

1 A bill to be entitled

2 An act relating to property insurance; amending s.
3 626.621, F.S.; prohibiting compensation, inducement,
4 or reward from inspectors for referrals; providing
5 applicability; amending s. 627.351, F.S.; requiring
6 the Citizens Property Insurance Corporation's board to
7 contract with the Division of Administrative Hearings
8 to hear protests of the corporation's decisions
9 regarding the purchase of commodities and contractual
10 services and issue a recommended order; requiring the
11 board to take final action in a public meeting;
12 revising the date for submitting the annual loss ratio
13 report for residential coverage; amending s. 627.3518,
14 F.S.; defining the term "surplus lines insurer";
15 authorizing eligible surplus lines insurers to
16 participate in the corporation's clearinghouse program
17 and providing criteria for such eligibility;
18 conforming cross-references; providing that certain
19 applicants who accept an offer from a surplus lines
20 insurer are considered a renewal; repealing s.
21 627.3519, F.S., relating to an annual report
22 requirement relating to aggregate net probable maximum
23 losses; amending s. 627.35191, F.S.; requiring the
24 corporation to annually provide certain estimates for
25 the next 12-month period to the Legislature and the
26 Financial Services Commission; providing an effective

27 | date.

28 |

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

30 |

31 | Section 1. Subsection (15) is added to section 626.621,
32 | Florida Statutes, to read:

33 | 626.621 Grounds for discretionary refusal, suspension, or
34 | revocation of agent's, adjuster's, customer representative's,
35 | service representative's, or managing general agent's license or
36 | appointment.—The department may, in its discretion, deny an
37 | application for, suspend, revoke, or refuse to renew or continue
38 | the license or appointment of any applicant, agent, adjuster,
39 | customer representative, service representative, or managing
40 | general agent, and it may suspend or revoke the eligibility to
41 | hold a license or appointment of any such person, if it finds
42 | that as to the applicant, licensee, or appointee any one or more
43 | of the following applicable grounds exist under circumstances
44 | for which such denial, suspension, revocation, or refusal is not
45 | mandatory under s. 626.611:

46 | (15) Accepting directly or indirectly any compensation,
47 | inducement, or reward from any inspector for the referral of the
48 | owner of the inspected property to the inspector or inspection
49 | company. This subsection applies to any inspection intended for
50 | submission to an insurer in order to obtain property insurance
51 | coverage or establish the applicable property insurance premium.

52 | Section 2. Paragraphs (e) and (hh) of subsection (6) of

53 section 627.351, Florida Statutes, are amended to read:

54 627.351 Insurance risk apportionment plans.—

55 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

56 (e) The corporation is subject to s. 287.057 for the
57 purchase of commodities and contractual services except as
58 otherwise provided in this paragraph. Services provided by
59 tradepersons or technical experts to assist a licensed adjuster
60 in the evaluation of individual claims are not subject to the
61 procurement requirements of this section. Additionally, the
62 procurement of financial services providers and underwriters
63 must be made pursuant to s. 627.3513. Contracts for goods or
64 services valued at or more than \$100,000 are subject to approval
65 by the board.

66 1. The corporation is an agency for purposes of s.
67 287.057, except that, for purposes of s. 287.057(22), the
68 corporation is an eligible user.

69 a. The authority of the Department of Management Services
70 and the Chief Financial Officer under s. 287.057 extends to the
71 corporation as if the corporation were an agency.

72 b. The executive director of the corporation is the agency
73 head under s. 287.057, except for resolution of bid protests for
74 which the board would serve as the agency head.

75 2. The corporation must provide notice of a decision or
76 intended decision concerning a solicitation, contract award, or
77 exceptional purchase by electronic posting. Such notice must
78 contain the following statement: "Failure to file a protest

79 | within the time prescribed in this section constitutes a waiver
80 | of proceedings."

81 | a. A person adversely affected by the corporation's
82 | decision or intended decision to award a contract pursuant to s.
83 | 287.057(1) or (3)(c) who elects to challenge the decision must
84 | file a written notice of protest with the executive director of
85 | the corporation within 72 hours after the corporation posts a
86 | notice of its decision or intended decision. For a protest of
87 | the terms, conditions, and specifications contained in a
88 | solicitation, including ~~any~~ provisions governing the methods for
89 | ranking bids, proposals, replies, awarding contracts, reserving
90 | rights of further negotiation, or modifying or amending any
91 | contract, the notice of protest must be filed in writing within
92 | 72 hours after ~~the~~ posting ~~of~~ the solicitation. Saturdays,
93 | Sundays, and state holidays are excluded in the computation of
94 | the 72-hour time period.

