

Depopulation of Citizens Property Insurance Corporation Statute

627.3511 Depopulation of Citizens Property Insurance Corporation.—

- (1) **LEGISLATIVE INTENT.**—The Legislature finds that the public policy of this state requires the maintenance of a residual market for residential property insurance. It is the intent of the Legislature to provide a variety of financial incentives to encourage the replacement of the highest possible number of Citizens Property Insurance Corporation policies with policies written by admitted insurers at approved rates.
- (2) **TAKE-OUT BONUS.**—The Citizens Property Insurance Corporation shall pay the sum of up to \$100 to an insurer for each risk that the insurer removes from the corporation, either by issuance of a policy upon expiration or cancellation of the corporation policy or by assumption of the corporation's obligations with respect to an in-force policy. Such payment is subject to approval of the corporation board. In order to qualify for the bonus under this subsection, the take-out plan must include a minimum of 25,000 policies. Within 30 days after approval by the board, the office may reject the insurer's take-out plan and disqualify the insurer from the bonus, based on the following criteria:
- (a) The capacity of the insurer to absorb the policies proposed to be taken out of the corporation and the concentration of risks of those policies.
 - (b) Whether the geographic and risk characteristics of policies in the proposed take-out plan serve to reduce the exposure of the corporation sufficiently to justify the bonus.
 - (c) Whether coverage for risks to be taken out otherwise exists in the admitted voluntary market.
 - (d) The degree to which the take-out bonus is promoting new capital being allocated by the insurer to Florida residential property coverage.
- (3) **EXEMPTION FROM DEFICIT ASSESSMENTS.**—
- (a) The calculation of an insurer's assessment liability under s. [627.351](#)(6)(b)3.a. shall, for an insurer that in any calendar year removes 50,000 or more risks from the Citizens Property Insurance Corporation, either by issuance of a policy upon expiration or cancellation of the corporation policy or by assumption of the corporation's obligations with respect to in-force policies, exclude such removed policies for the succeeding 3 years, as follows:
 - 1. In the first year following removal of the risks, the risks are excluded from the calculation to the extent of 100 percent.
 - 2. In the second year following removal of the risks, the risks are excluded from the calculation to the extent of 75 percent.
 - 3. In the third year following removal of the risks, the risks are excluded from the calculation to the extent of 50 percent.

If the removal of risks is accomplished through assumption of obligations with respect to in-force policies, the corporation shall pay to the assuming insurer all unearned premium with respect to such policies less any policy acquisition costs agreed to by the corporation and assuming insurer. The term "policy acquisition

costs” is defined as costs of issuance of the policy by the corporation which includes agent commissions, servicing company fees, and premium tax. This paragraph does not apply to an insurer that, at any time within 5 years before removing the risks, had a market share in excess of 0.1 percent of the statewide aggregate gross direct written premium for any line of property insurance, or to an affiliate of such an insurer. This paragraph does not apply unless either at least 40 percent of the risks removed from the corporation are located in Miami-Dade, Broward, and Palm Beach Counties, or at least 30 percent of the risks removed from the corporation are located in such counties and an additional 50 percent of the risks removed from the corporation are located in other coastal counties.

- (b) An insurer that first wrote personal lines residential property coverage in this state on or after July 1, 1994, is exempt from regular deficit assessments imposed pursuant to s. [627.351](#)(6)(b)3.a., but not emergency assessments collected from policyholders pursuant to s. [627.351](#)(6)(b)3.d., of the Citizens Property Insurance Corporation until the earlier of the following:
 - 1. The end of the calendar year in which it first wrote 0.5 percent or more of the statewide aggregate direct written premium for any line of residential property coverage; or
 - 2. December 31, 1997, or December 31 of the third year in which it wrote such coverage in this state, whichever is later.
 - (c) Other than an insurer that is exempt under paragraph (b), an insurer that in any calendar year increases its total structure exposure subject to wind coverage by 25 percent or more over its exposure for the preceding calendar year is, with respect to that year, exempt from deficit assessments imposed pursuant to s. [627.351](#)(6)(b)3.a., but not emergency assessments collected from policyholders pursuant to s. [627.351](#)(6)(b)3.d., of the Citizens Property Insurance Corporation attributable to such increase in exposure.
 - (d) Any exemption or credit from regular assessments authorized by this section shall last no longer than 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.
- (4) **AGENT BONUS.**—When the corporation enters into a contractual agreement for a take-out plan that provides a bonus to the insurer, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:
- (a) Pay to the producing agent of record of the association policy, for the first year, an amount that is the greater of the insurer’s usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or
 - (b) Offer to allow the producing agent of record of the corporation policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the greater of the insurer’s or the corporation’s usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with paragraph (a). The requirement of this subsection that

