

1 A bill to be entitled
2 An act relating to property insurance; amending s.
3 627.7011, F.S.; requiring that before issuing a
4 homeowner's insurance policy, an insurer must offer
5 specified coverage options; revising requirements
6 relating to an offer for law and ordinance coverage;
7 amending s. 627.706, F.S.; requiring an insurer to
8 make certain sinkhole loss coverage available for an
9 additional premium; authorizing residential property
10 insurance policies to include specified deductible
11 amounts; revising the definitions of the terms
12 "structural damage" and "safety hazard"; amending s.
13 627.707, F.S.; providing that an insurer must pay
14 initially to stabilize a building if a sinkhole loss
15 is verified, subject to certain policy limits and
16 terms; requiring an insurer to pay for certain repairs
17 after completion of building stabilization in
18 accordance with certain policy terms and limits;
19 requiring an insured to repair sinkhole damage or loss
20 in accordance with the insurer's professional
21 engineer's recommendation, notwithstanding certain
22 policy terms and limitations; deleting a provision
23 requiring an insurer to pay for repairs in accordance
24 with such engineer's recommendation under certain
25 circumstances; subjecting certain actions relating to
26 stabilization and repairs to sinkhole loss coverage
27 limits and policy terms; revising provisions relating
28 to the payment of lienholders and other persons for

29 | stabilization and repairs; prohibiting the Citizens
 30 | Property Insurance Corporation from nonrenewing a
 31 | property insurance policy on the basis of filing
 32 | sinkhole loss claims under specified circumstances;
 33 | providing for retroactive application under certain
 34 | circumstances; amending s. 627.7072, F.S.; conforming
 35 | provisions to changes made by the act; amending s.
 36 | 627.7073, F.S.; conforming provisions; providing for
 37 | monetary penalties to be assessed against an insurer
 38 | who fails to file with the county court clerk a copy
 39 | of a specified report relating to payment for a
 40 | sinkhole loss; deleting provisions that require a
 41 | policyholder to file certain reports as a precondition
 42 | to accepting a payment for sinkhole loss; providing a
 43 | penalty applicable to a seller who fails to disclose
 44 | certain information to a buyer with respect to
 45 | payments for sinkhole losses; amending s. 627.7074,
 46 | F.S.; conforming a provision to changes made by the
 47 | act; deleting a provision that allows a policyholder
 48 | to obtain attorney fees under certain circumstances;
 49 | providing an effective date.

50 |
 51 | Be It Enacted by the Legislature of the State of Florida:

52 |
 53 | Section 1. Subsection (1) of section 627.7011, Florida
 54 | Statutes, is amended to read:

55 | 627.7011 Homeowners' policies; ~~offer of replacement cost~~
 56 | ~~coverage and law and ordinance coverage~~ options.-

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57 | (1) ~~Before~~ Prior to issuing a homeowner's insurance
58 | policy, the insurer must offer a potential policyholder all ~~each~~
59 | of the following options:

60 | (a) A policy or endorsement ~~providing~~ that provides that
61 | any loss that is repaired or replaced will be adjusted on the
62 | basis of replacement costs to the dwelling, not exceeding policy
63 | limits, rather than actual cash value, but does not include
64 | ~~including~~ costs necessary to meet applicable laws and ordinances
65 | regulating the construction, use, or repair of any property or
66 | requiring the tearing down of any property, including the costs
67 | of removing debris.

68 | (b) A policy or endorsement that provides that any loss
69 | that is repaired or replaced will be adjusted on the basis of
70 | the actual cash value of the dwelling, not exceeding policy
71 | limits, rather than replacement costs, but does not include
72 | costs necessary to meet applicable laws and ordinances
73 | regulating the construction, use, or repair of any property or
74 | requiring the tearing down of any property, including the costs
75 | of removing debris.

76 | (c) ~~(b)~~ A policy or endorsement ~~providing~~ that, subject to
77 | other policy provisions, provides that any loss that is repaired
78 | or replaced at any location will be adjusted on the basis of
79 | replacement costs to the dwelling not exceeding policy limits,
80 | rather than actual cash value, and also includes ~~including~~ costs
81 | necessary to meet applicable laws and ordinances regulating the
82 | construction, use, or repair of any property or requiring the
83 | tearing down of any property, including the costs of removing
84 | debris. However, additional costs necessary to meet applicable

85 | laws and ordinances may be limited to 25 percent or 50 percent
 86 | of the dwelling limit, as selected by the policyholder, and such
 87 | coverage applies only to repairs of the damaged portion of the
 88 | structure unless the total damage to the structure exceeds 50
 89 | percent of the replacement cost of the structure.

