonableness of the filing according to the criteria  
 711 enumerated in this section.

712 (g) The office may at any time review a rate, rating  
 713 schedule, rating manual, or rate change; the pertinent records  
 714 of the insurer; and market conditions. If the office finds on a  
 715 preliminary basis that a rate may be excessive, inadequate, or  
 716 unfairly discriminatory, the office shall initiate proceedings  
 717 to disapprove the rate and shall so notify the insurer. However,  
 718 the office may not disapprove as excessive any rate for which it  
 719 has given final approval or which has been deemed approved for a  
 720 ~~period of~~ 1 year after the effective date of the filing unless  
 721 the office finds that a material misrepresentation or material  
 722 error was made by the insurer or was contained in the filing.  
 723 Upon being ~~so~~ notified, the insurer or rating organization  
 724 shall, within 60 days, file with the office all information that  
 725 ~~which,~~ in the belief of the insurer or organization, proves the  
 726 reasonableness, adequacy, and fairness of the rate or rate  
 727 change. The office shall issue a notice of intent to approve or  
 728 a notice of intent to disapprove pursuant to ~~the procedures of~~

729 paragraph (a) within 90 days after receipt of the insurer's  
 730 initial response. In such instances and in any administrative  
 731 proceeding relating to the legality of the rate, the insurer or  
 732 rating organization shall carry the burden of proof by a  
 733 preponderance of the evidence to show that the rate is not  
 734 excessive, inadequate, or unfairly discriminatory. After the  
 735 office notifies an insurer that a rate may be excessive,  
 736 inadequate, or unfairly discriminatory, unless the office  
 737 withdraws the notification, the insurer may ~~shall~~ not alter the  
 738 rate except to conform to ~~with~~ the office's notice until the  
 739 earlier of 120 days after the date the notification was provided  
 740 or 180 days after the date of implementing ~~the implementation of~~  
 741 the rate. The office ~~may~~, subject to chapter 120, may disapprove  
 742 without the 60-day notification any rate increase filed by an  
 743 insurer within the prohibited time period or during the time  
 744 that the legality of the increased rate is being contested.

745 (h) If ~~In the event~~ the office finds that a rate or rate  
 746 change is excessive, inadequate, or unfairly discriminatory, the  
 747 office shall issue an order of disapproval specifying that a new  
 748 rate or rate schedule, which responds to the findings of the  
 749 office, be filed by the insurer. The office shall further order,  
 750 for any "use and file" filing made in accordance with  
 751 subparagraph (a)2., that premiums charged each policyholder  
 752 constituting the portion of the rate above that which was  
 753 actuarially justified be returned to the ~~such~~ policyholder in  
 754 the form of a credit or refund. If the office finds that an  
 755 insurer's rate or rate change is inadequate, the new rate or  
 756 rate schedule filed with the office in response to such a

757 finding is ~~shall be~~ applicable only to new or renewal business  
 758 of the insurer written on or after the effective date of the  
 759 responsive filing.

760 (i) Except as otherwise specifically provided in this  
 761 chapter, the office may ~~shall~~ not, directly or indirectly:

762 1. Prohibit any insurer, including any residual market  
 763 plan or joint underwriting association, from paying acquisition  
 764 costs based on the full amount of premium, as defined in s.  
 765 627.403, applicable to any policy, or prohibit any such insurer  
 766 from including the full amount of acquisition costs in a rate  
 767 filing; or.

768 2. Impede, abridge, or otherwise compromise an insurer's  
 769 right to acquire policyholders, advertise, or appoint agents,  
 770 including the calculation, manner, or amount of such agent  
 771 commissions, if any, in property and casualty insurance.

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

775 (k)1. An insurer may make a separate filing limited solely  
 776 to an adjustment of its rates for reinsurance or financing costs  
 777 incurred in the purchase of reinsurance or financing products to  
 778 replace or finance the payment of the amount covered by the  
 779 Temporary Increase in Coverage Limits (TICL) portion of the  
 780 Florida Hurricane Catastrophe Fund including replacement  
 781 reinsurance for the TICL reductions made pursuant to s.  
 782 215.555(17) (e); the actual cost paid due to the application of  
 783 the TICL premium factor pursuant to s. 215.555(17) (f); and the  
 784 actual cost paid due to the application of the cash build-up

785 factor pursuant to s. 215.555(5)(b) if the insurer:

786 a. Elects to purchase financing products such as a

787 liquidity instrument or line of credit, in which case the cost

788 included in the filing for the liquidity instrument or line of

789 credit may not result in a premium increase exceeding 3 percent

790 for any individual policyholder. All costs contained in the

791 filing may not result in an overall premium increase of more

792 than 10 percent for any individual policyholder.

793 b. Includes in the filing a copy of all of its

794 reinsurance, liquidity instrument, or line of credit contracts;

795 proof of the billing or payment for the contracts; and the

796 calculation upon which the proposed rate change is based

797 demonstrates that the costs meet the criteria of this section

798 and are not loaded for expenses or profit for the insurer making

799 the filing.

800 c. Includes no other changes to its rates in the filing.

801 d. Has not implemented a rate increase within the 6 months

802 immediately preceding the filing.

803 e. Does not file for a rate increase under any other

804 paragraph within 6 months after making a filing under this

805 paragraph.

806 f. That purchases reinsurance or financing products from

807 an affiliated company in compliance with this paragraph does so

808 only if the costs for such reinsurance or financing products are

809 charged at or below charges made for comparable coverage by

810 nonaffiliated reinsurers or financial entities making such

811 coverage or financing products available in this state.

812 2. An insurer may only make one filing in any 12-month

813 period under this paragraph.

814 3. An insurer that elects to implement a rate change under  
 815 this paragraph must file its rate filing with the office at  
 816 least 45 days before the effective date of the rate change.  
 817 After an insurer submits a complete filing that meets all of the  
 818 requirements of this paragraph, the office has 45 days after the  
 819 date of the filing to review the rate filing and determine if  
 820 the rate is excessive, inadequate, or unfairly discriminatory.

821  
 822 The provisions of this subsection do ~~shall~~ not apply to workers'  
 823 compensation, and employer's liability insurance, and ~~to~~ motor  
 824 vehicle insurance.

825 (3) (a) For individual risks that are not rated in  
 826 accordance with the insurer's rates, rating schedules, rating  
 827 manuals, and underwriting rules filed with the office and that  
 828 ~~which~~ have been submitted to the insurer for individual rating,  
 829 the insurer must maintain documentation on each risk subject to  
 830 individual risk rating. The documentation must identify the  
 831 named insured and specify the characteristics and classification  
 832 of the risk supporting the reason for the risk being  
 833 individually risk rated, including any modifications to existing  
 834 approved forms to be used on the risk. The insurer must maintain  
 835 these records for ~~a period of~~ at least 5 years after the  
 836 effective date of the policy.

837 (b) Individual risk rates and modifications to existing  
 838 approved forms are not subject to this part or part II, except  
 839 for paragraph (a) and ss. 627.402, 627.403, 627.4035, 627.404,  
 840 627.405, 627.406, 627.407, 627.4085, 627.409, 627.4132,

841 627.4133, 627.415, 627.416, 627.417, 627.419, 627.425, 627.426,  
 842 627.4265, 627.427, and 627.428, but are subject to all other  
 843 applicable provisions of this code and rules adopted thereunder.

844 (c) This subsection does not apply to private passenger  
 845 motor vehicle insurance.

846 (d)1. The following categories or kinds of insurance and  
 847 types of commercial lines risks are not subject to paragraph  
 848 (2) (a) or paragraph (2) (f):

849 a. Excess or umbrella.

850 b. Surety and fidelity.

851 c. Boiler and machinery and leakage and fire extinguishing  
 852 equipment.

853 d. Errors and omissions.

854 e. Directors and officers, employment practices, and  
 855 management liability.

856 f. Intellectual property and patent infringement  
 857 liability.

858 g. Advertising injury and Internet liability insurance.

859 h. Property risks rated under a highly protected risks  
 860 rating plan.

861 i. Any other commercial lines categories or kinds of  
 862 insurance or types of commercial lines risks that the office  
 863 determines should not be subject to paragraph (2) (a) or  
 864 paragraph (2) (f) because of the existence of a competitive  
 865 market for such insurance, similarity of such insurance to other  
 866 categories or kinds of insurance not subject to paragraph (2) (a)  
 867 or paragraph (2) (f), or to improve the general operational  
 868 efficiency of the office.

869           2. Insurers or rating organizations shall establish and  
 870 use rates, rating schedules, or rating manuals to allow the  
 871 insurer a reasonable rate of return on insurance and risks  
 872 described in subparagraph 1. which are written in this state.

873           3. An insurer must notify the office of any changes to  
 874 rates for insurance and risks described in subparagraph 1.  
 875 within ~~no later than~~ 30 days after the effective date of the  
 876 change. The notice must include the name of the insurer, the  
 877 type or kind of insurance subject to rate change, total premium  
 878 written during the immediately preceding year by the insurer for  
 879 the type or kind of insurance subject to the rate change, and  
 880 the average statewide percentage change in rates. Underwriting  
 881 files, premiums, losses, and expense statistics with regard to  
 882 such insurance and risks ~~described in subparagraph 1.~~ written by  
 883 an insurer must ~~shall~~ be maintained by the insurer and subject  
 884 to examination by the office. Upon examination, the office  
 885 ~~shall~~, in accordance with generally accepted and reasonable  
 886 actuarial techniques, shall consider the rate factors in  
 887 paragraphs (2) (b), (c), and (d) and the standards in paragraph  
 888 (2) (e) to determine if the rate is excessive, inadequate, or  
 889 unfairly discriminatory.

890           4. A rating organization must notify the office of any  
 891 changes to loss cost for insurance and risks described in  
 892 subparagraph 1. within ~~no later than~~ 30 days after the effective  
 893 date of the change. The notice must include the name of the  
 894 rating organization, the type or kind of insurance subject to a  
 895 loss cost change, loss costs during the immediately preceding  
 896 year for the type or kind of insurance subject to the loss cost



897 change, and the average statewide percentage change in loss  
 898 cost. Loss and exposure statistics with regard to risks  
 899 applicable to loss costs for a rating organization not subject  
 900 to paragraph (2)(a) or paragraph (2)(f) must ~~shall~~ be maintained  
 901 by the rating organization and are subject to examination by the  
 902 office. Upon examination, the office ~~shall~~, in accordance with  
 903 generally accepted and reasonable actuarial techniques, shall  
 904 consider the rate factors in paragraphs (2)(b)-(d) and the  
 905 standards in paragraph (2)(e) to determine if the rate is  
 906 excessive, inadequate, or unfairly discriminatory.

