

1 A bill to be entitled  
2 An act relating to property insurance; amending s.  
3 626.854, F.S.; revising the restrictions on public  
4 adjuster compensation, payment, commission, fee, or  
5 any other thing of value; providing penalties;  
6 deleting a provision requiring the public adjuster to  
7 ensure prompt notice of property loss claims;  
8 requiring a public adjuster to ensure that prompt  
9 notice is given of a claim to the insurer; requiring a  
10 public adjuster to meet or communicate with the  
11 insurer for a specified purpose; prohibiting a public  
12 adjuster from acquiring any interest in salvaged  
13 property; providing an exception; amending s. 627.351,  
14 F.S.; deleting a provision that limits the amount that  
15 a public adjuster may charge, agree to, or accept as  
16 compensation with respect to a claim filed under a  
17 policy of the Citizens Property Insurance Corporation;  
18 requiring the corporation to prepare a report for each  
19 calendar year relating to the loss ratio attributable  
20 to losses that are not catastrophic losses for  
21 residential coverage provided by the corporation;  
22 amending s. 627.422, F.S.; authorizing a property  
23 insurance policy to prohibit the post-loss assignment  
24 of rights, benefits, causes of action, or choses in  
25 action, except for a specified purpose; voiding the  
26 assignment if certain post-loss assignments are made  
27 under a policy that prohibits such acts; amending s.  
28 627.706, F.S.; requiring insurers to offer sinkhole

29 |       loss coverage with specified coverage limits;  
 30 |       requiring discounts for the coverage limits; requiring  
 31 |       insurers to offer sinkhole loss deductibles in  
 32 |       specified percentages of policy dwelling limits;  
 33 |       amending s. 627.707, F.S.; revising provisions  
 34 |       relating to the payment of lienholders and other  
 35 |       persons for stabilization and repair; amending s.  
 36 |       627.7074, F.S.; deleting a provision that allows a  
 37 |       policyholder to obtain attorney fees under certain  
 38 |       circumstances; providing an effective date.

39 |

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

41 |

42 |       Section 1. Present subsections (11), (15), and (17) of  
 43 |       section 626.854, Florida Statutes, are amended, and a new  
 44 |       subsection (17) is added to that section to read:

45 |       626.854 "Public adjuster" defined; prohibitions.—The  
 46 |       Legislature finds that it is necessary for the protection of the  
 47 |       public to regulate public insurance adjusters and to prevent the  
 48 |       unauthorized practice of law.

49 |       (11) (a) If a public adjuster enters into a contract with  
 50 |       an insured or claimant to reopen a claim or file a supplemental  
 51 |       claim that seeks additional payments for a claim that has been  
 52 |       previously paid in part or in full or settled by the insurer,  
 53 |       the public adjuster may not charge, agree to, or accept from any  
 54 |       source ~~any~~ compensation, payment, commission, fee, or any other  
 55 |       thing of value based on a previous settlement or previous claim  
 56 |       payments by the insurer for the same cause of loss. The charge,

57 compensation, payment, commission, fee, or any other thing of  
 58 value must be based only on the claim payments or settlement  
 59 obtained through the work of the public adjuster after entering  
 60 into the contract with the insured or claimant. Compensation for  
 61 the reopened or supplemental claim may not exceed 20 percent of  
 62 the reopened or supplemental claim payment. In no event shall  
 63 the contracts described in this paragraph exceed ~~are not subject~~  
 64 ~~to~~ the limitations in paragraph (b).

65 (b) A public adjuster may not charge, agree to, or accept  
 66 from any source ~~any~~ compensation, payment, commission, fee, or  
 67 any other thing of value in excess of:

68 1. Ten percent of the amount of insurance claim payments  
 69 made by the insurer for claims based on events that are the  
 70 subject of a declaration of a state of emergency by the  
 71 Governor. This provision applies to claims made during the year  
 72 after the declaration of emergency. After that year, the  
 73 limitations in subparagraph 2. apply.

74 2. Twenty percent of the amount of insurance claim  
 75 payments made by the insurer for claims that are not based on  
 76 events that are the subject of a declaration of a state of  
 77 emergency by the Governor.

78 (c) Any maneuver, shift, or device through which the  
 79 limits on compensation set forth in this subsection are exceeded  
 80 is a violation of this chapter punishable as provided under s.  
 81 626.8698.