95 | b. A formal written protest must be filed within 10 days
96 | after the date the notice of protest is filed. The formal
97 | written protest must state with particularity the facts and law
98 | upon which the protest is based. Upon receipt of a formal
99 | written protest that has been timely filed, the corporation must
100 | stop the solicitation or contract award process until the
101 | subject of the protest is resolved by final board action unless
102 | the executive director sets forth in writing particular facts
103 | and circumstances that require the continuance of the
104 | solicitation or contract award process without delay in order to

105 avoid an immediate and serious danger to the public health,
106 safety, or welfare.

107 (I) The corporation must provide an opportunity to resolve
108 the protest by mutual agreement between the parties within 7
109 business days after receipt of the formal written protest.

110 (II) If the subject of a protest is not resolved by mutual
111 agreement within 7 business days, the corporation's board must
112 transmit the protest to the Division of Administrative Hearings
113 and contract with the division to conduct a hearing to determine
114 the merits of the protest and to issue a recommended order ~~place~~
115 ~~the protest on the agenda and resolve it at its next regularly~~
116 ~~scheduled meeting.~~ The contract must provide for the corporation
117 to reimburse the division for any costs incurred by the division
118 for court reporters, transcript preparation, travel, facility
119 rental, and other customary hearing costs in the manner set
120 forth in s. 120.65(9). The division has jurisdiction to
121 determine the facts and law concerning the protest and to issue
122 a recommended order. The division's rules and procedures apply
123 to these proceedings; the division's applicable bond
124 requirements do not apply. The protest must be heard by the
125 division ~~board~~ at a publicly noticed meeting in accordance with
126 procedures established by the division ~~board~~.

127 c. In a protest of an invitation-to-bid or request-for-
128 proposals procurement, submissions made after the bid or
129 proposal opening which amend or supplement the bid or proposal
130 may not be considered. In protesting an invitation-to-negotiate

131 procurement, submissions made after the corporation announces
132 its intent to award a contract, reject all replies, or withdraw
133 the solicitation that amends or supplements the reply may not be
134 considered. Unless otherwise provided by law, the burden of
135 proof rests with the party protesting the corporation's action.
136 In a competitive-procurement protest, other than a rejection of
137 all bids, proposals, or replies, the corporation's board must
138 conduct a de novo proceeding to determine whether the
139 corporation's proposed action is contrary to the corporation's
140 governing statutes, the corporation's rules or policies, or the
141 solicitation specifications. The standard of proof for the
142 proceeding is whether the corporation's action was clearly
143 erroneous, contrary to competition, arbitrary, or capricious. In
144 any bid-protest proceeding contesting an intended corporation
145 action to reject all bids, proposals, or replies, the standard
146 of review by the board is whether the corporation's intended
147 action is illegal, arbitrary, dishonest, or fraudulent.

148 d. Failure to file a notice of protest or failure to file
149 a formal written protest constitutes a waiver of proceedings.

150 3. The board, acting as agency head, shall consider the
151 recommended order of an administrative law judge in a public
152 meeting and take final action on the protest. ~~Contract actions~~
153 and decisions by the board under this paragraph are final. Any
154 further legal remedy lies with the First District Court of
155 Appeal ~~must be made in the Circuit Court of Leon County.~~

156 (hh) The corporation shall ~~must~~ prepare a report for each

157 calendar year outlining both the statewide average and county-
158 specific details of the loss ratio attributable to losses that
159 are not catastrophic losses for residential coverage provided by
160 the corporation, which information must be presented to the
161 office and available for public inspection on the Internet
162 website of the corporation by March 1 ~~January 15th~~ of the
163 following calendar year.

164 Section 3. Subsections (5) through (10) of section
165 627.3518, Florida Statutes, are renumbered as subsections (6)
166 through (11), respectively, present subsection (11) is
167 renumbered as subsection (13), subsection (2), paragraph (e) of
168 subsection (4), and present subsections (5) through (7) are
169 amended, paragraph (e) is added to subsection (1), and new
170 subsections (5) and (12) are added to that section, to read:

171 627.3518 Citizens Property Insurance Corporation
172 policyholder eligibility clearinghouse program.—The purpose of
173 this section is to provide a framework for the corporation to
174 implement a clearinghouse program by January 1, 2014.

175 (1) As used in this section, the term:

176 (e) "Surplus lines insurer" means an unauthorized insurer
177 that is made eligible by the office to issue coverage under the
178 Surplus Lines Law.