907 5. In reviewing a rate, the office may require the insurer  
 908 to provide, at the insurer's expense, all information necessary  
 909 to evaluate the condition of the company and the reasonableness  
 910 of the rate according to the applicable criteria described in  
 911 this section.

912 (4) The establishment of any rate, rating classification,  
 913 rating plan or schedule, or variation thereof in violation of  
 914 part IX of chapter 626 is also in violation of this section. ~~In~~  
 915 ~~order to enhance the ability of consumers to compare premiums~~  
 916 ~~and to increase the accuracy and usefulness of rate comparison~~  
 917 ~~information provided by the office to the public, the office~~  
 918 ~~shall develop a proposed standard rating territory plan to be~~  
 919 ~~used by all authorized property and casualty insurers for~~  
 920 ~~residential property insurance. In adopting the proposed plan,~~  
 921 ~~the office may consider geographical characteristics relevant to~~  
 922 ~~risk, county lines, major roadways, existing rating territories~~  
 923 ~~used by a significant segment of the market, and other relevant~~  
 924 ~~factors. Such plan shall be submitted to the President of the~~

925 ~~Senate and the Speaker of the House of Representatives by~~  
 926 ~~January 15, 2006. The plan may not be implemented unless~~  
 927 ~~authorized by further act of the Legislature.~~

928 (5) With respect to a rate filing involving coverage of  
 929 the type for which the insurer is required to pay a  
 930 reimbursement premium to the Florida Hurricane Catastrophe Fund,  
 931 the insurer may fully recoup in its property insurance premiums  
 932 any reimbursement premiums paid to the ~~Florida Hurricane~~  
 933 ~~Catastrophe~~ fund, together with reasonable costs of other  
 934 reinsurance; however, ~~but~~ except as otherwise provided in this  
 935 section, the insurer may not recoup reinsurance costs that  
 936 duplicate coverage provided by the ~~Florida Hurricane Catastrophe~~  
 937 fund. An insurer may not recoup more than 1 year of  
 938 reimbursement premium at a time. Any under-recoupment from the  
 939 prior year may be added to the following year's reimbursement  
 940 premium, and any over-recoupment must ~~shall~~ be subtracted from  
 941 the following year's reimbursement premium.

942 (6) (a) If an insurer requests an administrative hearing  
 943 pursuant to s. 120.57 related to a rate filing under this  
 944 section, the director of the Division of Administrative Hearings  
 945 shall expedite the hearing and assign an administrative law  
 946 judge who shall commence the hearing within 30 days after the  
 947 receipt of the formal request and ~~shall~~ enter a recommended  
 948 order within 30 days after the hearing or within 30 days after  
 949 receipt of the hearing transcript by the administrative law  
 950 judge, whichever is later. Each party shall have ~~be allowed~~ 10  
 951 days in which to submit written exceptions to the recommended  
 952 order. The office shall enter a final order within 30 days after

953 the entry of the recommended order. The provisions of this  
 954 paragraph may be waived upon stipulation of all parties.

955 (b) Upon entry of a final order, the insurer may request a  
 956 expedited appellate review pursuant to the Florida Rules of  
 957 Appellate Procedure. It is the intent of the Legislature that  
 958 the First District Court of Appeal grant an insurer's request  
 959 for an expedited appellate review.

960 (7) ~~(a)~~ The provisions of this subsection apply only ~~with~~  
 961 ~~respect~~ to rates for medical malpractice insurance and ~~shall~~  
 962 control to the extent of any conflict with other provisions of  
 963 this section.

964 (a) ~~(b)~~ Any portion of a judgment entered or settlement  
 965 paid as a result of a statutory or common-law bad faith action  
 966 and any portion of a judgment entered which awards punitive  
 967 damages against an insurer may not be included in the insurer's  
 968 rate base, and ~~shall not be~~ used to justify a rate or rate  
 969 change. Any common-law bad faith action identified as such, any  
 970 portion of a settlement entered as a result of a statutory or  
 971 common-law action, or any portion of a settlement wherein an  
 972 insurer agrees to pay specific punitive damages may not be used  
 973 to justify a rate or rate change. The portion of the taxable  
 974 costs and attorney's fees which is identified as being related  
 975 to the bad faith and punitive damages ~~in these judgments and~~  
 976 ~~settlements~~ may not be included in the insurer's rate base and  
 977 used ~~may not be utilized~~ to justify a rate or rate change.

978 (b) ~~(e)~~ Upon reviewing a rate filing and determining  
 979 whether the rate is excessive, inadequate, or unfairly  
 980 discriminatory, the office shall consider, in accordance with

981 generally accepted and reasonable actuarial techniques, past and  
 982 present prospective loss experience, ~~either~~ using loss  
 983 experience solely for this state or giving greater credibility  
 984 to this state's loss data after applying actuarially sound  
 985 methods of assigning credibility to such data.

986 (c)~~(d)~~ Rates shall be deemed excessive if, among other  
 987 standards established by this section, the rate structure  
 988 provides for replenishment of reserves or surpluses from  
 989 premiums when the replenishment is attributable to investment  
 990 losses.

991 (d)~~(e)~~ The insurer must apply a discount or surcharge  
 992 based on the health care provider's loss experience or ~~shall~~  
 993 establish an alternative method giving due consideration to the  
 994 provider's loss experience. The insurer must include in the  
 995 filing a copy of the surcharge or discount schedule or a  
 996 description of the alternative method used, and ~~must~~ provide a  
 997 copy ~~of such schedule or description~~, as approved by the office,  
 998 to policyholders at the time of renewal and to prospective  
 999 policyholders at the time of application for coverage.

1000 (e)~~(f)~~ Each medical malpractice insurer must make a rate  
 1001 filing under this section, sworn to by at least two executive  
 1002 officers of the insurer, at least once each calendar year.

1003 ~~(8)(a)1. No later than 60 days after the effective date of~~  
 1004 ~~medical malpractice legislation enacted during the 2003 Special~~  
 1005 ~~Session D of the Florida Legislature, the office shall calculate~~  
 1006 ~~a presumed factor that reflects the impact that the changes~~  
 1007 ~~contained in such legislation will have on rates for medical~~  
 1008 ~~malpractice insurance and shall issue a notice informing all~~

1009 ~~insurers writing medical malpractice coverage of such presumed~~  
 1010 ~~factor. In determining the presumed factor, the office shall use~~  
 1011 ~~generally accepted actuarial techniques and standards provided~~  
 1012 ~~in this section in determining the expected impact on losses,~~  
 1013 ~~expenses, and investment income of the insurer. To the extent~~  
 1014 ~~that the operation of a provision of medical malpractice~~  
 1015 ~~legislation enacted during the 2003 Special Session D of the~~  
 1016 ~~Florida Legislature is stayed pending a constitutional~~  
 1017 ~~challenge, the impact of that provision shall not be included in~~  
 1018 ~~the calculation of a presumed factor under this subparagraph.~~

1019 ~~2. No later than 60 days after the office issues its~~  
 1020 ~~notice of the presumed rate change factor under subparagraph 1.,~~  
 1021 ~~each insurer writing medical malpractice coverage in this state~~  
 1022 ~~shall submit to the office a rate filing for medical malpractice~~  
 1023 ~~insurance, which will take effect no later than January 1, 2004,~~  
 1024 ~~and apply retroactively to policies issued or renewed on or~~  
 1025 ~~after the effective date of medical malpractice legislation~~  
 1026 ~~enacted during the 2003 Special Session D of the Florida~~  
 1027 ~~Legislature. Except as authorized under paragraph (b), the~~  
 1028 ~~filing shall reflect an overall rate reduction at least as great~~  
 1029 ~~as the presumed factor determined under subparagraph 1. With~~  
 1030 ~~respect to policies issued on or after the effective date of~~  
 1031 ~~such legislation and prior to the effective date of the rate~~  
 1032 ~~filing required by this subsection, the office shall order the~~  
 1033 ~~insurer to make a refund of the amount that was charged in~~  
 1034 ~~excess of the rate that is approved.~~

1035 ~~(b) Any insurer or rating organization that contends that~~  
 1036 ~~the rate provided for in paragraph (a) is excessive, inadequate,~~

1037 ~~or unfairly discriminatory shall separately state in its filing~~  
 1038 ~~the rate it contends is appropriate and shall state with~~  
 1039 ~~specificity the factors or data that it contends should be~~  
 1040 ~~considered in order to produce such appropriate rate. The~~  
 1041 ~~insurer or rating organization shall be permitted to use all of~~  
 1042 ~~the generally accepted actuarial techniques provided in this~~  
 1043 ~~section in making any filing pursuant to this subsection. The~~  
 1044 ~~office shall review each such exception and approve or~~  
 1045 ~~disapprove it prior to use. It shall be the insurer's burden to~~  
 1046 ~~actuarially justify any deviations from the rates required to be~~  
 1047 ~~filed under paragraph (a). The insurer making a filing under~~  
 1048 ~~this paragraph shall include in the filing the expected impact~~  
 1049 ~~of medical malpractice legislation enacted during the 2003~~  
 1050 ~~Special Session D of the Florida Legislature on losses,~~  
 1051 ~~expenses, and rates.~~

1052 ~~(c) If any provision of medical malpractice legislation~~  
 1053 ~~enacted during the 2003 Special Session D of the Florida~~  
 1054 ~~Legislature is held invalid by a court of competent~~  
 1055 ~~jurisdiction, the office shall permit an adjustment of all~~  
 1056 ~~medical malpractice rates filed under this section to reflect~~  
 1057 ~~the impact of such holding on such rates so as to ensure that~~  
 1058 ~~the rates are not excessive, inadequate, or unfairly~~  
 1059 ~~discriminatory.~~

1060 ~~(d) Rates approved on or before July 1, 2003, for medical~~  
 1061 ~~malpractice insurance shall remain in effect until the effective~~  
 1062 ~~date of a new rate filing approved under this subsection.~~

1063 ~~(e) The calculation and notice by the office of the~~  
 1064 ~~presumed factor pursuant to paragraph (a) is not an order or~~

1065 ~~rule that is subject to chapter 120. If the office enters into a~~  
 1066 ~~contract with an independent consultant to assist the office in~~  
 1067 ~~calculating the presumed factor, such contract shall not be~~  
 1068 ~~subject to the competitive solicitation requirements of s.~~  
 1069 ~~287.057.~~

1070 (8) ~~(9)~~ (a) The chief executive officer or chief financial  
 1071 officer of a property insurer and the chief actuary of a  
 1072 property insurer must certify under oath and subject to the  
 1073 penalty of perjury, on a form approved by the commission, the  
 1074 following information, which must accompany a rate filing:

1075 1. The signing officer and actuary have reviewed the rate  
 1076 filing;

1077 2. Based on the signing officer's and actuary's knowledge,  
 1078 the rate filing does not contain any untrue statement of a  
 1079 material fact or omit to state a material fact necessary ~~in~~  
 1080 ~~order~~ to make the statements made, in light of the circumstances  
 1081 under which such statements were made, not misleading;

1082 3. Based on the signing officer's and actuary's knowledge,  
 1083 the information and other factors described in paragraph (2) (b),  
 1084 including, but not limited to, investment income, fairly present  
 1085 in all material respects the basis of the rate filing for the  
 1086 periods presented in the filing; and

1087 4. Based on the signing officer's and actuary's knowledge,  
 1088 the rate filing reflects all premium savings that are reasonably  
 1089 expected to result from legislative enactments and are in  
 1090 accordance with generally accepted and reasonable actuarial  
 1091 techniques.