90 |
 91 | An insurer is not required to offer ~~make the offers required by~~
 92 | ~~this subsection with respect to the issuance or renewal of a~~
 93 | ~~homeowner's policy that contains the provisions specified in~~
 94 | ~~paragraph (b) for~~ law and ordinance coverage limited to 25
 95 | percent of the dwelling limit, but ~~except that the insurer~~ must
 96 | offer the law and ordinance coverage limited to 50 percent of
 97 | the dwelling limit. This subsection does not prohibit the offer
 98 | of a guaranteed replacement cost policy.

99 | Section 2. Paragraph (b) of subsection (1) and paragraph
 100 | (k) of subsection (2) of section 627.706, Florida Statutes, are
 101 | amended to read:

102 | 627.706 Sinkhole insurance; catastrophic ground cover
 103 | collapse; definitions.—

104 | (1)

105 | (b) The insurer shall make available, for an appropriate
 106 | additional premium, coverage for all sinkhole losses on any
 107 | structure, including the stabilization and repairs of the
 108 | building and the contents of personal property contained
 109 | therein, only to the extent provided in the form to which the
 110 | coverage attaches. The insurer may require an inspection of the
 111 | property before issuance of sinkhole loss coverage. A policy for
 112 | residential property insurance may include the following a

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113 | deductible amounts ~~amount~~ applicable to sinkhole losses: \$500,
114 | \$1,000, \$2,500, or \$5,000 ~~equal to 1 percent, 2 percent, 5~~
115 | ~~percent, or 10 percent of the policy dwelling limits,~~ with
116 | appropriate premium discounts offered with each deductible
117 | amount.

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

121 | (k) "Structural damage" means a covered building,
122 | regardless of the date of its construction, has experienced the
123 | following:

124 | 1. Interior floor displacement or deflection in excess of
125 | acceptable variances as defined in ACI 117-90 or the Florida
126 | Building Code, which results in settlement-related damage to the
127 | interior such that the interior building structure or members
128 | become unfit for service or represents a safety hazard as
129 | defined within the 2007 Florida Building Code;

130 | 2. Foundation displacement or deflection in excess of
131 | acceptable variances as defined in ACI 318-95 or the Florida
132 | Building Code, which results in settlement-related damage to the
133 | primary structural members or primary structural systems that
134 | prevents those members or systems from supporting the loads and
135 | forces they were designed to support to the extent that stresses
136 | in those primary structural members or primary structural
137 | systems exceeds one and one-third the nominal strength allowed
138 | under the Florida Building Code for new buildings of similar
139 | structure, purpose, or location;

140 | 3. Damage that results in listing, leaning, or buckling of

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141 the exterior load-bearing walls or other vertical primary
142 structural members to such an extent that a plumb line passing
143 through the center of gravity does not fall inside the middle
144 one-third of the base as defined within the Florida Building
145 Code;

146 4. Damage that results in the building, or any portion of
147 the building containing primary structural members or primary
148 structural systems, being significantly likely to imminently
149 collapse because of the movement or instability of the ground
150 within the influence zone of the supporting ground within the
151 shear plane necessary for the purpose of supporting such
152 building ~~as defined within the Florida Building Code~~; or

153 5. Damage occurring on or after October 15, 2005, that
154 qualifies as "substantial structural damage" as defined in the
155 Florida Building Code.

156 Section 3. Paragraph (b) of subsection (3) and subsections
157 (5) and (7) of section 627.707, Florida Statutes, are amended to
158 read:

159 627.707 Investigation of sinkhole claims; insurer payment;
160 nonrenewals.—Upon receipt of a claim for a sinkhole loss to a
161 covered building, an insurer must meet the following standards
162 in investigating a claim:

163 (3) Following the initial inspection of the policyholder's
164 premises, the insurer shall provide written notice to the
165 policyholder disclosing the following information:

166 (b) A statement of the circumstances under which the
167 insurer is required to engage a professional engineer or a
168 professional geologist to verify or eliminate sinkhole loss and

169 to engage a professional engineer to make recommendations
 170 regarding ~~land and building stabilization, and foundation~~
 171 repairs, and building repairs ~~repair~~.