82 ~~(15) A public adjuster must ensure prompt notice of~~  
 83 ~~property loss claims submitted to an insurer by or through a~~  
 84 ~~public adjuster or on which a public adjuster represents the~~

85 | ~~insured at the time the claim or notice of loss is submitted to~~  
86 | ~~the insurer.~~ The public adjuster must ensure that prompt notice  
87 | is given of the claim to the insurer, the public adjuster's  
88 | contract is provided to the insurer, the property is available  
89 | for inspection of the loss or damage by the insurer, and the  
90 | insurer is given an opportunity to interview the insured  
91 | directly about the loss and claim. The insurer must be allowed  
92 | to obtain necessary information to investigate and respond to  
93 | the claim.

94 | (a) The insurer may not exclude the public adjuster from  
95 | its in-person meetings with the insured. The insurer shall meet  
96 | or communicate with the public adjuster in an effort to reach  
97 | agreement as to the scope of the covered loss under the  
98 | insurance policy. The public adjuster shall meet or communicate  
99 | with the insurer in an effort to reach agreement as to the scope  
100 | of the covered loss under the insurance policy. This section  
101 | does not impair the terms and conditions of the insurance policy  
102 | in effect at the time the claim is filed.

103 | (b) A public adjuster may not restrict or prevent an  
104 | insurer, company employee adjuster, independent adjuster,  
105 | attorney, investigator, or other person acting on behalf of the  
106 | insurer from having reasonable access at reasonable times to any  
107 | ~~an~~ insured or claimant or to the insured property that is the  
108 | subject of a claim.

109 | (c) A public adjuster may not act or fail to reasonably  
110 | act in any manner that obstructs or prevents an insurer or  
111 | insurer's adjuster from timely conducting an inspection of any  
112 | part of the insured property for which there is a claim for loss

113 or damage. The public adjuster representing the insureds ~~insured~~  
114 may be present for the insurer's inspection, but if the  
115 unavailability of the public adjuster otherwise delays the  
116 insurer's timely inspection of the property, the public adjuster  
117 or the insureds ~~insured~~ must allow the insurer to have access to  
118 the property without the participation or presence of the public  
119 adjuster or insureds ~~insured~~ in order to facilitate the  
120 insurer's prompt inspection of the loss or damage.

121 (17) A public adjuster shall not acquire any interest in  
122 salvaged property, except with the written consent and  
123 permission of the insured through a signed affidavit.

124 (18) ~~(17)~~ The provisions of subsections (5)-(17) ~~(5)-(16)~~  
125 apply only to residential property insurance policies and  
126 condominium unit owner policies as defined in s. 718.111(11).

127 Section 2. Paragraph (a) of subsection (6) of section  
128 627.351, Florida Statutes, is amended, and paragraph (gg) is  
129 added to that subsection, to read:

130 627.351 Insurance risk apportionment plans.—

131 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

132 (a) The public purpose of this subsection is to ensure  
133 that there is an orderly market for property insurance for  
134 residents and businesses of this state.

135 1. The Legislature finds that private insurers are  
136 unwilling or unable to provide affordable property insurance  
137 coverage in this state to the extent sought and needed. The  
138 absence of affordable property insurance threatens the public  
139 health, safety, and welfare and likewise threatens the economic  
140 health of the state. The state therefore has a compelling public

141 interest and a public purpose to assist in assuring that  
142 property in the state is insured and that it is insured at  
143 affordable rates so as to facilitate the remediation,  
144 reconstruction, and replacement of damaged or destroyed property  
145 in order to reduce or avoid the negative effects otherwise  
146 resulting to the public health, safety, and welfare, to the  
147 economy of the state, and to the revenues of the state and local  
148 governments which are needed to provide for the public welfare.  
149 It is necessary, therefore, to provide affordable property  
150 insurance to applicants who are in good faith entitled to  
151 procure insurance through the voluntary market but are unable to  
152 do so. The Legislature intends, therefore, that affordable  
153 property insurance be provided and that it continue to be  
154 provided, as long as necessary, through Citizens Property  
155 Insurance Corporation, a government entity that is an integral  
156 part of the state, and that is not a private insurance company.  
157 To that end, the corporation shall strive to increase the  
158 availability of affordable property insurance in this state,  
159 while achieving efficiencies and economies, and while providing  
160 service to policyholders, applicants, and agents which is no  
161 less than the quality generally provided in the voluntary  
162 market, for the achievement of the foregoing public purposes.  
163 Because it is essential for this government entity to have the  
164 maximum financial resources to pay claims following a  
165 catastrophic hurricane, it is the intent of the Legislature that  
166 the corporation continue to be an integral part of the state and  
167 that the income of the corporation be exempt from federal income  
168 taxation and that interest on the debt obligations issued by the

169 corporation be exempt from federal income taxation.