1092 (b) A signing officer or actuary who knowingly makes

1093 ~~making~~ a false certification under this subsection commits a  
 1094 violation of s. 626.9541(1)(e) and is subject to the penalties  
 1095 under s. 626.9521.

1096 (c) Failure to provide such certification by the officer  
 1097 and actuary shall result in the rate filing being disapproved  
 1098 without prejudice to be refiled.

1099 (d) The certification made pursuant to paragraph (a) is  
 1100 not rendered false if, after making the subject rate filing, the  
 1101 insurer provides the office with additional or supplementary  
 1102 information pursuant to a formal or informal request from the  
 1103 office. However, the actuary primarily responsible for  
 1104 preparing and submitting the additional or supplementary  
 1105 information shall certify the information consistent with the  
 1106 certification required in paragraph (a) and the penalties in  
 1107 paragraph (b), except that the chief executive officer or chief  
 1108 financial officer or chief actuary is not required to certify to  
 1109 the additional or supplementary information.

1110 (e)~~(d)~~ The commission may adopt rules and forms pursuant  
 1111 ~~to ss. 120.536(1) and 120.54~~ to administer this subsection.

1112 (9)~~(10)~~ The burden is on the office to establish that  
 1113 rates are excessive for personal lines residential coverage with  
 1114 a dwelling replacement cost of \$1 million or more or for a  
 1115 single condominium unit with a combined dwelling and contents  
 1116 replacement cost of \$1 million or more. Upon request of the  
 1117 office, the insurer shall provide ~~to the office~~ such loss and  
 1118 expense information as the office reasonably needs to meet this  
 1119 burden.

1120 (10)~~(11)~~ Any interest paid pursuant to s. 627.70131(5) may



1121 not be included in the insurer's rate base and may not be used  
 1122 to justify a rate or rate change.

1123 Section 10. Subsections (1) and (5) and paragraph (b) of  
 1124 subsection (8) of section 627.0629, Florida Statutes, are  
 1125 amended to read:

1126 627.0629 Residential property insurance; rate filings.—

1127 (1)(a) It is the intent of the Legislature that insurers  
 1128 ~~must~~ provide savings to consumers who install or implement  
 1129 windstorm damage mitigation techniques, alterations, or  
 1130 solutions to their properties to prevent windstorm losses. A  
 1131 rate filing for residential property insurance must include  
 1132 actuarially reasonable discounts, credits, or other rate  
 1133 differentials, or appropriate reductions in deductibles, for  
 1134 properties on which fixtures or construction techniques  
 1135 demonstrated to reduce the amount of loss in a windstorm have  
 1136 been installed or implemented. The fixtures or construction  
 1137 techniques must ~~shall~~ include, but not be limited to, fixtures  
 1138 or construction techniques that ~~which~~ enhance roof strength,  
 1139 roof covering performance, roof-to-wall strength, wall-to-floor-  
 1140 to-foundation strength, opening protection, and window, door,  
 1141 and skylight strength. Credits, discounts, or other rate  
 1142 differentials, or appropriate reductions in deductibles, for  
 1143 fixtures and construction techniques that ~~which~~ meet the minimum  
 1144 requirements of the Florida Building Code must be included in  
 1145 the rate filing. ~~All insurance companies must make a rate filing~~  
 1146 ~~which includes the credits, discounts, or other rate~~  
 1147 ~~differentials or reductions in deductibles by February 28, 2003.~~  
 1148 ~~By July 1, 2007, the office shall reevaluate the discounts,~~

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1149 ~~credits, other rate differentials, and appropriate reductions in~~  
1150 ~~deductibles for fixtures and construction techniques that meet~~  
1151 ~~the minimum requirements of the Florida Building Code, based~~  
1152 ~~upon actual experience or any other loss relativity studies~~  
1153 ~~available to the office.~~ The office shall determine the  
1154 discounts, credits, other rate differentials, and appropriate  
1155 reductions in deductibles that reflect the full actuarial value  
1156 of such revaluation, which may be used by insurers in rate  
1157 filings.

1158 ~~(b) By February 1, 2011, the Office of Insurance~~  
1159 ~~Regulation, in consultation with the Department of Financial~~  
1160 ~~Services and the Department of Community Affairs, shall develop~~  
1161 ~~and make publicly available a proposed method for insurers to~~  
1162 ~~establish discounts, credits, or other rate differentials for~~  
1163 ~~hurricane mitigation measures which directly correlate to the~~  
1164 ~~numerical rating assigned to a structure pursuant to the uniform~~  
1165 ~~home grading scale adopted by the Financial Services Commission~~  
1166 ~~pursuant to s. 215.55865, including any proposed changes to the~~  
1167 ~~uniform home grading scale. By October 1, 2011, the commission~~  
1168 ~~shall adopt rules requiring insurers to make rate filings for~~  
1169 ~~residential property insurance which revise insurers' discounts,~~  
1170 ~~credits, or other rate differentials for hurricane mitigation~~  
1171 ~~measures so that such rate differentials correlate directly to~~  
1172 ~~the uniform home grading scale. The rules may include such~~  
1173 ~~changes to the uniform home grading scale as the commission~~  
1174 ~~determines are necessary, and may specify the minimum required~~  
1175 ~~discounts, credits, or other rate differentials. Such rate~~  
1176 ~~differentials must be consistent with generally accepted~~

1177 ~~actuarial principles and wind loss mitigation studies. The rules~~  
 1178 ~~shall allow a period of at least 2 years after the effective~~  
 1179 ~~date of the revised mitigation discounts, credits, or other rate~~  
 1180 ~~differentials for a property owner to obtain an inspection or~~  
 1181 ~~otherwise qualify for the revised credit, during which time the~~  
 1182 ~~insurer shall continue to apply the mitigation credit that was~~  
 1183 ~~applied immediately prior to the effective date of the revised~~  
 1184 ~~credit. Discounts, credits, and other rate differentials~~  
 1185 ~~established for rate filings under this paragraph shall~~  
 1186 ~~supersede, after adoption, the discounts, credits, and other~~  
 1187 ~~rate differentials included in rate filings under paragraph (a).~~

1188 (5) In order to provide an appropriate transition period,  
 1189 an insurer may, ~~in its sole discretion,~~ implement an approved  
 1190 rate filing for residential property insurance over a period of  
 1191 years. Such ~~An~~ insurer ~~electing to phase in its rate filing~~ must  
 1192 provide an informational notice to the office setting out its  
 1193 schedule for implementation of the phased-in rate filing. The ~~An~~  
 1194 insurer may include in its rate the actual cost of private  
 1195 market reinsurance that corresponds to available coverage of the  
 1196 Temporary Increase in Coverage Limits, TICL, from the Florida  
 1197 Hurricane Catastrophe Fund. The insurer may also include the  
 1198 cost of reinsurance to replace the TICL reduction implemented  
 1199 pursuant to s. 215.555(17)(d)9. However, this cost for  
 1200 reinsurance may not include any expense or profit load or result  
 1201 in a total annual base rate increase in excess of 10 percent.

1202 (8) EVALUATION OF RESIDENTIAL PROPERTY STRUCTURAL  
 1203 SOUNDNESS.—

1204 (b) To the extent ~~that~~ funds are provided for this purpose

1205 in the General Appropriations Act, ~~the Legislature hereby~~  
 1206 ~~authorizes~~ the establishment of a program to be administered by  
 1207 the Citizens Property Insurance Corporation for homeowners  
 1208 insured in the high-risk account is authorized.

1209 Section 11. Paragraph (b) of subsection (2) of section  
 1210 627.4133, Florida Statutes, is amended to read:

1211 627.4133 Notice of cancellation, nonrenewal, or renewal  
 1212 premium.—

1213 (2) With respect to any personal lines or commercial  
 1214 residential property insurance policy, including, but not  
 1215 limited to, any homeowner's, mobile home owner's, farmowner's,  
 1216 condominium association, condominium unit owner's, apartment  
 1217 building, or other policy covering a residential structure or  
 1218 its contents:

1219 (b) The insurer shall give the named insured written  
 1220 notice of nonrenewal, cancellation, or termination at least 100  
 1221 days before ~~prior to~~ the effective date of the nonrenewal,  
 1222 cancellation, or termination. However, the insurer shall give at  
 1223 least 100 days' written notice, or written notice by June 1,  
 1224 whichever is earlier, for any nonrenewal, cancellation, or  
 1225 termination that would be effective between June 1 and November  
 1226 30. The notice must include the reason or reasons for the  
 1227 nonrenewal, cancellation, or termination, except that:

1228 1. The insurer shall give the named insured written notice  
 1229 of nonrenewal, cancellation, or termination at least 180 days  
 1230 prior to the effective date of the nonrenewal, cancellation, or  
 1231 termination for a named insured whose residential structure has  
 1232 been insured by that insurer or an affiliated insurer for at

1233 least a 5-year period immediately prior to the date of the  
 1234 written notice.

1235 2. If ~~When~~ cancellation is for nonpayment of premium, at  
 1236 least 10 days' written notice of cancellation accompanied by the  
 1237 reason therefor must ~~shall~~ be given. As used in this  
 1238 subparagraph, the term "nonpayment of premium" means failure of  
 1239 the named insured to discharge when due ~~any of~~ her or his  
 1240 obligations in connection with the payment of premiums on a  
 1241 policy or any installment of such premium, whether the premium  
 1242 is payable directly to the insurer or its agent or indirectly  
 1243 under any premium finance plan or extension of credit, or  
 1244 failure to maintain membership in an organization if such  
 1245 membership is a condition precedent to insurance coverage. The  
 1246 term "Nonpayment of premium" also means the failure of a  
 1247 financial institution to honor an insurance applicant's check  
 1248 after delivery to a licensed agent for payment of a premium,  
 1249 even if the agent has previously delivered or transferred the  
 1250 premium to the insurer. If a dishonored check represents the  
 1251 initial premium payment, the contract and all contractual  
 1252 obligations are ~~shall be~~ void ab initio unless the nonpayment is  
 1253 cured within the earlier of 5 days after actual notice by  
 1254 certified mail is received by the applicant or 15 days after  
 1255 notice is sent to the applicant by certified mail or registered  
 1256 mail, and if the contract is void, any premium received by the  
 1257 insurer from a third party must ~~shall~~ be refunded to that party  
 1258 in full.