179 (2) In order to confirm eligibility with the corporation
180 and to enhance the access of new applicants for coverage and
181 existing policyholders of the corporation to offers of coverage
182 from authorized insurers and surplus lines insurers, the

183 corporation shall establish a program for personal residential
 184 risks in order to facilitate the diversion of ineligible
 185 applicants and existing policyholders ~~from the corporation~~ into
 186 the voluntary insurance market. The corporation shall also
 187 develop appropriate procedures for facilitating the diversion of
 188 ineligible applicants and existing policyholders for commercial
 189 residential coverage into the private insurance market and shall
 190 report such procedures to the President of the Senate and the
 191 Speaker of the House of Representatives by January 1, 2014.

192 (4) Any authorized insurer may participate in the program;
 193 however, participation is not mandatory for any insurer.
 194 Insurers making offers of coverage to new applicants or renewal
 195 policyholders through the program:

196 (e) May participate through their single-designated
 197 managing general agent or broker; however, the provisions of
 198 paragraph (7) (a) ~~(6) (a)~~ regarding ownership, control, and use of
 199 the expirations continue to apply.

200 (5) Effective January 1, 2015, an eligible surplus lines
 201 insurer may make an offer of similar coverage on a risk
 202 submitted though the clearinghouse program if offers of coverage
 203 are not submitted by authorized insurers participating in the
 204 program and the office determines that the eligible surplus
 205 lines insurer:

206 (a) Maintains a surplus of \$50 million on a company or
 207 pooled basis.

208 (b) Is rated as having a superior, excellent, exceptional,

209 or equally comparable financial strength by a rating agency
210 acceptable to the office.

211 (c) Maintains reserves, surplus, reinsurance, and
212 reinsurance equivalents to cover the eligible surplus lines
213 insurer's 100-year probable maximum hurricane loss at least
214 twice in a single hurricane season, and submits such reinsurance
215 to the office for review for purposes of participation in the
216 program.

217 (d) Provides prominent notice to the policyholder:

218 1. That the policyholder is not required to accept an
219 offer of coverage from a surplus lines insurer.

220 2. That an offer of coverage from a surplus lines insurer
221 does not affect whether the policyholder is eligible for
222 coverage from the corporation.

223 3. That a policyholder who accepts an offer of coverage
224 from a surplus lines insurer may, at any time, submit a new
225 application for coverage to the corporation.

226 4. That surplus lines policies are not covered by the
227 Florida Insurance Guaranty Association.

228 5. That rates for surplus lines insurance are not subject
229 to review by the office.

230 6. Of any additional information required by the office.

231
232 Such notice must be signed by the policyholder and kept on file
233 with the surplus lines insurer for as long as the policyholder
234 remains insured by the surplus lines insurer.

235 ~~(6)(5)~~ Notwithstanding s. 627.3517, an ~~any~~ applicant for
 236 new coverage from the corporation is not eligible for coverage
 237 from the corporation if provided an offer of coverage from an
 238 authorized insurer through the program at a premium that is at
 239 or below the eligibility threshold established in s.
 240 627.351(6)(c)5.a. Whenever an offer of coverage for a personal
 241 lines risk is received for a policyholder of the corporation at
 242 renewal from an authorized insurer through the program, if the
 243 offer is equal to or less than the corporation's renewal premium
 244 for comparable coverage, the risk is not eligible for coverage
 245 with the corporation. If ~~In the event~~ an offer of coverage for a
 246 new applicant is received from an authorized insurer through the
 247 program, and the premium offered exceeds the eligibility
 248 threshold contained in s. 627.351(6)(c)5.a., the applicant or
 249 insured may elect to accept such coverage, or may elect to
 250 accept or continue coverage with the corporation. If ~~In the~~
 251 ~~event~~ an offer of coverage for a personal lines risk is received
 252 from an authorized insurer at renewal through the program, and
 253 if the premium offered is more than the corporation's renewal
 254 premium for comparable coverage, the insured may elect to accept
 255 such coverage, or may elect to accept or continue coverage with
 256 the corporation. Section 627.351(6)(c)5.a.(I) does not apply to
 257 an offer of coverage from an authorized insurer obtained through
 258 the program. An applicant for personal lines residential
 259 coverage from the corporation who was declared ineligible for
 260 coverage at renewal by the corporation in the previous 36 months

261 due to an offer of coverage pursuant to this subsection is ~~shall~~
 262 ~~be~~ considered a renewal under this section if the corporation
 263 determines that the authorized insurer making the offer of
 264 coverage pursuant to this subsection continues to insure the
 265 applicant and increased the rate on the policy in excess of the
 266 increase allowed for the corporation under s. 627.351(6)(n)6.