170       2. The Residential Property and Casualty Joint  
171 Underwriting Association originally created by this statute  
172 shall be known as the Citizens Property Insurance Corporation.  
173 The corporation shall provide insurance for residential and  
174 commercial property, for applicants who are entitled, but, in  
175 good faith, are unable to procure insurance through the  
176 voluntary market. The corporation shall operate pursuant to a  
177 plan of operation approved by order of the Financial Services  
178 Commission. The plan is subject to continuous review by the  
179 commission. The commission may, by order, withdraw approval of  
180 all or part of a plan if the commission determines that  
181 conditions have changed since approval was granted and that the  
182 purposes of the plan require changes in the plan. For the  
183 purposes of this subsection, residential coverage includes both  
184 personal lines residential coverage, which consists of the type  
185 of coverage provided by homeowner's, mobile home owner's,  
186 dwelling, tenant's, condominium unit owner's, and similar  
187 policies; and commercial lines residential coverage, which  
188 consists of the type of coverage provided by condominium  
189 association, apartment building, and similar policies.

190       3. Effective January 1, 2009, a personal lines residential  
191 structure that has a dwelling replacement cost of \$2 million or  
192 more, or a single condominium unit that has a combined dwelling  
193 and contents replacement cost of \$2 million or more is not  
194 eligible for coverage by the corporation. Such dwellings insured  
195 by the corporation on December 31, 2008, may continue to be  
196 covered by the corporation until the end of the policy term.

197 However, such dwellings may reapply and obtain coverage if the  
198 property owner provides the corporation with a sworn affidavit  
199 from one or more insurance agents, on a form provided by the  
200 corporation, stating that the agents have made their best  
201 efforts to obtain coverage and that the property has been  
202 rejected for coverage by at least one authorized insurer and at  
203 least three surplus lines insurers. If such conditions are met,  
204 the dwelling may be insured by the corporation for up to 3  
205 years, after which time the dwelling is ineligible for coverage.  
206 The office shall approve the method used by the corporation for  
207 valuing the dwelling replacement cost for the purposes of this  
208 subparagraph. If a policyholder is insured by the corporation  
209 before ~~prior to~~ being determined to be ineligible pursuant to  
210 this subparagraph and such policyholder files a lawsuit  
211 challenging the determination, the policyholder may remain  
212 insured by the corporation until the conclusion of the  
213 litigation.

214 4. It is the intent of the Legislature that policyholders,  
215 applicants, and agents of the corporation receive service and  
216 treatment of the highest possible level but never less than that  
217 generally provided in the voluntary market. It is also intended  
218 that the corporation be held to service standards no less than  
219 those applied to insurers in the voluntary market by the office  
220 with respect to responsiveness, timeliness, customer courtesy,  
221 and overall dealings with policyholders, applicants, or agents  
222 of the corporation.

223 5. Effective January 1, 2009, a personal lines residential  
224 structure that is located in the "wind-borne debris region," as



225 defined in s. 1609.2, International Building Code (2006), and  
226 that has an insured value on the structure of \$750,000 or more  
227 is not eligible for coverage by the corporation unless the  
228 structure has opening protections as required under the Florida  
229 Building Code for a newly constructed residential structure in  
230 that area. A residential structure is ~~shall be~~ deemed to comply  
231 with this subparagraph if it has shutters or opening protections  
232 on all openings and if such opening protections complied with  
233 the Florida Building Code at the time they were installed.

234 ~~6. For any claim filed under any policy of the~~  
235 ~~corporation, a public adjuster may not charge, agree to, or~~  
236 ~~accept any compensation, payment, commission, fee, or other~~  
237 ~~thing of value greater than 10 percent of the additional amount~~  
238 ~~actually paid over the amount that was originally offered by the~~  
239 ~~corporation for any one claim.~~

240 (gg) The corporation must prepare a report for each  
241 calendar year outlining both the statewide average and county-  
242 specific details of the loss ratio attributable to losses that  
243 are not catastrophic losses for residential coverage provided by  
244 the corporation, which information must be presented to the  
245 office and available for public inspection on the Internet  
246 website of the corporation by January 15th of the following  
247 calendar year.

248 Section 3. Section 627.422, Florida Statutes, is amended  
249 to read:

250 627.422 Assignment of policies.—A policy may be  
251 assignable, or not assignable, as provided by its terms.

252 (1) Subject to its terms relating to assignability, any

253 life or health insurance policy under the terms of which the  
254 beneficiary may be changed upon the sole request of the  
255 policyowner may be assigned either by pledge or transfer of  
256 title, by an assignment executed by the policyowner alone and  
257 delivered to the insurer, whether or not the pledgee or assignee  
258 is the insurer. Any such assignment shall entitle the insurer to  
259 deal with the assignee as the owner or pledgee of the policy in  
260 accordance with the terms of the assignment, until the insurer  
261 has received at its home office written notice of termination of  
262 the assignment or pledge or written notice by or on behalf of  
263 some other person claiming some interest in the policy in  
264 conflict with the assignment.