1259 3. If ~~When~~ such cancellation or termination occurs during  
 1260 the first 90 days ~~during which~~ the insurance is in force and the

1261 insurance is canceled or terminated for reasons other than  
 1262 nonpayment of premium, at least 20 days' written notice of  
 1263 cancellation or termination accompanied by the reason therefor  
 1264 must ~~shall~~ be given unless ~~except where~~ there has been a  
 1265 material misstatement or misrepresentation or failure to comply  
 1266 with the underwriting requirements established by the insurer.

1267 4. The requirement for providing written notice ~~of~~  
 1268 ~~nonrenewal~~ by June 1 of any nonrenewal that would be effective  
 1269 between June 1 and November 30 does not apply to the following  
 1270 situations, but the insurer remains subject to the requirement  
 1271 to provide such notice at least 100 days before ~~prior to~~ the  
 1272 effective date of nonrenewal:

1273 a. A policy that is nonrenewed due to a revision in the  
 1274 coverage for sinkhole losses and catastrophic ground cover  
 1275 collapse pursuant to s. 627.706, ~~as amended by s. 30, chapter~~  
 1276 ~~2007-1, Laws of Florida.~~

1277 b. A policy that is nonrenewed by Citizens Property  
 1278 Insurance Corporation, pursuant to s. 627.351(6), for a policy  
 1279 that has been assumed by an authorized insurer offering  
 1280 replacement or renewal coverage to the policyholder.

1281  
 1282 After the policy has been in effect for 90 days, the policy may  
 1283 ~~shall~~ not be canceled by the insurer unless ~~except when~~ there  
 1284 has been a material misstatement, a nonpayment of premium, a  
 1285 failure to comply with underwriting requirements established by  
 1286 the insurer within 90 days after ~~of~~ the date of effectuation of  
 1287 coverage, or a substantial change in the risk covered by the  
 1288 policy or if ~~when~~ the cancellation is for all insureds under

1289 such policies for a given class of insureds. This paragraph does  
 1290 not apply to individually rated risks having a policy term of  
 1291 less than 90 days.

1292 4. Notwithstanding any other provision of law, an insurer  
 1293 may cancel or nonrenew a property insurance policy after at  
 1294 least 45 days' notice if the office finds that the early  
 1295 cancellation of some or all of the insurer's policies is  
 1296 necessary to protect the best interests of the public or  
 1297 policyholders and the office approves the insurer's plan for  
 1298 early cancellation or nonrenewal of some or all of its policies.  
 1299 The office may base such finding upon the financial condition of  
 1300 the insurer, lack of adequate reinsurance coverage for hurricane  
 1301 risk, or other relevant factors. The office may condition its  
 1302 finding on the consent of the insurer to be placed under  
 1303 administrative supervision pursuant to s. 624.81 or to the  
 1304 appointment of a receiver under chapter 631.

1305 Section 12. Section 627.43141, Florida Statutes, is  
 1306 created to read:

1307 627.43141 Notice of change in policy terms.—

1308 (1) As used in this section, the term:

1309 (a) "Change in policy terms" means the modification,  
 1310 addition, or deletion of any term, coverage, duty, or condition  
 1311 from the previous policy. The correction of typographical or  
 1312 scrivener's errors or the application of mandated legislative  
 1313 changes is not a change in policy terms.

1314 (b) "Policy" means a written contract of personal lines  
 1315 property and casualty insurance or a written agreement for  
 1316 insurance, or the certificate of such insurance, by whatever

1317 name called, and includes all clauses, riders, endorsements, and  
 1318 papers that are a part of such policy. The term does not include  
 1319 a binder as defined in s. 627.420 unless the duration of the  
 1320 binder period exceeds 60 days.

1321 (c) "Renewal" means the issuance and delivery by an  
 1322 insurer of a policy superseding at the end of the policy period  
 1323 a policy previously issued and delivered by the same insurer or  
 1324 the issuance and delivery of a certificate or notice extending  
 1325 the term of a policy beyond its policy period or term. Any  
 1326 policy that has a policy period or term of less than 6 months or  
 1327 that does not have a fixed expiration date shall, for purposes  
 1328 of this section, be considered as written for successive policy  
 1329 periods or terms of 6 months.

1330 (2) A renewal policy may contain a change in policy terms.  
 1331 If a renewal policy does contains such change, the insurer must  
 1332 give the named insured written notice of the change, which must  
 1333 be enclosed along with the written notice of renewal premium  
 1334 required by ss. 627.4133 and 627.728. Such notice shall be  
 1335 entitled "Notice of Change in Policy Terms."

1336 (3) Although not required, proof of mailing or registered  
 1337 mailing through the United States Postal Service of the Notice  
 1338 of Change in Policy Terms to the named insured at the address  
 1339 shown in the policy is sufficient proof of notice.

1340 (4) Receipt of the premium payment for the renewal policy  
 1341 by the insurer is deemed to be acceptance of the new policy  
 1342 terms by the named insured.

1343 (5) If an insurer fails to provide the notice required in  
 1344 subsection (2), the original policy terms remain in effect until



1345 the next renewal and the proper service of the notice, or until  
 1346 the effective date of replacement coverage obtained by the named  
 1347 insured, whichever occurs first.

1348 (6) The intent of this section is to:

1349 (a) Allow an insurer to make a change in policy terms  
 1350 without nonrenewing those policyholders that the insurer wishes  
 1351 to continue insuring.

1352 (b) Alleviate concern and confusion to the policyholder  
 1353 caused by the required policy nonrenewal for the limited issue  
 1354 if an insurer intends to renew the insurance policy, but the new  
 1355 policy contains a change in policy terms.

1356 (c) Encourage policyholders to discuss their coverages  
 1357 with their insurance agents.

1358 Section 13. Section 627.7011, Florida Statutes, is amended  
 1359 to read:

1360 627.7011 Homeowners' policies; offer of replacement cost  
 1361 coverage and law and ordinance coverage.—

1362 (1) Before ~~Prior to~~ issuing or renewing a homeowner's  
 1363 insurance policy ~~on or after October 1, 2005, or prior to the~~  
 1364 ~~first renewal of a homeowner's insurance policy on or after~~  
 1365 ~~October 1, 2005,~~ the insurer must offer each of the following:

1366 (a) A policy or endorsement providing that any loss that  
 1367 ~~which~~ is repaired or replaced will be adjusted on the basis of  
 1368 replacement costs to the dwelling not exceeding policy limits ~~as~~  
 1369 ~~to the dwelling,~~ rather than actual cash value, but not  
 1370 including costs necessary to meet applicable laws and ordinances  
 1371 regulating the construction, use, or repair of any property or  
 1372 requiring the tearing down of any property, including the costs

1373 of removing debris.

1374 (b) A policy or endorsement providing that, subject to  
 1375 other policy provisions, any loss that ~~which~~ is repaired or  
 1376 replaced at any location will be adjusted on the basis of  
 1377 replacement costs to the dwelling not exceeding policy limits ~~as~~  
 1378 ~~to the dwelling~~, rather than actual cash value, and also  
 1379 including costs necessary to meet applicable laws and ordinances  
 1380 regulating the construction, use, or repair of any property or  
 1381 requiring the tearing down of any property, including the costs  
 1382 of removing debris. ~~+~~ However, ~~such~~ additional costs necessary to  
 1383 meet applicable laws and ordinances may be limited to ~~either~~ 25  
 1384 percent or 50 percent of the dwelling limit, as selected by the  
 1385 policyholder, and such coverage applies ~~shall apply~~ only to  
 1386 repairs of the damaged portion of the structure unless the total  
 1387 damage to the structure exceeds 50 percent of the replacement  
 1388 cost of the structure.

1389  
 1390 An insurer is not required to make the offers required by this  
 1391 subsection with respect to the issuance or renewal of a  
 1392 homeowner's policy that contains the provisions specified in  
 1393 paragraph (b) for law and ordinance coverage limited to 25  
 1394 percent of the dwelling limit, except that the insurer must  
 1395 offer the law and ordinance coverage limited to 50 percent of  
 1396 the dwelling limit. This subsection does not prohibit the offer  
 1397 of a guaranteed replacement cost policy.

1398 (2) Unless the insurer obtains the policyholder's written  
 1399 refusal of the policies or endorsements specified in subsection  
 1400 (1), any policy covering the dwelling is deemed to include the

1401 law and ordinance coverage limited to 25 percent of the dwelling  
 1402 limit. The rejection or selection of alternative coverage shall  
 1403 be made on a form approved by the office. The form must ~~shall~~  
 1404 fully advise the applicant of the nature of the coverage being  
 1405 rejected. If this form is signed by a named insured, it is ~~will~~  
 1406 ~~be~~ conclusively presumed that there was an informed, knowing  
 1407 rejection of the coverage or election of the alternative  
 1408 coverage on behalf of all insureds. Unless the policyholder  
 1409 requests in writing the coverage specified in this section, it  
 1410 need not be provided in or supplemental to any other policy that  
 1411 renews, insures, extends, changes, supersedes, or replaces an  
 1412 existing policy if ~~when~~ the policyholder has rejected the  
 1413 coverage specified in this section or has selected alternative  
 1414 coverage. The insurer must provide the ~~such~~ policyholder with  
 1415 notice of the availability of such coverage in a form approved  
 1416 by the office at least once every 3 years. The failure to  
 1417 provide such notice constitutes a violation of this code, but  
 1418 does not affect the coverage provided under the policy.

1419 (3) (a) In the event of a loss for which a dwelling is  
 1420 insured on the basis of replacement costs, the insurer initially  
 1421 must pay at least the actual cash value of the insured loss,  
 1422 less any applicable deductible. An insured shall subsequently  
 1423 enter into a contract for the performance of building and  
 1424 structural repairs. The insurer shall pay any remaining amounts  
 1425 incurred to perform such repairs as the work is performed. With  
 1426 the exception of incidental expenses to mitigate further damage,  
 1427 the insurer or any contractor or subcontractor may not require  
 1428 the policyholder to advance payment for such repairs or

1429 expenses. The insurer may waive the requirement for a contract  
 1430 as provided in this paragraph. An insured shall have a period of  
 1431 one 1 year after the date the insurer pays actual cash value to  
 1432 make a claim for replacement cost. If a total loss of a dwelling  
 1433 occurs, the insurer shall pay the replacement cost coverage  
 1434 without reservation or holdback of any depreciation in value,  
 1435 pursuant to s. 627.702.