172 (5) If a sinkhole loss is verified, the insurer shall
 173 initially pay to stabilize the ~~land and building and repair the~~
 174 ~~foundation~~ in accordance with the recommendations of the
 175 professional engineer retained pursuant to subsection (2), with
 176 notice to the policyholder, subject to the sinkhole loss
 177 coverage limit and terms of the policy. Upon completion of the
 178 stabilization of the building, if any sinkhole loss coverage
 179 remains, the insurer shall pay for ~~other~~ repairs to the
 180 foundation, building, structure and contents in accordance with
 181 the terms of the policy up to the sinkhole loss coverage limit.
 182 If a covered building suffers a sinkhole loss or a catastrophic
 183 ground cover collapse, notwithstanding the sinkhole loss
 184 coverage limit or the cost of the repairs, the insured must
 185 repair such damage or loss in accordance with the insurer's
 186 professional engineer's recommended repairs. ~~However, if the~~
 187 ~~insurer's professional engineer determines that the repair~~
 188 ~~cannot be completed within policy limits, the insurer must pay~~
 189 ~~to complete the repairs recommended by the insurer's~~
 190 ~~professional engineer or tender the policy limits to the~~
 191 ~~policyholder.~~

192 (a) Subject to the sinkhole loss coverage limit, the
 193 insurer may limit its total claims payment to the actual cash
 194 value of the sinkhole loss, which does not include underpinning
 195 or grouting or any other repair technique performed below the
 196 existing foundation of the building, until after the

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197 stabilization of the building is complete ~~the policyholder~~
198 ~~enters into a contract for the performance of building~~
199 ~~stabilization or foundation repairs in accordance with the~~
200 ~~recommendations set forth in the insurer's report issued~~
201 ~~pursuant to s. 627.7073.~~

202 (b) In order to prevent additional damage to the building
203 ~~or structure~~, the policyholder must enter into a contract for
204 the performance of building stabilization ~~and foundation repairs~~
205 within 90 days after the insurance company confirms coverage for
206 the sinkhole loss and notifies the policyholder of such
207 confirmation. This time period is tolled if either party invokes
208 the neutral evaluation process, and begins again 10 days after
209 the conclusion of the neutral evaluation process.

210 (c) After the policyholder enters into the contract for
211 the performance of building stabilization ~~and foundation~~
212 ~~repairs~~, subject to the sinkhole loss coverage limit, the
213 insurer shall pay the amounts necessary to begin and perform
214 such stabilization ~~repairs~~ as the work is performed and the
215 expenses are incurred. The insurer may not require the
216 policyholder to advance the first payment to begin the
217 stabilization, subject to the sinkhole loss coverage limit ~~for~~
218 ~~such repairs. If repair covered by a personal lines residential~~
219 ~~property insurance policy has begun and the professional~~
220 ~~engineer selected or approved by the insurer determines that the~~
221 ~~repair cannot be completed within the policy limits, the insurer~~
222 ~~must complete the professional engineer's recommended repair or~~
223 ~~tender the policy limits to the policyholder without a reduction~~
224 ~~for the repair expenses incurred.~~

225 (d) The stabilization and all ~~other~~ repairs to the
 226 foundation, building, structure and contents must be completed
 227 within 12 months after entering into the contract for
 228 stabilization repairs described in paragraph (b) unless:

229 1. There is a mutual agreement between the insurer and the
 230 policyholder;

231 2. The claim is involved with the neutral evaluation
 232 process;

233 3. The claim is in litigation; or

234 4. The claim is under appraisal or mediation.

235 (e) If there is any lienholder, upon the insurer's
 236 obtaining the written approval of the ~~any~~ lienholder, the
 237 insurer ~~must~~ ~~may~~ make all payments ~~payment~~ directly to the
 238 persons selected by the policyholder to perform the ~~land and~~
 239 building stabilization, and foundation repairs, and building
 240 repairs. If there is no lienholder, the insurer must make all
 241 payments directly to the persons selected by the policyholder to
 242 perform the building stabilization, foundation repairs, and
 243 building repairs. The decision by the insurer to make payment to
 244 such persons does not hold the insurer liable for the work
 245 performed.