265 (2) A property insurance policy may prohibit the post-loss  
266 assignment of rights, benefits, causes of action, choses in  
267 action, or other contractual rights under the policy, except for  
268 the limited purpose permitted by s. 626.854(11) of compensating  
269 a public adjuster for services. Except as provided in this  
270 subsection, any post-loss assignment of rights, benefits, causes  
271 of action, choses in action, or other contractual rights under a  
272 property insurance policy which prohibits such assignment shall  
273 render the assignment void.

274 Section 4. Paragraph (b) of subsection (1) of section  
275 627.706, Florida Statutes, is amended to read:

276 627.706 Sinkhole insurance; catastrophic ground cover  
277 collapse; definitions.—

278 (1)

279 (b) The insurer shall make available, for an appropriate  
280 additional premium, coverage for sinkhole losses on any

281 structure, including the contents of personal property contained  
282 therein, to the extent provided in the form to which the  
283 coverage attaches. The insurer must offer sinkhole loss coverage  
284 for 50 percent, 75 percent, and 100 percent of the policy  
285 dwelling limits, with appropriate premium discounts offered with  
286 each coverage limit. The insurer may require an inspection of  
287 the property before issuance of sinkhole loss coverage. ~~A policy~~  
288 For residential property insurance, the insurer must offer ~~may~~  
289 ~~include~~ a deductible amount applicable to sinkhole losses equal  
290 to ~~1 percent,~~ 2 percent, 5 percent, or 10 percent of the policy  
291 dwelling limits, with appropriate premium discounts offered with  
292 each deductible amount.

293 Section 5. Paragraph (e) of subsection (5) of section  
294 627.707, Florida Statutes, is amended to read:

295 627.707 Investigation of sinkhole claims; insurer payment;  
296 nonrenewals.—Upon receipt of a claim for a sinkhole loss to a  
297 covered building, an insurer must meet the following standards  
298 in investigating a claim:

299 (5) If a sinkhole loss is verified, the insurer shall pay  
300 to stabilize the land and building and repair the foundation in  
301 accordance with the recommendations of the professional engineer  
302 retained pursuant to subsection (2), with notice to the  
303 policyholder, subject to the coverage and terms of the policy.  
304 The insurer shall pay for other repairs to the structure and  
305 contents in accordance with the terms of the policy. If a  
306 covered building suffers a sinkhole loss or a catastrophic  
307 ground cover collapse, the insured must repair such damage or  
308 loss in accordance with the insurer's professional engineer's

309 recommended repairs. However, if the insurer's professional  
310 engineer determines that the repair cannot be completed within  
311 policy limits, the insurer must pay to complete the repairs  
312 recommended by the insurer's professional engineer or tender the  
313 policy limits to the policyholder.

314 (e) If there is any lienholder, upon the insurer's  
315 obtaining the written approval of the ~~any~~ lienholder, the  
316 insurer must ~~may~~ make all payments ~~payment~~ directly to the  
317 persons selected by the policyholder to perform the land and  
318 building stabilization and foundation repairs. If there is no  
319 lienholder, the insurer must make all payments directly to the  
320 persons selected by the policyholder to perform the land and  
321 building stabilization and foundation repairs. The decision by  
322 the insurer to make payment to such persons does not hold the  
323 insurer liable for the work performed.

324 Section 6. Subsection (15) of section 627.7074, Florida  
325 Statutes, is amended to read:

326 627.7074 Alternative procedure for resolution of disputed  
327 sinkhole insurance claims.—

328 (15) If the insurer timely agrees in writing to comply and  
329 timely complies with the recommendation of the neutral  
330 evaluator, but the policyholder declines to resolve the matter  
331 in accordance with the recommendation of the neutral evaluator  
332 pursuant to this section:

333 (a) The insurer is not liable for extracontractual damages  
334 related to a claim for a sinkhole loss but only as related to  
335 the issues determined by the neutral evaluation process. This  
336 section does not affect or impair claims for extracontractual

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337 damages unrelated to the issues determined by the neutral  
338 evaluation process contained in this section; and

339 (b) The actions of the insurer are not a confession of  
340 judgment or admission of liability, and the insurer is not  
341 liable for attorney ~~attorney's~~ fees under s. 627.428 or other  
342 provisions of the insurance code ~~unless the policyholder obtains~~  
343 ~~a judgment that is more favorable than the recommendation of the~~  
344 ~~neutral evaluator.~~

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