1436 (b) In the event of a loss for which ~~a dwelling or~~  
 1437 personal property is insured on the basis of replacement costs,  
 1438 the insurer shall pay the replacement cost without reservation  
 1439 or holdback of any depreciation in value, whether or not the  
 1440 insured replaces or repairs the ~~dwelling or~~ property.

1441 (4) ~~A~~ Any homeowner's insurance policy ~~issued or renewed~~  
 1442 ~~on or after October 1, 2005,~~ must include in bold type no  
 1443 smaller than 18 points the following statement:

1444  
 1445 "LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE  
 1446 THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO  
 1447 CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE  
 1448 NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS  
 1449 COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE  
 1450 DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT."  
 1451

1452 The intent of this subsection is to encourage policyholders to  
 1453 purchase sufficient coverage to protect them in case events  
 1454 excluded from the standard homeowners policy, such as law and  
 1455 ordinance enforcement and flood, combine with covered events to  
 1456 produce damage or loss to the insured property. The intent is

1457 also to encourage policyholders to discuss these issues with  
 1458 their insurance agent.

1459 (5) ~~Nothing in~~ This section does not: ~~shall be construed~~  
 1460 ~~to~~

1461 (a) Apply to policies not considered to be "homeowners'  
 1462 policies," as that term is commonly understood in the insurance  
 1463 industry. ~~This section specifically does not~~

1464 (b) Apply to mobile home policies. ~~Nothing in this section~~

1465 (c) ~~Limit shall be construed as limiting~~ the ability of an  
 1466 ~~any~~ insurer to reject or nonrenew any insured or applicant on  
 1467 the grounds that the structure does not meet underwriting  
 1468 criteria applicable to replacement cost or law and ordinance  
 1469 policies or for other lawful reasons.

1470 (d) ~~(6) This section does not~~ Prohibit an insurer from  
 1471 limiting its liability under a policy or endorsement providing  
 1472 that loss will be adjusted on the basis of replacement costs to  
 1473 the lesser of:

1474 1. ~~(a)~~ The limit of liability shown on the policy  
 1475 declarations page;

1476 2. ~~(b)~~ The reasonable and necessary cost to repair the  
 1477 damaged, destroyed, or stolen covered property; or

1478 3. ~~(c)~~ The reasonable and necessary cost to replace the  
 1479 damaged, destroyed, or stolen covered property.

1480 (e) ~~(7) This section does not~~ Prohibit an insurer from  
 1481 exercising its right to repair damaged property in compliance  
 1482 with its policy and s. 627.702(7).

1483 Section 14. Paragraph (a) of subsection (5) of section  
 1484 627.70131, Florida Statutes, is amended to read:

1485           627.70131 Insurer's duty to acknowledge communications  
 1486 regarding claims; investigation.-

1487           (5) (a) Within 90 days after an insurer receives notice of  
 1488 an initial, reopened, or supplemental a property insurance claim  
 1489 from a policyholder, the insurer shall pay or deny such claim or  
 1490 a portion of the claim unless the failure to pay ~~such claim or a~~  
 1491 ~~portion of the claim~~ is caused by factors beyond the control of  
 1492 the insurer which reasonably prevent such payment. Any payment  
 1493 of an initial or supplemental a claim or portion of such a claim  
 1494 made paid 90 days after the insurer receives notice of the  
 1495 claim, or made paid more than 15 days after there are no longer  
 1496 factors beyond the control of the insurer which reasonably  
 1497 prevented such payment, whichever is later, bears ~~shall bear~~  
 1498 interest at the rate set forth in s. 55.03. Interest begins to  
 1499 accrue from the date the insurer receives notice of the claim.  
 1500 The provisions of this subsection may not be waived, voided, or  
 1501 nullified by the terms of the insurance policy. If there is a  
 1502 right to prejudgment interest, the insured shall select whether  
 1503 to receive prejudgment interest or interest under this  
 1504 subsection. Interest is payable when the claim or portion of the  
 1505 claim is paid. Failure to comply with this subsection  
 1506 constitutes a violation of this code. However, failure to comply  
 1507 with this subsection does ~~shall~~ not form the sole basis for a  
 1508 private cause of action.

1509           Section 15. The Legislature finds and declares:

1510           (1) There is a compelling state interest in maintaining a  
 1511 viable and orderly private-sector market for property insurance  
 1512 in this state. The lack of a viable and orderly property market

1513 reduces the availability of property insurance coverage to state  
 1514 residents, increases the cost of property insurance, and  
 1515 increases the state's reliance on a residual property insurance  
 1516 market and its potential for imposing assessments on  
 1517 policyholders throughout the state.

1518 (2) In 2005, the Legislature revised ss. 627.706-627.7074,  
 1519 Florida Statutes, to adopt certain geological or technical  
 1520 terms; to increase reliance on objective, scientific testing  
 1521 requirements; and generally to reduce the number of sinkhole  
 1522 claims and related disputes arising under prior law. The  
 1523 Legislature determined that since the enactment of these  
 1524 statutory revisions, both private-sector insurers and Citizens  
 1525 Property Insurance Corporation have, nevertheless, continued to  
 1526 experience high claims frequency and severity for sinkhole  
 1527 insurance claims. In addition, many properties remain unrepaired  
 1528 even after loss payments, which reduces the local property tax  
 1529 base and adversely affects the real estate market. Therefore,  
 1530 the Legislature finds that losses associated with sinkhole  
 1531 claims adversely affect the public health, safety, and welfare  
 1532 of this state and its citizens.

1533 (3) Pursuant to sections 16 through 20 of this act,  
 1534 technical or scientific definitions adopted in the 2005  
 1535 legislation are clarified to implement and advance the  
 1536 Legislature's intended reduction of sinkhole claims and  
 1537 disputes. Certain other revisions to ss. 627.706-627.7074,  
 1538 Florida Statutes, are enacted to advance legislative intent to  
 1539 rely on scientific or technical determinations relating to  
 1540 sinkholes and sinkhole claims, reduce the number and cost of

1541 disputes relating to sinkhole claims, and ensure that repairs  
 1542 are made commensurate with the scientific and technical  
 1543 determinations and insurance claims payments.

1544 Section 16. Section 627.706, Florida Statutes, is  
 1545 reordered and amended to read:

1546 627.706 Sinkhole insurance; catastrophic ground cover  
 1547 collapse; definitions.—

1548 (1) (a) Every insurer authorized to transact property  
 1549 insurance in this state must ~~shall~~ provide coverage for a  
 1550 catastrophic ground cover collapse.

1551 (b) The insurer ~~and~~ shall make available, for an  
 1552 appropriate additional premium, coverage for sinkhole losses on  
 1553 any structure, including the contents of personal property  
 1554 contained therein, to the extent provided in the form to which  
 1555 the coverage attaches. The insurer may require an inspection of  
 1556 the property before issuance of sinkhole loss coverage. A policy  
 1557 for residential property insurance may include a deductible  
 1558 amount applicable to sinkhole losses equal to 1 percent, 2  
 1559 percent, 5 percent, or 10 percent of the policy dwelling limits,  
 1560 with appropriate premium discounts offered with each deductible  
 1561 amount.

1562 (c) The insurer may restrict catastrophic ground cover  
 1563 collapse and sinkhole loss coverage to the principal building,  
 1564 as defined in the applicable policy.

1565 (2) As used in ss. 627.706-627.7074, and as used in  
 1566 connection with any policy providing coverage for a catastrophic  
 1567 ground cover collapse or for sinkhole losses, the term:

1568 (a) "Catastrophic ground cover collapse" means geological



- 1569 activity that results in all the following:
- 1570 1. The abrupt collapse of the ground cover;
  - 1571 2. A depression in the ground cover clearly visible to the  
1572 naked eye;
  - 1573 3. Structural damage to the covered building, including  
1574 the foundation; and
  - 1575 4. The insured structure being condemned and ordered to be  
1576 vacated by the governmental agency authorized by law to issue  
1577 such an order for that structure.

1578

1579 Contents coverage applies if there is a loss resulting from a  
1580 catastrophic ground cover collapse. ~~Structural~~ Damage consisting  
1581 merely of the settling or cracking of a foundation, structure,  
1582 or building does not constitute a loss resulting from a  
1583 catastrophic ground cover collapse.

1584 (b) "Neutral evaluation" means the alternative dispute  
1585 resolution provided in s. 627.7074.

1586 (c) "Neutral evaluator" means a professional engineer or a  
1587 professional geologist who has completed a course of study in  
1588 alternative dispute resolution designed or approved by the  
1589 department for use in the neutral evaluation process and who is  
1590 determined to be fair and impartial.

1591 (d)-(b) "Sinkhole" means a landform created by subsidence  
1592 of soil, sediment, or rock as underlying strata are dissolved by  
1593 groundwater. A sinkhole forms ~~may form~~ by collapse into  
1594 subterranean voids created by dissolution of limestone or  
1595 dolostone or by subsidence as these strata are dissolved.

1596 (e)-(e) "Sinkhole loss" means structural damage to the

1597 covered building, including the foundation, caused by sinkhole  
 1598 activity. Contents coverage and additional living expenses ~~shall~~  
 1599 apply only if there is structural damage to the covered building  
 1600 caused by sinkhole activity.

1601 (f) ~~(d)~~ "Sinkhole activity" means settlement or systematic  
 1602 weakening of the earth supporting ~~such~~ property only if the ~~when~~  
 1603 ~~such~~ settlement or systematic weakening results from  
 1604 contemporaneous movement or raveling of soils, sediments, or  
 1605 rock materials into subterranean voids created by the effect of  
 1606 water on a limestone or similar rock formation.

1607 (g) ~~(e)~~ "Professional engineer" means a person, as defined  
 1608 in s. 471.005, who has a bachelor's degree or higher in  
 1609 engineering and has successfully completed at least five courses  
 1610 in any combination of the following: geotechnical engineering,  
 1611 structural engineering, soil mechanics, foundations, or geology  
 1612 ~~with a specialty in the geotechnical engineering field.~~ A  
 1613 professional engineer must also have ~~geotechnical~~ experience and  
 1614 expertise in the identification of sinkhole activity as well as  
 1615 other potential causes of structural damage ~~to the structure.~~

1616 (h) ~~(f)~~ "Professional geologist" means a person, as defined  
 1617 in ~~by~~ s. 492.102, who has a bachelor's degree or higher in  
 1618 geology or related earth science and ~~with expertise in the~~  
 1619 ~~geology of Florida.~~ A ~~professional geologist must have~~  
 1620 ~~geological~~ experience and expertise in the identification of  
 1621 sinkhole activity as well as other potential geologic causes of  
 1622 structural damage ~~to the structure.~~

1623 (i) "Structural damage" means a covered building has  
 1624 experienced:

1625 1. Foundation displacement in excess of acceptable  
 1626 variances or deflections as defined in ACI 117-90 or the Florida  
 1627 Building Code and damage in the primary structural members or  
 1628 primary structural systems that prevents them from supporting  
 1629 the loads and forces they were designed to support as defined in  
 1630 the Florida Building Code;

1631 2. Damage that results in stresses in a primary structural  
 1632 member greater than one and one-third the nominal strength  
 1633 allowed under the Florida Building Code for new buildings of  
 1634 similar structure, purpose, or location;

1635 3. Listing, leaning, or buckling of the exterior load  
 1636 bearing walls or other vertical primary structural members to  
 1637 such an extent that a plumb line passing through the center of  
 1638 gravity does not fall inside the middle one-third of the base as  
 1639 defined within the Florida Building Code;

1640 4. Damage that results in the building, or any portion  
 1641 thereof, being likely to imminently collapse partially or  
 1642 completely because of the movement or instability of the ground  
 1643 within the influence zone of the supporting ground within the  
 1644 sheer plane necessary for the purpose of supporting such  
 1645 building as defined within the Florida Building Code; or

1646 5. Damage that qualifies as "substantial structural  
 1647 damage" as defined in the Florida Building Code.

