

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 Homeowner Claims Bill of Rights for personal lines
20 residential property insurance policyholders;
21 providing that such bill of rights does not provide a
22 cause of action; creating s. 627.715, F.S.; defining
23 terms; providing requirements for emergency mitigation
24 repair agreements; requiring an emergency mitigation
25 contractor to be appropriately certified or to possess
26 a contracting license; providing an effective date.

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

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 is in effect for 90 days,
 130 the insurer may not cancel or terminate the policy or contract

131 based on credit information available in public records.

132 ~~5.4.~~ The requirement for providing written notice by June
 133 1 of any nonrenewal that would be effective between June 1 and
 134 November 30 does not apply to the following situations, but the
 135 insurer remains subject to the requirement to provide such
 136 notice at least 100 days before the effective date of
 137 nonrenewal:

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

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

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

157 class of insureds. This paragraph does not apply to individually
 158 rated risks that have ~~having~~ a policy term of less than 90 days.

159 ~~6.5.~~ Notwithstanding any other provision of law, an
 160 insurer may cancel or nonrenew a property insurance policy after
 161 at least 45 days' notice if the office finds that the early
 162 cancellation of some or all of the insurer's policies is
 163 necessary to protect the best interests of the public or
 164 policyholders and the office approves the insurer's plan for
 165 early cancellation or nonrenewal of some or all of its policies.
 166 The office may base such finding upon the financial condition of
 167 the insurer, lack of adequate reinsurance coverage for hurricane
 168 risk, or other relevant factors. The office may condition its
 169 finding on the consent of the insurer to be placed under
 170 administrative supervision pursuant to s. 624.81 or to the
 171 appointment of a receiver under chapter 631.

172 ~~7.6.~~ A policy covering both a home and a motor vehicle may
 173 be nonrenewed for any reason applicable to ~~either~~ the property
 174 or motor vehicle insurance after providing 90 days' notice.

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

177 627.7015 Alternative procedure for resolution of disputed
 178 property insurance claims.—

179 (4) The department shall adopt by rule a property
 180 insurance mediation program to be administered by the department
 181 or its designee. The department may also adopt special rules
 182 which are applicable in cases of an emergency within the state.

183 The rules shall be modeled after practices and procedures set
 184 forth in mediation rules of procedure adopted by the Supreme
 185 Court. The rules shall provide for:

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

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

194 627.70151 Appraisal; conflicts of interest.—An insurer
 195 that offers residential coverage, as defined in s. 627.4025, or
 196 a policyholder that uses an appraisal clause in a property
 197 insurance contract to establish a process of estimating or
 198 evaluating the amount of loss through the use of an impartial
 199 umpire may challenge an umpire's impartiality and disqualify the
 200 proposed umpire only if:

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

204 (2) The umpire has previously represented any party in a
 205 professional capacity in the same claim or matter involving the
 206 same property;

207 (3) The umpire has represented another person in a
 208 professional capacity on the same or a substantially related

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

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

214 Section 6. Paragraphs (c) and (f) of subsection (2)
 215 of section 627.706, Florida Statutes, are amended to read:

216 627.706 Sinkhole insurance; catastrophic ground cover
 217 collapse; definitions.—

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

221 (c) "Neutral evaluator" means an ~~a professional~~ engineer
 222 licensed under chapter 471 with experience and expertise in the
 223 identification of sinkhole activity as well as other potential
 224 causes of structural damage or a professional geologist. The
 225 engineer or professional geologist must have ~~who has~~ completed a
 226 course of study in alternative dispute resolution designed or
 227 approved by the department for use in the neutral evaluation
 228 process, must be ~~and who is~~ determined by the department to be
 229 fair and impartial, and must not be otherwise ineligible for
 230 certification as provided in s. 627.7074.

231 (f) "Professional engineer" means a person, as defined in
 232 s. 471.005, who has a bachelor's degree or higher in
 233 engineering. A professional engineer must also have experience

234 and expertise in the identification of sinkhole activity or ~~as~~
 235 ~~well as~~ other potential causes of structural damage.

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

238 627.7074 Alternative procedure for resolution of disputed
 239 sinkhole insurance claims.—

240 (7) Upon receipt of a request for neutral evaluation, the
 241 department shall provide the parties a list of certified neutral
 242 evaluators. The department shall allow the parties to submit
 243 requests to disqualify evaluators on the list for cause.