246 (f) The policyholder may not accept a rebate from any
 247 person performing the repairs specified in this section. If a
 248 policyholder receives a rebate, coverage is void and the
 249 policyholder must refund the amount of the rebate to the
 250 insurer. Any person performing the repairs specified in this
 251 section who offers a rebate commits insurance fraud punishable
 252 as a third degree felony as provided in s. 775.082, s. 775.083,

253 or s. 775.084. As used in this paragraph, the term "rebate"
 254 means a remuneration, payment, gift, discount, or transfer of
 255 any item of value to the policyholder by or on behalf of a
 256 person performing the repairs specified in this section as an
 257 incentive or inducement to obtain repairs performed by that
 258 person.

259 (7) (a) An insurer, including Citizens Property Insurance
 260 Corporation, may not nonrenew any policy of property insurance
 261 on the basis of filing of claims for sinkhole loss if the total
 262 of ~~such~~ payments for such loss does not equal ~~or exceed~~ the
 263 policy limits of sinkhole loss coverage for the policy in effect
 264 on the date of loss, for property damage to the covered
 265 building, as set forth on the declarations page, or if the
 266 policyholder stabilized and repaired the structure in accordance
 267 with the engineering recommendations made pursuant to subsection
 268 (2) upon which any payment or policy proceeds were based, even
 269 if the costs of such repairs exceeded the limits of the policy
 270 and the policyholder was responsible for and paid the difference
 271 between the policy limits paid and the cost of repairs. If the
 272 insurer pays such limits, and the policyholder fails to make the
 273 repairs, it may nonrenew the policy.

274 (b) An insurer, including the Citizens Property Insurance
 275 Corporation, may not nonrenew a policy of property insurance on
 276 the basis of filing claims for sinkhole loss if the insurer, the
 277 corporation, or the policyholder paid to stabilize and repair
 278 the structure before July 1, 2013, in accordance with
 279 professional engineering or geologist recommendations.

280 Section 4. Section 627.7072, Florida Statutes, is amended

281 to read:

282 627.7072 Testing standards for sinkholes.—The professional
 283 engineer and professional geologist shall perform such tests as
 284 sufficient, in their professional opinion, to determine the
 285 presence or absence of sinkhole loss or other cause of damage
 286 within reasonable professional probability and for the
 287 professional engineer to make recommendations regarding
 288 necessary building stabilization, ~~and~~ foundation repairs, and
 289 building repairs ~~repair~~.

290 Section 5. Section 627.7073, Florida Statutes, is amended
 291 to read:

292 627.7073 Sinkhole reports.—

293 (1) Upon completion of testing as provided in s. 627.7072,
 294 the professional engineer or professional geologist shall issue
 295 a report and certification to the insurer and the policyholder
 296 as provided in this section.

297 (a) Sinkhole loss is verified if, based upon tests
 298 performed in accordance with s. 627.7072, a professional
 299 engineer or a professional geologist issues a written report and
 300 certification stating:

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

303 2. That the cause of the structural damage is sinkhole
 304 activity within a reasonable professional probability.

305 3. That the analyses conducted were of sufficient scope to
 306 identify sinkhole activity as the cause of damage within a
 307 reasonable professional probability.

308 4. A description of the tests performed.

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309 5. A recommendation by the professional engineer of
310 methods for stabilizing the ~~land and~~ building and for making
311 repairs to the building ~~foundation~~.

312 (b) If there is no structural damage or if sinkhole
313 activity is eliminated as the cause of such damage to the
314 covered building, the professional engineer or professional
315 geologist shall issue a written report and certification to the
316 policyholder and the insurer stating:

317 1. That there is no structural damage or the cause of such
318 damage is not sinkhole activity within a reasonable professional
319 probability.

320 2. That the analyses and tests conducted were of
321 sufficient scope to eliminate sinkhole activity as the cause of
322 the structural damage within a reasonable professional
323 probability.

324 3. A statement of the cause of the structural damage
325 within a reasonable professional probability.

326 4. A description of the tests performed.

327 (c) The respective findings, opinions, and recommendations
328 of the insurer's professional engineer or professional geologist
329 as to the cause of distress to the property and the findings,
330 opinions, and recommendations of the insurer's professional
331 engineer as to land and building stabilization and foundation
332 repair set forth by s. 627.7072 shall be presumed correct.