267 (7) ~~(6)~~ Independent insurance agents submitting new
 268 applications for coverage or that are the agent of record on a
 269 renewal policy submitted to the program:

270 (a) Are granted and must maintain ownership and the
 271 exclusive use of expirations, records, or other written or
 272 electronic information directly related to such applications or
 273 renewals written through the corporation or through an insurer
 274 participating in the program, notwithstanding s.
 275 627.351(6)(c)5.a.(I)(B) and (II)(B). Such ownership is granted
 276 for as long as the insured remains with the agency or until sold
 277 or surrendered in writing by the agent. Contracts with the
 278 corporation or required by the corporation must not amend,
 279 modify, interfere with, or limit such rights of ownership. Such
 280 expirations, records, or other written or electronic information
 281 may be used to review an application, issue a policy, or for any
 282 other purpose necessary for placing such business through the
 283 program.

284 (b) May not be required to be appointed by any insurer
 285 participating in the program for policies written solely through
 286 the program, notwithstanding ~~the provisions of~~ s. 626.112.

287 (c) May accept an appointment from an ~~any~~ insurer
 288 participating in the program.

289 (d) May enter into ~~either~~ a standard or limited agency
 290 agreement with the insurer, at the insurer's option.

291
 292 Applicants ineligible for coverage in accordance with subsection
 293 (6) ~~(5)~~ remain ineligible if their independent agent is
 294 unwilling or unable to enter into a standard or limited agency
 295 agreement with an insurer participating in the program.

296 (8) ~~(7)~~ Exclusive agents submitting new applications for
 297 coverage or that are the agent of record on a renewal policy
 298 submitted to the program:

299 (a) Must maintain ownership and the exclusive use of
 300 expirations, records, or other written or electronic information
 301 directly related to such applications or renewals written
 302 through the corporation or through an insurer participating in
 303 the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and
 304 (II)(B). Contracts with the corporation or required by the
 305 corporation must not amend, modify, interfere with, or limit
 306 such rights of ownership. Such expirations, records, or other
 307 written or electronic information may be used to review an
 308 application, issue a policy, or for any other purpose necessary
 309 for placing such business through the program.

310 (b) May not be required to be appointed by any insurer
 311 participating in the program for policies written solely through
 312 the program, notwithstanding ~~the provisions of~~ s. 626.112.

313 (c) Must only facilitate the placement of an offer of
 314 coverage from an insurer whose limited servicing agreement is
 315 approved by that exclusive agent's exclusive insurer.

316 (d) May enter into a limited servicing agreement with the
 317 insurer making an offer of coverage, and only after the
 318 exclusive agent's insurer has approved the limited servicing
 319 agreement terms. The exclusive agent's insurer must approve a
 320 limited service agreement for the program for an ~~any~~ insurer for
 321 which it has approved a service agreement for other purposes.

322
 323 Applicants ineligible for coverage in accordance with subsection
 324 (6) ~~(5)~~ remain ineligible if their exclusive agent is unwilling
 325 or unable to enter into a standard or limited agency agreement
 326 with an insurer making an offer of coverage to that applicant.

327 (12) An applicant for coverage from the corporation who
 328 was a policyholder of the corporation within the previous 36
 329 months and who subsequently accepts an offer of coverage from a
 330 surplus lines insurer is considered a renewal under this
 331 section.

332 Section 4. Section 627.3519, Florida Statutes, is
 333 repealed.

334 Section 5. Section 627.35191, Florida Statutes, is amended
 335 to read:

336 627.35191 Required reports ~~Annual report of aggregate net~~
 337 ~~probable maximum losses, financing options, and potential~~
 338 ~~assessments.-~~

339 (1) By ~~No later than~~ February 1 of each year, the Florida
340 Hurricane Catastrophe Fund and Citizens Property Insurance
341 Corporation shall each submit a report to the Legislature and
342 the Financial Services Commission identifying their respective
343 aggregate net probable maximum losses, financing options, and
344 potential assessments. The report issued by the fund and the
345 corporation must include their respective 50-year, 100-year, and
346 250-year probable maximum losses; analysis of all reasonable
347 financing strategies for each such probable maximum loss,
348 including the amount and term of debt instruments; specification
349 of the percentage assessments that would be needed to support
350 each of the financing strategies; and calculations of the
351 aggregate assessment burden on Florida property and casualty
352 policyholders for each of the probable maximum losses.

353 (2) In May of each year, Citizens Property Insurance
354 Corporation shall also provide to the Legislature and the
355 Financial Services Commission a statement of the estimated
356 borrowing capacity of the corporation for the next 12-month
357 period, the estimated claims-paying capacity of the corporation,
358 and the corporation's estimated balance as of December 31 of the
359 current calendar year. Such estimates must take into account
360 that the corporation, the Florida Hurricane Catastrophe Fund,
361 and the Florida Insurance Guaranty Association may all be
362 concurrently issuing debt instruments following a catastrophic
363 event.

364 Section 6. This act shall take effect July 1, 2014.