

1 A bill to be entitled

2 An act relating to property insurance; amending s.
3 627.3518, F.S.; conforming a cross-reference; amending
4 s. 627.409, F.S.; providing that a claim for
5 residential property insurance cannot be denied based
6 on certain credit information; amending s. 627.4133,
7 F.S.; providing that a policy or contract may not be
8 cancelled based on certain credit information;
9 amending s. 627.7015, F.S.; revising the rule
10 requirements relating to the property insurance
11 mediation program administered by the department;
12 creating s. 627.70151, F.S.; providing grounds for
13 challenging an umpire's impartiality in estimating the
14 amount of a property loss; amending s. 627.706, F.S.;
15 redefining the term "neutral evaluator"; amending s.
16 627.7074, F.S.; specifying grounds for denying,
17 suspending, or revoking approval of a neutral
18 evaluator; creating s. 627.7142, F.S.; establishing a
19 Claims Bill of Rights for residential property
20 insurance policyholders; providing that such bill of
21 rights does not provide a cause of action; creating s.
22 627.715, F.S.; defining terms; providing requirements
23 for emergency mitigation repair agreements; requiring
24 an emergency mitigation contractor to be appropriately
25 certified or to possess a contracting license;
26 providing an effective date.

Page 1 of 16

27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52

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

Section 1. Section 1. Subsection (9) of section 627.3518, Florida Statutes, is amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.

(9) The 45-day notice of nonrenewal requirement set forth in s. 627.4133(2)(b)5.b. ~~s. 627.4133(2)(b)4.b.~~ applies when a policy is nonrenewed by the corporation because the risk has received an offer of coverage pursuant to this section which renders the risk ineligible for coverage by the corporation.

Section 2. Section 627.409, Florida Statutes, is amended to read:

627.409 Representations in applications; warranties.—

(1) Any statement or description made by or on behalf of an insured or annuitant in an application for an insurance policy or annuity contract, or in negotiations for a policy or contract, is a representation and ~~is~~ not a warranty. Except as provided in subsection (3), a misrepresentation, omission, concealment of fact, or incorrect statement may prevent recovery under the contract or policy only if any of the following apply:

(a) The misrepresentation, omission, concealment, or statement is fraudulent or is material ~~either~~ to the acceptance

53 of the risk or to the hazard assumed by the insurer.

54 (b) If the true facts had been known to the insurer
 55 pursuant to a policy requirement or other requirement, the
 56 insurer in good faith would not have issued the policy or
 57 contract, would not have issued it at the same premium rate,
 58 would not have issued a policy or contract in as large an
 59 amount, or would not have provided coverage with respect to the
 60 hazard resulting in the loss.

61 (2) A breach or violation by the insured of a ~~any~~
 62 warranty, condition, or provision of a ~~any~~ wet marine or
 63 transportation insurance policy, contract of insurance,
 64 endorsement, or application ~~therefor~~ does not void the policy or
 65 contract, or constitute a defense to a loss thereon, unless such
 66 breach or violation increased the hazard by any means within the
 67 control of the insured.

68 (3) For residential property insurance, if a policy or
 69 contract is in effect for more than 90 days, a claim filed by
 70 the insured may not be denied based on credit information
 71 available in public records.

72 Section 3. Paragraph (b) of subsection (2) of section
 73 627.4133, Florida Statutes, is amended to read:

74 627.4133 Notice of cancellation, nonrenewal, or renewal
 75 premium.—

76 (2) With respect to any personal lines or commercial
 77 residential property insurance policy, including, but not
 78 limited to, any homeowner's, mobile home owner's, farmowner's,

79 condominium association, condominium unit owner's, apartment
 80 building, or other policy covering a residential structure or
 81 its contents:

82 (b) The insurer shall give the first-named insured written
 83 notice of nonrenewal, cancellation, or termination at least 100
 84 days before the effective date of the nonrenewal, cancellation,
 85 or termination. However, the insurer shall give at least 100
 86 days' written notice, or written notice by June 1, whichever is
 87 earlier, for any nonrenewal, cancellation, or termination that
 88 would be effective between June 1 and November 30. The notice
 89 must include the reason ~~or reasons~~ for the nonrenewal,
 90 cancellation, or termination, except that:

91 1. The insurer shall give the first-named insured written
 92 notice of nonrenewal, cancellation, or termination at least 120
 93 days before ~~prior to~~ the effective date of the nonrenewal,
 94 cancellation, or termination for a first-named insured whose
 95 residential structure has been insured by that insurer or an
 96 affiliated insurer for at least 5 years before ~~a 5-year period~~
 97 ~~immediately prior to~~ the date of the written notice.

98 2. If cancellation is for nonpayment of premium, at least
 99 10 days' written notice of cancellation accompanied by the
 100 reason therefor must be given. As used in this subparagraph, the
 101 term "nonpayment of premium" means failure of the named insured
 102 to discharge when due her or his obligations for paying the
 103 premium ~~in connection with the payment of premiums~~ on a policy
 104 or an ~~any~~ installment of such premium, whether the premium is

105 payable directly to the insurer or its agent or indirectly under
 106 a ~~any~~ premium finance plan or extension of credit, or failure to
 107 maintain membership in an organization if such membership is a
 108 condition precedent to insurance coverage. The term also means
 109 the failure of a financial institution to honor an insurance
 110 applicant's check after delivery to a licensed agent for payment
 111 of a premium, ~~even if the agent has previously delivered or~~
 112 transferred the premium to the insurer. If a dishonored check
 113 represents the initial premium payment, the contract and all
 114 contractual obligations are void ab initio unless the nonpayment
 115 is cured within the earlier of 5 days after actual notice by
 116 certified mail is received by the applicant or 15 days after
 117 notice is sent to the applicant by certified mail or registered
 118 mail. ~~and~~ If the contract is void, any premium received by the
 119 insurer from a third party must be refunded to that party in
 120 full.

121 3. If ~~such~~ cancellation or termination occurs during the
 122 first 90 days the insurance is in force and the insurance is
 123 canceled or terminated for reasons other than nonpayment of
 124 premium, at least 20 days' written notice of cancellation or
 125 termination accompanied by the reason therefor must be given
 126 unless there has been a material misstatement or
 127 misrepresentation or a failure to comply with the underwriting
 128 requirements established by the insurer.

129 4. After a policy or contract has been in effect for 90
 130 days, the insurer may not cancel or terminate the policy or

131 contract based on credit information available in public
 132 records.

133 ~~5.4.~~ The requirement for providing written notice by June
 134 1 of any nonrenewal that would be effective between June 1 and
 135 November 30 does not apply to the following situations, but the
 136 insurer remains subject to the requirement to provide such
 137 notice at least 100 days before the effective date of
 138 nonrenewal:

139 a. A policy that is nonrenewed due to a revision in the
 140 coverage for sinkhole losses and catastrophic ground cover
 141 collapse pursuant to s. 627.706.

142 b. A policy that is nonrenewed by Citizens Property
 143 Insurance Corporation, pursuant to s. 627.351(6), for a policy
 144 that has been assumed by an authorized insurer offering
 145 replacement coverage to the policyholder is exempt from the
 146 notice requirements of paragraph (a) and this paragraph. In such
 147 cases, the corporation must give the named insured written
 148 notice of nonrenewal at least 45 days before the effective date
 149 of the nonrenewal.

150
 151 After the policy has been in effect for 90 days, the policy may
 152 not be canceled by the insurer unless there has been a material
 153 misstatement, a nonpayment of premium, a failure to comply with
 154 underwriting requirements established by the insurer within 90
 155 days after the date of effectuation of coverage, ~~or~~ a
 156 substantial change in the risk covered by the policy, or ~~if~~ the

157 cancellation is for all insureds under such policies for a given
 158 class of insureds. This paragraph does not apply to individually
 159 rated risks that have ~~having~~ a policy term of less than 90 days.