333 (2) An insurer that has paid a claim for a sinkhole loss
334 shall file a copy of the report and certification, prepared
335 pursuant to subsection (1), including the legal description of
336 the real property and the name of the property owner, the

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337 neutral evaluator's report, if any, which indicates that
338 sinkhole activity caused the damage claimed, a copy of the
339 certification indicating that stabilization has been completed,
340 if applicable, and the amount of the payment, with the county
341 clerk of court, who shall record the report and certification.
342 The insurer shall bear the cost of filing and recording one or
343 more reports and certifications. If an insurer fails to file a
344 copy of the report within 30 days after payment of a sinkhole
345 claim, a \$25 penalty payable to the clerk of the court shall be
346 assessed for each day beyond the 30th day that the insurer
347 remains in noncompliance with this subsection. There shall be no
348 cause of action or liability against an insurer for compliance
349 with this section.

350 (a) The recording of the report and certification does
351 not:

352 1. Constitute a lien, encumbrance, or restriction on the
353 title to the real property or constitute a defect in the title
354 to the real property;

355 2. Create any cause of action or liability against any
356 grantor of the real property for breach of any warranty of good
357 title or warranty against encumbrances; or

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

360 ~~(b) As a precondition to accepting payment for a sinkhole~~
361 ~~loss, the policyholder must file a copy of any sinkhole report~~
362 ~~regarding the insured property which was prepared on behalf or~~
363 ~~at the request of the policyholder. The policyholder shall bear~~
364 ~~the cost of filing and recording the sinkhole report. The~~

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365 ~~recording of the report does not:~~

366 ~~1. Constitute a lien, encumbrance, or restriction on the~~
367 ~~title to the real property or constitute a defect in the title~~
368 ~~to the real property;~~

369 ~~2. Create any cause of action or liability against any~~
370 ~~grantor of the real property for breach of any warranty of good~~
371 ~~title or warranty against encumbrances; or~~

372 ~~3. Create any cause of action or liability against a title~~
373 ~~insurer that insures the title to the real property.~~

374 (b)(e) The seller of real property upon which a sinkhole
375 claim has been made ~~by the seller~~ and paid by the insurer must
376 disclose to the buyer of such property, before the closing, that
377 a claim has been paid and whether or not the full amount of the
378 proceeds was used to repair the sinkhole damage. A person who
379 fails to make the disclosure required under this paragraph
380 commits a first degree misdemeanor punishable as provided in s.
381 775.082 and s. 775.083.

382 (3) Upon completion of any building stabilization or
383 foundation repairs for a verified sinkhole loss, the
384 professional engineer responsible for monitoring the repairs
385 shall issue a report to the property owner which specifies what
386 repairs have been performed and certifies within a reasonable
387 degree of professional probability that such repairs have been
388 properly performed. The professional engineer issuing the report
389 shall file a copy of the report and certification, which
390 includes a legal description of the real property and the name
391 of the property owner, with the county clerk of the court, who
392 shall record the report and certification. This subsection does

393 | not create liability for an insurer based on any representation
 394 | or certification by a professional engineer related to the
 395 | stabilization or foundation repairs for the verified sinkhole
 396 | loss.

397 | Section 6. Subsection (12) and paragraph (b) of subsection
 398 | (15) of section 627.7074, Florida Statutes, are amended to read:

399 | 627.7074 Alternative procedure for resolution of disputed
 400 | sinkhole insurance claims.—

401 | (12) At the conclusion of the neutral evaluation, the
 402 | neutral evaluator shall prepare a report describing all matters
 403 | that are the subject of the neutral evaluation, including
 404 | whether, in his or her opinion, the sinkhole loss has been
 405 | verified or eliminated within a reasonable degree of
 406 | professional probability and, if verified, whether the sinkhole
 407 | activity caused structural damage to the covered building, and,
 408 | if so, the need for and estimated costs of stabilizing ~~the land~~
 409 | ~~and~~ any covered buildings and other appropriate remediation or
 410 | necessary building repairs due to the sinkhole loss. The
 411 | evaluator's report shall be sent to all parties and to the
 412 | department, within 14 days after completing the neutral
 413 | evaluation conference.

414 | (15) If the insurer timely agrees in writing to comply and
 415 | timely complies with the recommendation of the neutral
 416 | evaluator, but the policyholder declines to resolve the matter
 417 | in accordance with the recommendation of the neutral evaluator
 418 | pursuant to this section:

419 | (b) The actions of the insurer are not a confession of
 420 | judgment or admission of liability, and the insurer is not

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421 | liable for attorney ~~attorney's~~ fees under s. 627.428 or other
422 | provisions of the insurance code ~~unless the policyholder obtains~~
423 | ~~a judgment that is more favorable than the recommendation of the~~
424 | ~~neutral evaluator.~~

425 | Section 7. This act shall take effect July 1, 2013.