1648 ~~(3) On or before June 1, 2007, Every insurer authorized to~~  
 1649 ~~transact property insurance in this state shall make a proper~~  
 1650 ~~filing with the office for the purpose of extending the~~  
 1651 ~~appropriate forms of property insurance to include coverage for~~  
 1652 ~~catastrophic ground cover collapse or for sinkhole losses.~~

1653 ~~coverage for catastrophic ground cover collapse may not go into~~  
 1654 ~~effect until the effective date provided for in the filing~~  
 1655 ~~approved by the office.~~

1656 (3)~~(4)~~ Insurers offering policies that exclude coverage  
 1657 for sinkhole losses must ~~shall~~ inform policyholders in bold type  
 1658 of not less than 14 points as follows: "YOUR POLICY PROVIDES  
 1659 COVERAGE FOR A CATASTROPHIC GROUND COVER COLLAPSE THAT RESULTS  
 1660 IN THE PROPERTY BEING CONDEMNED AND UNINHABITABLE. OTHERWISE,  
 1661 YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES. YOU  
 1662 MAY PURCHASE ADDITIONAL COVERAGE FOR SINKHOLE LOSSES FOR AN  
 1663 ADDITIONAL PREMIUM."

1664 (4)~~(5)~~ An insurer offering sinkhole coverage to  
 1665 policyholders before or after the adoption of s. 30, chapter  
 1666 2007-1, Laws of Florida, may nonrenew the policies of  
 1667 policyholders maintaining sinkhole coverage ~~in Pasco County or~~  
 1668 ~~Hernando County,~~ at the option of the insurer, and provide an  
 1669 offer of coverage that ~~to such policyholders which~~ includes  
 1670 catastrophic ground cover collapse and excludes sinkhole  
 1671 coverage. Insurers acting in accordance with this subsection are  
 1672 subject to the following requirements:

1673 (a) Policyholders must be notified that a nonrenewal is  
 1674 for purposes of removing sinkhole coverage, and that the  
 1675 policyholder is ~~still~~ being offered a policy that provides  
 1676 coverage for catastrophic ground cover collapse.

1677 (b) Policyholders must be provided an actuarially  
 1678 reasonable premium credit or discount for the removal of  
 1679 sinkhole coverage and provision of only catastrophic ground  
 1680 cover collapse.

1681 (c) Subject to the provisions of this subsection and the  
 1682 insurer's approved underwriting or insurability guidelines, the  
 1683 insurer shall provide each policyholder with the opportunity to  
 1684 purchase an endorsement to his or her policy providing sinkhole  
 1685 coverage and may require an inspection of the property before  
 1686 issuance of a sinkhole coverage endorsement.

1687 (d) Section 624.4305 does not apply to nonrenewal notices  
 1688 issued pursuant to this subsection.

1689 (5) Any claim, including, but not limited to, initial,  
 1690 supplemental, and reopened claims under an insurance policy that  
 1691 provides sinkhole coverage is barred unless notice of the claim  
 1692 was given to the insurer in accordance with the terms of the  
 1693 policy within 3 years after the policyholder knew or reasonably  
 1694 should have known about the sinkhole loss.

1695 Section 17. Section 627.7065, Florida Statutes, is  
 1696 repealed.

1697 Section 18. Section 627.707, Florida Statutes, is amended  
 1698 to read:

1699 627.707 ~~Standards for~~ Investigation of sinkhole claims ~~by~~  
 1700 ~~insurers; insurer payment;~~ nonrenewals.—Upon receipt of a claim  
 1701 for a sinkhole loss to a covered building, an insurer must meet  
 1702 the following standards in investigating a claim:

1703 (1) The insurer must inspect ~~make an inspection of~~ the  
 1704 policyholder's insured's premises to determine if there is  
 1705 structural ~~has been physical~~ damage that ~~to the structure which~~  
 1706 may be the result of sinkhole activity.

1707 (2) If the insurer confirms that structural damage exists  
 1708 but is unable to identify a valid cause of such damage or

1709 discovers that such damage is consistent with sinkhole loss  
 1710 ~~Following the insurer's initial inspection,~~ the insurer shall  
 1711 engage a professional engineer or a professional geologist to  
 1712 conduct testing as provided in s. 627.7072 to determine the  
 1713 cause of the loss within a reasonable professional probability  
 1714 and issue a report as provided in s. 627.7073, only if sinkhole  
 1715 loss is covered under the policy. Except as provided in  
 1716 subsections (4) and (6), the fees and costs of the professional  
 1717 engineer or professional geologist shall be paid by the  
 1718 insurer.+

1719 ~~(a) The insurer is unable to identify a valid cause of the~~  
 1720 ~~damage or discovers damage to the structure which is consistent~~  
 1721 ~~with sinkhole loss; or~~

1722 ~~(b) The policyholder demands testing in accordance with~~  
 1723 ~~this section or s. 627.7072.~~

1724 (3) Following the initial inspection of the policyholder's  
 1725 ~~insured~~ premises, the insurer shall provide written notice to  
 1726 the policyholder disclosing the following information:

1727 (a) What the insurer has determined to be the cause of  
 1728 damage, if the insurer has made such a determination.

1729 (b) A statement of the circumstances under which the  
 1730 insurer is required to engage a professional engineer or a  
 1731 professional geologist to verify or eliminate sinkhole loss and  
 1732 to engage a professional engineer to make recommendations  
 1733 regarding land and building stabilization and foundation repair.

1734 (c) A statement regarding the right of the policyholder to  
 1735 request testing by a professional engineer or a professional  
 1736 geologist, ~~and~~ the circumstances under which the policyholder

1737 may demand certain testing, and the circumstances under which  
 1738 the policyholder may incur costs associated with testing.

1739 (4) (a) If the insurer determines that there is no  
 1740 sinkhole loss, the insurer may deny the claim.

1741 (b) If coverage for sinkhole loss is available and ~~If the~~  
 1742 insurer denies the claim, without performing testing under s.  
 1743 627.7072, the policyholder may demand testing by the insurer  
 1744 under s. 627.7072.

1745 1. The policyholder's demand for testing must be  
 1746 communicated to the insurer in writing within 60 days after the  
 1747 policyholder's receipt of the insurer's denial of the claim.

1748 2. The policyholder shall pay 50 percent of the actual  
 1749 costs of the analyses and services provided under ss. 627.7072  
 1750 and 627.7073 or \$2,500, whichever is less.

1751 3. The insurer shall reimburse the policyholder for the  
 1752 costs if the insurer obtains pursuant to s. 627.7073, written  
 1753 certification that there is sinkhole loss.

1754 (5) ~~(a) Subject to paragraph (b),~~ If a sinkhole loss is  
 1755 verified, the insurer shall pay to stabilize the land and  
 1756 building and repair the foundation in accordance with the  
 1757 recommendations of the professional engineer retained pursuant  
 1758 to subsection (2), as provided under s. 627.7073, and in  
 1759 ~~consultation~~ with notice to the policyholder, subject to the  
 1760 coverage and terms of the policy. The insurer shall pay for  
 1761 other repairs to the structure and contents in accordance with  
 1762 the terms of the policy.

1763 (a) ~~(b)~~ The insurer may limit its total claims payment to  
 1764 the actual cash value of the sinkhole loss, which does not

1765 include ~~including~~ underpinning or grouting or any other repair  
 1766 technique performed below the existing foundation of the  
 1767 building, until the policyholder enters into a contract for the  
 1768 performance of building stabilization or foundation repairs in  
 1769 accordance with the recommendations set forth in the insurer's  
 1770 report issued pursuant to s. 627.7073.

1771 (b) In order to prevent additional damage to the building  
 1772 or structure, the policyholder must enter into a contract for  
 1773 the performance of building stabilization or foundation repairs  
 1774 within 90 days after the insurance company confirms coverage for  
 1775 the sinkhole loss and notifies the policyholder of such  
 1776 confirmation. This time period is tolled if either party invokes  
 1777 the neutral evaluation process and begins again 10 days after  
 1778 the conclusion of the neutral evaluation process.

1779 (c) After the policyholder enters into the contract for  
 1780 the performance of building stabilization or foundation repairs,  
 1781 the insurer shall pay the amounts necessary to begin and perform  
 1782 such repairs as the work is performed and the expenses are  
 1783 incurred. The insurer may not require the policyholder to  
 1784 advance payment for such repairs. If repair covered by a  
 1785 personal lines residential property insurance policy has begun  
 1786 and the professional engineer selected or approved by the  
 1787 insurer determines that the repair cannot be completed within  
 1788 the policy limits, the insurer must ~~either~~ complete the  
 1789 professional engineer's recommended repair or tender the policy  
 1790 limits to the policyholder without a reduction for the repair  
 1791 expenses incurred.

1792 (d) The stabilization and all other repairs to the



1793 structure and contents must be completed within 12 months after  
 1794 entering into the contract for repairs described in paragraph  
 1795 (b) unless:

1796 1. There is a mutual agreement between the insurer and the  
 1797 policyholder;

1798 2. The claim is involved with the neutral evaluation  
 1799 process;

1800 3. The claim is in litigation; or

1801 4. The claim is under appraisal or mediation.

1802 (e)(e) Upon the insurer's obtaining the written approval  
 1803 of the policyholder and any lienholder, the insurer may make  
 1804 payment directly to the persons selected by the policyholder to  
 1805 perform the land and building stabilization and foundation  
 1806 repairs. The decision by the insurer to make payment to such  
 1807 persons does not hold the insurer liable for the work performed.  
 1808 The policyholder may not accept a rebate from any person  
 1809 performing the repairs specified in this section. If a  
 1810 policyholder does receive a rebate, coverage is void and the  
 1811 policyholder must refund the amount of the rebate to the  
 1812 insurer. Any person making the repairs specified in this section  
 1813 who offers a rebate, or any policyholder who accepts a rebate  
 1814 for such repairs, commits insurance fraud, a felony of the third  
 1815 degree punishable as provided in s. 775.082, s. 775.083, or s.  
 1816 775.084.