160 ~~6.5.~~ Notwithstanding any other provision of law, an
 161 insurer may cancel or nonrenew a property insurance policy after
 162 at least 45 days' notice if the office finds that the early
 163 cancellation of some or all of the insurer's policies is
 164 necessary to protect the best interests of the public or
 165 policyholders and the office approves the insurer's plan for
 166 early cancellation or nonrenewal of some or all of its policies.
 167 The office may base such finding upon the financial condition of
 168 the insurer, lack of adequate reinsurance coverage for hurricane
 169 risk, or other relevant factors. The office may condition its
 170 finding on the consent of the insurer to be placed under
 171 administrative supervision pursuant to s. 624.81 or to the
 172 appointment of a receiver under chapter 631.

173 ~~7.6.~~ A policy covering both a home and a motor vehicle may
 174 be nonrenewed for any reason applicable to ~~either~~ the property
 175 or motor vehicle insurance after providing 90 days' notice.

176 Section 4. Paragraph (b) of subsection (4) of section
 177 627.7015, Florida Statutes, is amended to read:

178 627.7015 Alternative procedure for resolution of disputed
 179 property insurance claims.—

180 (4) The department shall adopt by rule a property
 181 insurance mediation program to be administered by the department
 182 or its designee. The department may also adopt special rules

183 which are applicable in cases of an emergency within the state.
 184 The rules shall be modeled after practices and procedures set
 185 forth in mediation rules of procedure adopted by the Supreme
 186 Court. The rules shall provide for:

187 (b) Qualifications, denial of application, suspension,
 188 revocation of approval, and other penalties for ~~of~~ mediators as
 189 provided in s. 627.745 and in the Florida Rules of Certified and
 190 Court Appointed Mediators, ~~and for such other individuals as are~~
 191 ~~qualified by education, training, or experience as the~~
 192 ~~department determines to be appropriate.~~

193 Section 5. Section 627.70151, Florida Statutes, is created
 194 to read:

195 627.70151 Appraisal; conflicts of interest.—An insurer
 196 that offers residential coverage, as defined in s. 627.4025, or
 197 a policyholder that uses an appraisal clause in a property
 198 insurance contract to establish a process of estimating or
 199 evaluating the amount of loss through the use of an impartial
 200 umpire may challenge an umpire's impartiality and disqualify the
 201 proposed umpire only if:

202 (1) A familial relationship within the third degree exists
 203 between the umpire and any party or a representative of any
 204 party;

205 (2) The umpire has previously represented any party or a
 206 representative of any party in a professional capacity in the
 207 same or a substantially related matter;

208 (3) The umpire has represented another person in a

209 professional capacity on the same or a substantially related
 210 matter, which includes the claim, same property, or an adjacent
 211 property and that other person's interests are materially
 212 adverse to the interests of any party; or

213 (4) The umpire has worked as an employer or employee of
 214 any party within the preceding 5 years.

215 Section 6. Paragraph (c) of subsection (2) of section
 216 627.706, Florida Statutes, is amended to read:

217 627.706 Sinkhole insurance; catastrophic ground cover
 218 collapse; definitions.—

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

222 (c) "Neutral evaluator" means a professional engineer or a
 223 professional geologist who has completed a course of study in
 224 alternative dispute resolution designed or approved by the
 225 department for use in the neutral evaluation process, ~~and~~ who is
 226 determined by the department to be fair and impartial, and who
 227 is not otherwise ineligible for certification as provided in s.
 228 627.7074.

229 Section 7. Subsections (7) and (18) of section 627.7074,
 230 Florida Statutes, are amended to read:

231 627.7074 Alternative procedure for resolution of disputed
 232 sinkhole insurance claims.—

233 (7) Upon receipt of a request for neutral evaluation, the
 234 department shall provide the parties a list of certified neutral

235 evaluators. The department shall allow the parties to submit
 236 requests to disqualify evaluators on the list for cause.