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

246 1. A familial relationship exists between the neutral
 247 evaluator and either party or a representative of either party
 248 within the third degree.

249 2. The proposed neutral evaluator has, in a professional
 250 capacity, previously represented either party or a
 251 representative of either party, in the same or a substantially
 252 related matter.

253 3. The proposed neutral evaluator has, in a professional
 254 capacity, represented another person in the same or a
 255 substantially related matter and that person's interests are
 256 materially adverse to the interests of the parties. The term
 257 "substantially related matter" means participation by the
 258 neutral evaluator on the same claim, property, or adjacent
 259 property.

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

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

267 1. Lack of one or more of the qualifications for
 268 certification specified in this section.

269 2. Material misstatement, misrepresentation, or fraud in
 270 obtaining or attempting to obtain the certification.

271 3. Demonstrated lack of fitness or trustworthiness to act
 272 as a neutral evaluator.

273 4. Fraudulent or dishonest practices in the conduct of an
 274 evaluation or in the conduct of business in the financial
 275 services industry.

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

279 (c) ~~(b)~~ The parties shall appoint a neutral evaluator from
 280 the department list and promptly inform the department. If the
 281 parties cannot agree to a neutral evaluator within 14 business
 282 days, the department shall appoint a neutral evaluator from the
 283 list of certified neutral evaluators. The department shall allow
 284 each party to disqualify two neutral evaluators without cause.
 285 Upon selection or appointment, the department shall promptly

286 refer the request to the neutral evaluator.

287 (d)~~(e)~~ Within 14 business days after ~~the~~ referral, the
 288 neutral evaluator shall notify the policyholder and the insurer
 289 of the date, time, and place of the neutral evaluation
 290 conference. The conference may be held by telephone, if feasible
 291 and desirable. The neutral evaluator shall make reasonable
 292 efforts to hold the conference within 90 days after the receipt
 293 of the request by the department. Failure of the neutral
 294 evaluator to hold the conference within 90 days does not
 295 invalidate either party's right to neutral evaluation or to a
 296 neutral evaluation conference held outside this timeframe.

297 (18) The department shall adopt rules of procedure for the
 298 neutral evaluation process and adopt rules for certifying,
 299 denying certification of, suspending certification of, and
 300 revoking the certification of a neutral evaluator.

301 Section 8. Effective October 1, 2014, section 627.7142,
 302 Florida Statutes, is created to read:

303 627.7142 Homeowner Claims Bill of Rights.—An insurer
 304 issuing a personal lines residential property insurance policy
 305 in this state must provide a Homeowner Claims Bill of Rights to
 306 a policyholder within 14 days after receiving an initial
 307 communication with respect to a claim, unless the claim follows
 308 an event that is the subject of a declaration of a state of
 309 emergency by the Governor. The purpose of the bill of rights is
 310 to summarize, in simple, nontechnical terms, existing Florida
 311 law regarding the rights of a personal lines residential

312 property insurance policyholder who files a claim of loss. The
 313 Homeowner Claims Bill of Rights is specific to the claims
 314 process and does not represent all of a policyholder's rights
 315 under Florida law regarding the insurance policy. The Homeowner
 316 Claims Bill of Rights does not create a civil cause of action by
 317 any individual policyholder or class of policyholders against an
 318 insurer or insurers. The failure of an insurer to properly
 319 deliver the Homeowner Claims Bill of Rights is subject to
 320 administrative enforcement by the office, but is not admissible
 321 as evidence in any civil action against an insurer. The
 322 Homeowner Claims Bill of Rights does not enlarge, modify, or
 323 contravene statutory requirements, including, but not limited
 324 to, ss. 626.854, 626.9541, 627.70131, 627.7015, and 627.7074.
 325 The Homeowner Claims Bill of Rights does not prohibit an insurer
 326 from exercising its right to repair damaged property in
 327 compliance with the terms of an applicable policy or ss.
 328 627.7011(5)(e) and 627.702(7). The Homeowner Claims Bill of
 329 Rights shall state:

331 HOMEOWNER CLAIMS BILL OF RIGHTS

332 This Bill of Rights is specific to the claims process
 333 and does not represent all of your rights under
 334 Florida law regarding your policy. There are also
 335 exceptions to the stated timelines when conditions are
 336 beyond your insurance company's control. This document
 337 does not create a civil cause of action by an

338 individual policyholder, or a class of policyholders,
 339 against an insurer or insurers and does not prohibit
 340 an insurer from exercising its right to repair damaged
 341 property in compliance with the terms of an applicable
 342 policy.