1817 ~~(6) Except as provided in subsection (7), the fees and~~  
 1818 ~~costs of the professional engineer or the professional geologist~~  
 1819 ~~shall be paid by the insurer.~~

1820 (6)(7) If the insurer obtains, pursuant to s. 627.7073,

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1821 written certification that there is no sinkhole loss or that the  
 1822 cause of the damage was not sinkhole activity, and if the  
 1823 policyholder has submitted the sinkhole claim without good faith  
 1824 grounds for submitting such claim, the policyholder shall  
 1825 reimburse the insurer for 50 percent of the actual costs of the  
 1826 analyses and services provided under ss. 627.7072 and 627.7073;  
 1827 however, a policyholder is not required to reimburse an insurer  
 1828 more than \$2,500 with respect to any claim. A policyholder is  
 1829 required to pay reimbursement under this subsection only if the  
 1830 policyholder requested the analysis and services provided under  
 1831 ss. 627.7072 and 627.7073 and the insurer, before ~~prior to~~  
 1832 ordering the analysis under s. 627.7072, informs the  
 1833 policyholder in writing of the policyholder's potential  
 1834 liability for reimbursement and gives the policyholder the  
 1835 opportunity to withdraw the claim.

1836 ~~(7)-(8)~~ An ~~No~~ insurer may not shall nonrenew any policy of  
 1837 property insurance on the basis of filing of claims for partial  
 1838 loss caused by sinkhole damage or clay shrinkage if as long as  
 1839 the total of such payments does not exceed the ~~current~~ policy  
 1840 limits of coverage for the policy in effect on the date of loss,  
 1841 for property damage to the covered building, as set forth on the  
 1842 declarations page, and provided the insured has repaired the  
 1843 structure in accordance with the engineering recommendations  
 1844 made pursuant to subsection (2) upon which any payment or policy  
 1845 proceeds were based.

1846 ~~(8)-(9)~~ The insurer may engage a professional structural  
 1847 engineer to make recommendations as to the repair of the  
 1848 structure.

1849 Section 19. Section 627.7073, Florida Statutes, is amended  
 1850 to read:

1851 627.7073 Sinkhole reports.—

1852 (1) Upon completion of testing as provided in s. 627.7072,  
 1853 the professional engineer or professional geologist shall issue  
 1854 a report and certification to the insurer and the policyholder  
 1855 as provided in this section.

1856 (a) Sinkhole loss is verified if, based upon tests  
 1857 performed in accordance with s. 627.7072, a professional  
 1858 engineer or a professional geologist issues a written report and  
 1859 certification stating:

1860 1. That structural damage to the covered building has been  
 1861 identified within a reasonable professional probability.

1862 ~~2.1.~~ That the cause of the ~~actual physical and~~ structural  
 1863 damage is sinkhole activity within a reasonable professional  
 1864 probability.

1865 ~~3.2.~~ That the analyses conducted were of sufficient scope  
 1866 to identify sinkhole activity as the cause of damage within a  
 1867 reasonable professional probability.

1868 ~~4.3.~~ A description of the tests performed.

1869 ~~5.4.~~ A recommendation by the professional engineer of  
 1870 methods for stabilizing the land and building and for making  
 1871 repairs to the foundation.

1872 (b) If there is no structural damage or if sinkhole  
 1873 activity is eliminated as the cause of such damage to the  
 1874 covered building structure, the professional engineer or  
 1875 professional geologist shall issue a written report and  
 1876 certification to the policyholder and the insurer stating:

1877 1. That there is no structural damage or the cause of such  
 1878 ~~the~~ damage is not sinkhole activity within a reasonable  
 1879 professional probability.

1880 2. That the analyses and tests conducted were of  
 1881 sufficient scope to eliminate sinkhole activity as the cause of  
 1882 the structural damage within a reasonable professional  
 1883 probability.

1884 3. A statement of the cause of the structural damage  
 1885 within a reasonable professional probability.

1886 4. A description of the tests performed.

1887 (c) The respective findings, opinions, and recommendations  
 1888 of the professional engineer or professional geologist as to the  
 1889 cause of distress to the property and the findings, opinions,  
 1890 and recommendations of the professional engineer as to land and  
 1891 building stabilization and foundation repair shall be presumed  
 1892 correct.

1893 (2)~~(a)~~ Any insurer that has paid a claim for a sinkhole  
 1894 loss shall file a copy of the report and certification, prepared  
 1895 pursuant to subsection (1), including the legal description of  
 1896 the real property and the name of the property owner, the  
 1897 neutral evaluator's report, if any, that indicates that sinkhole  
 1898 activity caused the damage claimed, a copy of the certification  
 1899 indicating that stabilization has been completed, if applicable,  
 1900 and the amount of the payment, with the county clerk of court,  
 1901 who shall record the report and certification. The insurer shall  
 1902 bear the cost of filing and recording one or more reports and  
 1903 certifications ~~the report and certification~~. There shall be no  
 1904 cause of action or liability against an insurer for compliance

1905 with this section.

1906 (a) The recording of the report and certification does  
 1907 not:

1908 1. Constitute a lien, encumbrance, or restriction on the  
 1909 title to the real property or constitute a defect in the title  
 1910 to the real property;

1911 2. Create any cause of action or liability against any  
 1912 grantor of the real property for breach of any warranty of good  
 1913 title or warranty against encumbrances; or

1914 3. Create any cause of action or liability against any  
 1915 title insurer that insures the title to the real property.

1916 (b) As a precondition to accepting payment for a sinkhole  
 1917 loss, the policyholder must file a copy of any report prepared  
 1918 on behalf or at the request of the policyholder regarding the  
 1919 insured property. The policyholder shall bear the cost of filing  
 1920 and recording such sinkhole report. The recording of the report  
 1921 does not:

1922 1. Constitute a lien, encumbrance, or restriction on the  
 1923 title to the real property or constitute a defect in the title  
 1924 to the real property;

1925 2. Create any cause of action or liability against any  
 1926 grantor of the real property for breach of any warranty of good  
 1927 title or warranty against encumbrances; or

1928 3. Create any cause of action or liability against any  
 1929 title insurer that insures the title to the real property.

1930 (c) ~~(b)~~ The seller of real property upon which a sinkhole  
 1931 claim has been made by the seller and paid by the insurer must  
 1932 ~~shall~~ disclose to the buyer of such property that a claim has

1933 | been paid and whether or not the full amount of the proceeds  
 1934 | were used to repair the sinkhole damage.

1935 | Section 20. Section 627.7074, Florida Statutes, is amended  
 1936 | to read:

1937 | 627.7074 Alternative procedure for resolution of disputed  
 1938 | sinkhole insurance claims.-

1939 | ~~(1) As used in this section, the term:~~

1940 | ~~(a) "Neutral evaluation" means the alternative dispute~~  
 1941 | ~~resolution provided for in this section.~~

1942 | ~~(b) "Neutral evaluator" means a professional engineer or a~~  
 1943 | ~~professional geologist who has completed a course of study in~~  
 1944 | ~~alternative dispute resolution designed or approved by the~~  
 1945 | ~~department for use in the neutral evaluation process, who is~~  
 1946 | ~~determined to be fair and impartial.~~

1947 | (1)(2)(a) The department shall:

1948 | (a) Certify and maintain a list of persons who are neutral  
 1949 | evaluators.

1950 | ~~(b) The department shall~~ Prepare a consumer information  
 1951 | pamphlet for distribution by insurers to policyholders which  
 1952 | clearly describes the neutral evaluation process and includes  
 1953 | information ~~and forms~~ necessary for the policyholder to request  
 1954 | a neutral evaluation.

1955 | (2) Neutral evaluation is available to either party if a  
 1956 | sinkhole report has been issued pursuant to s. 627.7073. At a  
 1957 | minimum, neutral evaluation must determine:

1958 | (a) Causation;

1959 | (b) All methods of stabilization and repair both above and  
 1960 | below ground;

1961           (c) The costs for stabilization and all repairs; and  
 1962           (d) Information necessary to carry out subsection (12).  
 1963           (3) Following the receipt of the report provided under s.  
 1964 627.7073 or the denial of a claim for a sinkhole loss, the  
 1965 insurer shall notify the policyholder of his or her right to  
 1966 participate in the neutral evaluation program under this  
 1967 section. Neutral evaluation supersedes the alternative dispute  
 1968 resolution process under s. 627.7015, but does not invalidate  
 1969 the appraisal clause of the insurance policy. The insurer shall  
 1970 provide to the policyholder the consumer information pamphlet  
 1971 prepared by the department pursuant to subsection (1)  
 1972 electronically or by United States mail ~~paragraph (2)(b).~~  
 1973           (4) Neutral evaluation is nonbinding, but mandatory if  
 1974 requested by either party. A request for neutral evaluation may  
 1975 be filed with the department by the policyholder or the insurer  
 1976 on a form approved by the department. The request for neutral  
 1977 evaluation must state the reason for the request and must  
 1978 include an explanation of all the issues in dispute at the time  
 1979 of the request. Filing a request for neutral evaluation tolls  
 1980 the applicable time requirements for filing suit for ~~a period of~~  
 1981 60 days following the conclusion of the neutral evaluation  
 1982 process or the time prescribed in s. 95.11, whichever is later.  
 1983           (5) Neutral evaluation shall be conducted as an informal  
 1984 process in which formal rules of evidence and procedure need not  
 1985 be observed. A party to neutral evaluation is not required to  
 1986 attend neutral evaluation if a representative of the party  
 1987 attends and has the authority to make a binding decision on  
 1988 behalf of the party. All parties shall participate in the

1989 | evaluation in good faith. The neutral evaluator must be allowed  
 1990 | reasonable access to the interior and exterior of insured  
 1991 | structures to be evaluated or for which a claim has been made.  
 1992 | Any reports initiated by the policyholder, or an agent of the  
 1993 | policyholder, confirming a sinkhole loss or disputing another  
 1994 | sinkhole report regarding insured structures must be provided to  
 1995 | the neutral evaluator before the evaluator's physical inspection  
 1996 | of the insured property.

1997 |           (6) The insurer shall pay the costs associated with the  
 1998 | neutral evaluation. However, if a party chooses to hire a court  
 1999 | reporter or stenographer to contemporaneously record and  
 2000 | document the neutral evaluation, that party must bear such  
 2001 | costs.