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

239 1. A familial relationship exists between the neutral
 240 evaluator and either party or a representative of either party
 241 within the third degree.

242 2. The proposed neutral evaluator has, in a professional
 243 capacity, previously represented either party or a
 244 representative of either party, in the same or a substantially
 245 related matter.

246 3. The proposed neutral evaluator has, in a professional
 247 capacity, represented another person in the same or a
 248 substantially related matter and that person's interests are
 249 materially adverse to the interests of the parties. The term
 250 "substantially related matter" means participation by the
 251 neutral evaluator on the same claim, property, or adjacent
 252 property.

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

256 (b) The department shall deny an application, or suspend
 257 or revoke its certification, of a neutral evaluator to serve in
 258 such capacity if the department finds that one or more of the
 259 following grounds exist:

260 1. Lack of one or more of the qualifications for

261 certification specified in this section.

262 2. Material misstatement, misrepresentation, or fraud in
 263 obtaining or attempting to obtain the certification.

264 3. Demonstrated lack of fitness or trustworthiness to act
 265 as a neutral evaluator.

266 4. Fraudulent or dishonest practices in the conduct of an
 267 evaluation or in the conduct of business in the financial
 268 services industry.

269 5. Violation of any provision of this code or of a lawful
 270 order or rule of the department or aiding, instructing, or
 271 encouraging another party to commit such a violation.

272 (c)~~(b)~~ The parties shall appoint a neutral evaluator from
 273 the department list and promptly inform the department. If the
 274 parties cannot agree to a neutral evaluator within 14 business
 275 days, the department shall appoint a neutral evaluator from the
 276 list of certified neutral evaluators. The department shall allow
 277 each party to disqualify two neutral evaluators without cause.
 278 Upon selection or appointment, the department shall promptly
 279 refer the request to the neutral evaluator.

280 (d)~~(e)~~ Within 14 business days after ~~the~~ referral, the
 281 neutral evaluator shall notify the policyholder and the insurer
 282 of the date, time, and place of the neutral evaluation
 283 conference. The conference may be held by telephone, if feasible
 284 and desirable. The neutral evaluator shall make reasonable
 285 efforts to hold the conference within 90 days after the receipt
 286 of the request by the department. Failure of the neutral

287 evaluator to hold the conference within 90 days does not
 288 invalidate either party's right to neutral evaluation or to a
 289 neutral evaluation conference held outside this timeframe.

290 (18) The department shall adopt rules of procedure for the
 291 neutral evaluation process and adopt rules for certifying,
 292 denying certification of, suspending certification of, and
 293 revoking the certification of a neutral evaluator.

294 Section 8. Section 627.7142, Florida Statutes, is created
 295 to read:

296 627.7142 Homeowner Claims Bill of Rights.—An insurer
 297 issuing a personal lines residential property insurance policy
 298 in this state must provide a Claims Bill of Rights to a
 299 policyholder within 14 calendar days after receiving an initial
 300 communication with respect to a claim, unless the claim follows
 301 an event that is the subject of a declaration of a state of
 302 emergency by the Governor. The purpose of the bill of rights is
 303 to explain, in simple, nontechnical terms, the rights of a
 304 personal lines residential property insurance policyholder who
 305 files a claim of loss. The Claims Bill of Rights is specific to
 306 the claims process and does not represent all of a
 307 policyholder's rights under Florida law regarding the insurance
 308 policy. The Claims Bill of Rights does not create a civil cause
 309 of action by any individual policyholder or class of
 310 policyholders against an individual insurer. The Claims Bill of
 311 Rights shall state:

312

313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338

HOMEOWNER CLAIMS

BILL OF RIGHTS

This Bill of Rights is specific to the claims process and does not represent all of your rights under Florida law regarding your policy. There are also exceptions to the stated timelines when conditions are beyond your insurance company's control. This document does not create a civil cause of action by an individual policyholder, or a class of policyholders, against an individual insurer.