the producing agent of record is entitled to retain the unearned commission on an association policy does not apply to a policy for which coverage has been provided in the association for 30 days or less or for which a cancellation notice has been issued pursuant to ¹s. [627.351](#)(6)(c)10. during the first 30 days of coverage.

(5) APPLICABILITY.—

- (a) The take-out bonus provided by subsection (2) and the exemption from assessment provided by paragraph (3)(a) apply only if the corporation policy is replaced by a standard policy including wind coverage or, if consistent with the insurer's underwriting rules filed with the office, a basic policy including wind coverage; however, for risks located in areas where coverage through the coastal account of the corporation is available, the replacement policy need not provide wind coverage. The insurer must renew the replacement policy at approved rates on substantially similar terms for four additional 1-year terms, unless canceled or not renewed by the policyholder. If an insurer assumes the corporation's obligations for a policy, it must issue a replacement policy for a 1-year term upon expiration of the corporation policy and must renew the replacement policy at approved rates on substantially similar terms for four additional 1-year terms, unless canceled or not renewed by the policyholder. For each replacement policy canceled or nonrenewed by the insurer for any reason during the 5-year coverage period, the insurer must remove from the corporation one additional policy covering a risk similar to the risk covered by the canceled or nonrenewed policy. In addition, the corporation must place the bonus moneys in escrow for 5 years; such moneys may be released from escrow only to pay claims. If the policy is canceled or nonrenewed before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. A take-out bonus provided by subsection (2) or subsection (6) is not premium income for purposes of taxes and assessments under the Florida Insurance Code and remains the property of the corporation, subject to the prior security interest of the insurer under the escrow agreement until it is released from escrow; after it is released from escrow it is considered an asset of the insurer and credited to the insurer's capital and surplus.
- (b) It is the intent of the Legislature that an insurer eligible for the exemption under paragraph (3)(a) establish a preference in appointment of agents for those agents who lose a substantial amount of business as a result of risks being removed from the corporation.

(6) COMMERCIAL RESIDENTIAL TAKE-OUT PLANS.—

- (a) The corporation shall pay a bonus to an insurer for each commercial residential policy that the insurer removes from the corporation pursuant to an approved take-out plan, either by issuance of a new policy upon expiration of the corporation policy or by assumption of the corporation's obligations with respect to an in-force policy. The corporation board shall determine the amount of the bonus based on such factors as the coverage provided, relative hurricane risk, the length of time that the property has been covered by the corporation, and the criteria specified in paragraphs (b) and (c). The amount of the bonus with respect to a particular policy may not exceed 25 percent of the corporation's 1-year premium for the policy. Such payment is subject to approval of the corporation board. In order to qualify for the bonus under this subsection, the take-out plan must include policies reflecting at least \$100 million in structure exposure.
- (b) In order for a plan to qualify for approval:

1. At least 40 percent of the policies removed from the corporation under the plan must be located in Miami-Dade, Broward, and Palm Beach Counties, or at least 30 percent of the policies removed from the corporation under the plan must be located in such counties and an additional 50 percent of the policies removed from the corporation must be located in other coastal counties.
 2. The insurer must renew the replacement policy at approved rates on substantially similar terms for two additional 1-year terms, unless canceled or nonrenewed by the insurer for a lawful reason other than reduction of hurricane exposure. If an insurer assumes the corporation's obligations for a policy, it must issue a replacement policy for a 1-year term upon expiration of the corporation policy and must renew the replacement policy at approved rates on substantially similar terms for two additional 1-year terms, unless canceled by the insurer for a lawful reason other than reduction of hurricane exposure. For each replacement policy canceled or nonrenewed by the insurer for any reason during the 3-year coverage period required by this subparagraph, the insurer must remove from the corporation one additional policy covering a risk similar to the risk covered by the canceled or nonrenewed policy.
- (c) A take-out plan is deemed approved unless the office, within 120 days after the board votes to recommend the plan, disapproves the plan based on:
1. The capacity of the insurer to absorb the policies proposed to be taken out of the corporation and the concentration of risks of those policies.
 2. Whether the geographic and risk characteristics of policies in the proposed take-out plan serve to reduce the exposure of the corporation sufficiently to justify the bonus.
 3. Whether coverage for risks to be taken out otherwise exists in the admitted voluntary market.
 4. The degree to which the take-out bonus is promoting new capital being allocated by the insurer to residential property coverage in this state.
- (d) The calculation of an insurer's regular assessment liability under s. [627.351](#)(6)(b)3.a., but not emergency assessments collected from policyholders pursuant to s. [627.351](#)(6)(b)3.d., shall, with respect to commercial residential policies removed from the corporation under an approved take-out plan, exclude such removed policies for the succeeding 3 years, as follows:
1. In the first year following removal of the policies, the policies are excluded from the calculation to the extent of 100 percent.
 2. In the second year following removal of the policies, the policies are excluded from the calculation to the extent of 75 percent.
 3. In the third year following removal of the policies, the policies are excluded from the calculation to the extent of 50 percent.
- (e) An insurer that first wrote commercial residential property coverage in this state on or after June 1, 1996, is exempt from regular assessments under s. [627.351](#)(6)(b)3.a., but not emergency assessments collected from policyholders pursuant to s. [627.351](#)(6)(b)3.d., with respect to commercial residential policies until the earlier of:
1. The end of the calendar year in which such insurer first wrote 0.5 percent or more of the statewide aggregate direct written premium for commercial residential property coverage; or

2. December 31 of the third year in which such insurer wrote commercial residential property coverage in this state.
- (f) An insurer that is not otherwise exempt from regular assessments under s. [627.351](#)(6)(b)3.a. with respect to commercial residential policies is, for any calendar year in which such insurer increased its total commercial residential hurricane exposure by 25 percent or more over its exposure for the preceding calendar year, exempt from regular assessments under s. [627.351](#)(6)(b)3.a., but not emergency assessments collected from policyholders pursuant to s. [627.351](#)(6)(b)3.d., attributable to such increased exposure.
- (7) A minority business, which is at least 51 percent owned by minority persons as described in s. [288.703](#), desiring to operate or become licensed as a property and casualty insurer may exempt up to \$50 of the escrow requirements of the take-out bonus, as described in this section. Such minority business, which has applied for a certificate of authority to engage in business as a property and casualty insurer, may simultaneously file the business' proposed take-out plan, as described in this section, with the corporation.

History.—s. 10, ch. 95-276; s. 10, ch. 96-194; s. 6, ch. 97-55; s. 24, ch. 97-93; s. 1, ch. 99-142; s. 7, ch. 2000-333; s. 3, ch. 2002-221; s. 3, ch. 2002-240; s. 1102, ch. 2003-261; s. 88, ch. 2006-1; s. 17, ch. 2006-12; s. 12, ch. 2007-90; s. 149, ch. 2008-4; s. 16, ch. 2011-39; s. 433, ch. 2011-142; s. 78, ch. 2012-5; s. 107, ch. 2013-15.

¹**Note.**—Material in the cited provision relating to written notice of cancellation was deleted by s. 2, ch. 2002-240.