2002 |           (7) Upon receipt of a request for neutral evaluation, the  
 2003 | department shall provide the parties a list of certified neutral  
 2004 | evaluators. ~~The parties shall mutually select a neutral~~  
 2005 | ~~evaluator from the list and promptly inform the department. If~~  
 2006 | ~~the parties cannot agree to a neutral evaluator within 10~~  
 2007 | ~~business days,~~ The department shall allow the parties to submit  
 2008 | requests to disqualify evaluators on the list for cause.

2009 |           (a) The department shall disqualify neutral evaluators for  
 2010 | cause based only on any of the following grounds:

2011 |           1. A familial relationship exists between the neutral  
 2012 | evaluator and either party or a representative of either party  
 2013 | within the third degree.

2014 |           2. The proposed neutral evaluator has, in a professional  
 2015 | capacity, previously represented either party or a  
 2016 | representative of either party, in the same or a substantially



2017 related matter.

2018 3. The proposed neutral evaluator has, in a professional  
 2019 capacity, represented another person in the same or a  
 2020 substantially related matter and that person's interests are  
 2021 materially adverse to the interests of the parties. The term  
 2022 "substantially related matter" means participation by the  
 2023 neutral evaluator on the same claim, property, or adjacent  
 2024 property.

2025 4. The proposed neutral evaluator has, within the  
 2026 preceding 5 years, worked as an employer or employee of any  
 2027 party to the case.

2028 (b) The parties shall appoint a neutral evaluator from the  
 2029 department list and promptly inform the department. If the  
 2030 parties cannot agree to a neutral evaluator within 14 days, the  
 2031 department shall appoint a neutral evaluator from the list of  
 2032 certified neutral evaluators. The department shall allow each  
 2033 party to disqualify two neutral evaluators without cause. Upon  
 2034 selection or appointment, the department shall promptly refer  
 2035 the request to the neutral evaluator.

2036 (c) Within ~~7~~ 5 business days after the referral, the  
 2037 neutral evaluator shall notify the policyholder and the insurer  
 2038 of the date, time, and place of the neutral evaluation  
 2039 conference. The conference may be held by telephone, if feasible  
 2040 and desirable. The neutral evaluator shall hold the ~~neutral~~  
 2041 evaluation conference ~~shall be held~~ within 90 ~~45~~ days after the  
 2042 receipt of the request by the department. Failure of the neutral  
 2043 evaluator to hold the conference within 90 days does not  
 2044 invalidate either party's right to neutral evaluation or to a

2045 neutral evaluation conference held outside this timeframe.

2046 ~~(8) The department shall adopt rules of procedure for the~~  
 2047 ~~neutral evaluation process.~~

2048 (8)~~(9)~~ For policyholders not represented by an attorney, a  
 2049 consumer affairs specialist of the department or an employee  
 2050 designated as the primary contact for consumers on issues  
 2051 relating to sinkholes under s. 20.121 shall be available for  
 2052 consultation to the extent that he or she may lawfully do so.

2053 (9)~~(10)~~ Evidence of an offer to settle a claim during the  
 2054 neutral evaluation process, as well as any relevant conduct or  
 2055 statements made in negotiations concerning the offer to settle a  
 2056 claim, is inadmissible to prove liability or absence of  
 2057 liability for the claim or its value, except as provided in  
 2058 subsection (14) ~~(13)~~.

2059 (10)~~(11)~~ Regardless of when noticed, any court proceeding  
 2060 related to the subject matter of the neutral evaluation shall be  
 2061 stayed pending completion of the neutral evaluation and for 5  
 2062 days after the filing of the neutral evaluator's report with the  
 2063 court.

2064 (11) If, based upon his or her professional training and  
 2065 credentials, a neutral evaluator is qualified to determine only  
 2066 disputes relating to causation or method of repair, the  
 2067 department shall allow the neutral evaluator to enlist the  
 2068 assistance of another professional from the neutral evaluators  
 2069 list not previously stricken, who, based upon his or her  
 2070 professional training and credentials, is able to provide an  
 2071 opinion as to other disputed issues. A professional who would be  
 2072 disqualified for any reason listed in subsection (7) must be

2073 disqualified. The neutral evaluator may also use the services of  
 2074 professional engineers and professional geologists who are not  
 2075 certified as neutral evaluators, as well as licensed building  
 2076 contractors, in order to ensure that all items in dispute are  
 2077 addressed and the neutral evaluation can be completed. Any  
 2078 professional engineer, professional geologist, or licensed  
 2079 building contractor retained may be disqualified for any of the  
 2080 reasons listed in subsection (7).

2081 (12) ~~At For matters that are not resolved by the parties~~  
 2082 ~~at~~ the conclusion of the neutral evaluation, the neutral  
 2083 evaluator shall prepare a report describing all matters that are  
 2084 the subject of the neutral evaluation, including whether,  
 2085 ~~stating that~~ in his or her opinion, the sinkhole loss has been  
 2086 verified or eliminated within a reasonable degree of  
 2087 professional probability and, if verified, whether the sinkhole  
 2088 activity caused structural damage to the covered building, and  
 2089 if so, the need for an estimated costs of stabilizing the land  
 2090 and any covered ~~structures or~~ buildings and other appropriate  
 2091 remediation or necessary building structural repairs due to the  
 2092 sinkhole loss. The evaluator's report shall be sent to all  
 2093 parties ~~in attendance at the neutral evaluation~~ and to the  
 2094 department, within 14 days after completing the neutral  
 2095 evaluation conference.

2096 (13) The recommendation of the neutral evaluator is not  
 2097 binding on any party, and the parties retain access to the  
 2098 court. The neutral evaluator's written recommendation is  
 2099 admissible in any subsequent action or proceeding relating to  
 2100 the claim or to the cause of action giving rise to the claim.

2101 (14) If the neutral evaluator ~~first~~ verifies the existence  
 2102 of a sinkhole that caused structural damage and, ~~second,~~  
 2103 recommends the need for and estimates costs of stabilizing the  
 2104 land and any covered ~~structures or~~ buildings and other  
 2105 appropriate remediation or building structural repairs, which  
 2106 ~~costs~~ exceed the amount that the insurer has offered to pay the  
 2107 policyholder, the insurer is liable to the policyholder for up  
 2108 to \$2,500 in attorney's fees for the attorney's participation in  
 2109 the neutral evaluation process. For purposes of this subsection,  
 2110 the term "offer to pay" means a written offer signed by the  
 2111 insurer or its legal representative and delivered to the  
 2112 policyholder within 10 days after the insurer receives notice  
 2113 that a request for neutral evaluation has been made under this  
 2114 section.

2115 (15) If the insurer timely agrees in writing to comply and  
 2116 timely complies with the recommendation of the neutral  
 2117 evaluator, but the policyholder declines to resolve the matter  
 2118 in accordance with the recommendation of the neutral evaluator  
 2119 pursuant to this section:

2120 (a) The insurer is not liable for extracontractual damages  
 2121 related to a claim for a sinkhole loss but only as related to  
 2122 the issues determined by the neutral evaluation process. This  
 2123 section does not affect or impair claims for extracontractual  
 2124 damages unrelated to the issues determined by the neutral  
 2125 evaluation process contained in this section; and

2126 (b) The insurer is not liable for attorney's fees under s.  
 2127 627.428 or other provisions of the insurance code unless the  
 2128 policyholder obtains a judgment that is more favorable than the

2129 recommendation of the neutral evaluator.

2130 (16) Neutral evaluators are deemed to be agents of the  
 2131 department and have immunity from suit as provided in s. 44.107.

2132 (17) The department shall adopt rules of procedure for the  
 2133 neutral evaluation process.

2134 Section 21. Subsection (8) of section 627.711, Florida  
 2135 Statutes, is amended to read:

2136 627.711 Notice of premium discounts for hurricane loss  
 2137 mitigation; uniform mitigation verification inspection form.—

2138 (8) At its expense, the insurer may require that any  
 2139 uniform mitigation verification form provided by a policyholder,  
 2140 policyholder's agent, ~~an~~ authorized mitigation inspector, or  
 2141 inspection company be independently verified by an inspector, an  
 2142 inspection company, or an independent third-party quality  
 2143 assurance provider which does possess a quality assurance  
 2144 program before ~~prior to~~ accepting the uniform mitigation  
 2145 verification form as valid.

2146 Section 22. Subsection (3) of section 631.54, Florida  
 2147 Statutes, is amended to read:

2148 631.54 Definitions.—As used in this part:

2149 (3) "Covered claim" means an unpaid claim, including one  
 2150 of unearned premiums, which arises out of, and is within the  
 2151 coverage, and not in excess of, the applicable limits of an  
 2152 insurance policy to which this part applies, issued by an  
 2153 insurer, if such insurer becomes an insolvent insurer and the  
 2154 claimant or insured is a resident of this state at the time of  
 2155 the insured event or the property from which the claim arises is  
 2156 permanently located in this state. For entities other than

2157 individuals, the residence of a claimant, insured, or  
 2158 policyholder is the state in which the entity's principal place  
 2159 of business is located at the time of the insured event. The  
 2160 term does ~~"Covered claim"~~ shall not include:

2161 (a) Any amount due any reinsurer, insurer, insurance  
 2162 pool, or underwriting association, sought directly or indirectly  
 2163 through a third party, as subrogation, contribution,  
 2164 indemnification, or otherwise; ~~or~~

2165 (b) Any claim that would otherwise be a covered claim  
 2166 under this part that has been rejected by any other state  
 2167 guaranty fund on the grounds that an insured's net worth is  
 2168 greater than that allowed under that state's guaranty law.  
 2169 Member insurers ~~shall~~ have no right of subrogation,  
 2170 contribution, indemnification, or otherwise, sought directly or  
 2171 indirectly through a third party, against the insured of any  
 2172 insolvent member; or

2173 (c) Any amount payable for a sinkhole loss other than  
 2174 testing deemed appropriate by the association or payable for the  
 2175 actual repair of the loss, except that the association may not  
 2176 pay for attorney's fees or public adjuster's fees in connection  
 2177 with a sinkhole loss or pay the policyholder. The association  
 2178 may pay for actual repairs to the property, but is not liable  
 2179 for amounts in excess of policy limits.

2180 Section 23. If any provision of this act, or the  
 2181 application thereof to any person or circumstance is held  
 2182 invalid, such invalidity shall not affect other provisions or  
 2183 applications of this act which can be given effect without the  
 2184 invalid provision or application. It is the express intent of

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2185 the Legislature to enact multiple important, but independent,  
2186 reforms to Florida law relating to sinkhole insurance coverage  
2187 and related claims. The Legislature further intends that the  
2188 multiple reforms in the act could and should be enforced if one  
2189 or more provisions are held invalid. To this end, the provisions  
2190 of this act are declared to be severable.

2191 Section 24. Except as otherwise expressly provided in this  
2192 act and except for this section, which shall take effect June 1,  
2193 2011, this act shall take effect upon becoming a law.