343
 344 YOU HAVE THE RIGHT TO:

- 345 1. Receive from your insurance company an
 346 acknowledgment of your reported claim within 14 days
 347 after the time you communicated the claim.
- 348 2. Upon written request, receive from your insurance
 349 company, within 30 days after you have submitted a
 350 complete proof-of-loss statement to your insurance
 351 company, confirmation that your claim is covered in
 352 full, partially covered, or denied or receive a
 353 written statement that your claim is being
 354 investigated.
- 355 3. Within 90 days, subject to any dual interest noted
 356 in the policy, receive full settlement payment for
 357 your claim, payment of the undisputed portion of your
 358 claim, or your insurance company's denial of your
 359 claim.
- 360 4. Free mediation of your disputed claim by the
 361 Florida Department of Financial Services Division of
 362 Consumer Services under most circumstances and subject
 363 to certain restrictions.

364 5. Neutral evaluation of your disputed claim, if your
 365 claim is for damage caused by a sinkhole and is
 366 covered by your policy.

367 6. Contact the Florida Department of Financial
 368 Services Division of Consumer Services' toll-free
 369 helpline for assistance with any insurance claim or
 370 questions pertaining to the handling of your claim.
 371 You can reach the helpline by telephone at ...(toll
 372 free telephone number)..., or you can seek assistance
 373 online at the Florida Department of Financial Services
 374 Division of Consumer Services' website at ...(website
 375 address)....

376
 377 YOU ARE ADVISED TO:

378 1. Contact your insurance company before entering
 379 into any contract for repairs to confirm any managed
 380 repair policy provisions or optional preferred
 381 vendors.

382 2. Make and document emergency repairs that are
 383 necessary to prevent further damage. Keep the damaged
 384 property, if feasible, keep all receipts, and take
 385 photographs of damage before and after any repairs.

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

390 4. Confirm that the contractor you choose is licensed
 391 to do business in Florida. You can verify a
 392 contractor's license and check to see if there are any
 393 complaints against him or her by calling the Florida
 394 Department of Business and Professional Regulation.
 395 You should also ask the contractor for references from
 396 previous work.

397 5. Require all contractors to provide proof of
 398 insurance before beginning repairs.

399 6. Take precautions if the damage requires you to
 400 leave your home, including securing your property and
 401 turning off your gas, water, and electricity, and
 402 contacting your insurance company and provide a
 403 telephone number where you can be reached.

404
 405 Section 9. Section 627.715, Florida Statutes, is created
 406 to read:

407 627.715 Emergency mitigation services; agreements.-

408 (1) As used in this section, the term "emergency
 409 mitigation services" means the delivery of goods or services
 410 that are needed to mitigate damage caused by fire, water, or
 411 catastrophic events when delay may exacerbate the damage to the
 412 covered property. Services include the removal of contents,
 413 removal of water or other contaminants, cleaning, sanitizing,
 414 incidental demolition, or other treatment, including preventive
 415 activities.

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

419 (a) The agreement entered into by the policyholder
 420 complies with any managed repair or preferred vendor policy
 421 provisions;

422 (b) The agreement specifies in writing the estimated scope
 423 and price of the work before it is performed;

424 (c) Any change from the original estimated scope and price
 425 of the work is preapproved by the policyholder; and

426 (d) The work is performed by an individual or company
 427 possessing a valid certification consistent with the most recent
 428 Standard and Reference Guide for Professional Water Damage
 429 Restoration, as developed by the Institute of Inspection,
 430 Cleaning and Restoration Certification and approved by the
 431 American National Standards Institute, or by a company that
 432 possesses a valid Division I license under chapter 489, which is
 433 providing services within the scope of that license. A company
 434 is considered to be certified for purposes of this paragraph if
 435 the company representative who possesses a valid certification
 436 personally supervises the emergency mitigation services
 437 performed.

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