YOU HAVE THE RIGHT TO:

1. Receive from your insurance company an acknowledgment of your reported claim within 14 days after the time you communicated the claim, along with necessary claim forms, including a proof-of-loss form, instructions, and appropriate, up-to-date contact information.
2. Upon written request, receive from your insurance company within 30 days after you have completed a proof-of-loss statement to your insurance company, confirmation that your claim is covered in full, partially covered, or denied, or receive a written statement that your claim is being investigated.
3. Within 90 days, receive full settlement payment for your claim or payment of the undisputed portion of

339 your claim, or your insurance company's denial of your
 340 claim.

341 4. Free mediation of your disputed claim by the
 342 Division of Consumer Services, under most
 343 circumstances and subject to certain restrictions.

344 5. Neutral evaluation of your disputed claim, if your
 345 claim is for damage caused by a sinkhole and is
 346 covered by your policy.

347 6. Contact the Florida Department of Financial
 348 Services Division of Consumer Services' toll-free
 349 helpline for assistance with any insurance claim or
 350 questions pertaining to the handling of your claim.
 351 You can reach the Helpline by phone at...toll free
 352 phone number..., or you can seek assistance online at
 353 the Florida Department of Financial Services Division
 354 of Consumer Services' website at...website address....

355
 356 YOU ARE ADVISED TO:

357 1. Contact your insurance company before entering
 358 into any contract for repairs to confirm any managed
 359 repair policy provisions or optional preferred
 360 vendors.

361 2. Make and document emergency repairs that are
 362 necessary to prevent further damage. Keep the damaged
 363 property, if feasible, keep all receipts, and take
 364 photographs of damage before and after any repairs.

365 3. Carefully read any contract that requires you to
 366 pay out-of-pocket expenses or a fee that is based on a
 367 percentage of the insurance proceeds that you will
 368 receive for repairing or replacing your property.

369 4. Confirm that the contractor you choose is licensed
 370 to do business in Florida. You can verify a
 371 contractor's license and check to see if there are any
 372 complaints against him or her by calling the Florida
 373 Department of Business and Professional Regulation.
 374 You should also ask the contractor for references from
 375 previous work.

376 5. Require all contractors to provide proof of
 377 insurance before beginning repairs.

378 6. Take precautions if the damage requires you to
 379 leave your home, including securing your property and
 380 turning off your gas, water, and electricity, and
 381 contacting your insurance company and provide a phone
 382 number where you can be reached.

383
 384 Section 9. Section 627.715, Florida Statutes, is created

385 to read:

386 627.715 Emergency mitigation services; agreements.-

387 (1) As used in this section, the term "emergency
 388 mitigation services" means the delivery of goods or services
 389 that are needed to mitigate damage caused by fire, water, or
 390 catastrophic events when delay may exacerbate the damage to the

391 covered property. Services include the removal of contents,
 392 removal of water or other contaminants, cleaning, sanitizing,
 393 incidental demolition, or other treatment, including preventive
 394 activities.

395 (2) For residential property insurance, an agreement for
 396 emergency mitigation services to which insurance proceeds may be
 397 applied is valid only if:

398 (a) The agreement specifies in writing the estimated scope
 399 and price of the work before it is performed;

400 (b) Any change from the original estimated scope and price
 401 of the work is preapproved by the policyholder; and

402 (c) The work is performed by an individual or company
 403 possessing a valid certification consistent with the most recent
 404 Standard and Reference Guide for Professional Water Damage
 405 Restoration, as developed by the Institute of Inspection,
 406 Cleaning and Restoration Certification and approved by the
 407 American National Standards Institute, or by a company that
 408 possesses a valid Division I license under chapter 489, which is
 409 providing services within the scope of that license. A company
 410 is considered to be certified for the purposes of this paragraph
 411 if the company representative who possesses a valid
 412 certification personally supervises the emergency mitigation
 413 services performed.

414 Section 10. This act shall take effect July 1, 2014.