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1
2 An act relating to insurance claims; 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 terms "neutral evaluator" and
16 "professional engineer"; amending s. 627.7074, F.S.;
17 specifying grounds for denying, suspending, or
18 revoking approval of a neutral evaluator; creating s.
19 627.7142, F.S.; establishing a Homeowner Claims Bill
20 of Rights for residential property insurance
21 policyholders; providing that such bill of rights does
22 not provide a cause of action; providing effective
23 dates.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Subsection (9) of section 627.3518, Florida
28 Statutes, is amended to read:

29 627.3518 Citizens Property Insurance Corporation

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30 policyholder eligibility clearinghouse program.—The purpose of
31 this section is to provide a framework for the corporation to
32 implement a clearinghouse program by January 1, 2014.

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

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

40 627.409 Representations in applications; warranties.—

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

48 (a) The misrepresentation, omission, concealment, or
49 statement is fraudulent or is material ~~either~~ to the acceptance
50 of the risk or to the hazard assumed by the insurer.

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

58 (2) A breach or violation by the insured of a ~~any~~ warranty,

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

65 (3) For residential property insurance, if a policy or
66 contract has been in effect for more than 90 days, a claim filed
67 by the insured cannot be denied based on credit information
68 available in public records.

69 Section 3. Paragraph (b) of subsection (2) of section
70 627.4133, Florida Statutes, is amended to read:

71 627.4133 Notice of cancellation, nonrenewal, or renewal
72 premium.—

73 (2) With respect to any personal lines or commercial
74 residential property insurance policy, including, but not
75 limited to, any homeowner's, mobile home owner's, farmowner's,
76 condominium association, condominium unit owner's, apartment
77 building, or other policy covering a residential structure or
78 its contents:

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

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

95 2. If cancellation is for nonpayment of premium, at least
96 10 days' written notice of cancellation accompanied by the
97 reason therefor must be given. As used in this subparagraph, the
98 term "nonpayment of premium" means failure of the named insured
99 to discharge when due her or his obligations for paying the
100 premium in connection with the payment of premiums on a policy
101 or an ~~any~~ installment of such premium, whether the premium is
102 payable directly to the insurer or its agent or indirectly under
103 a ~~any~~ premium finance plan or extension of credit, or failure to
104 maintain membership in an organization if such membership is a
105 condition precedent to insurance coverage. The term also means
106 the failure of a financial institution to honor an insurance
107 applicant's check after delivery to a licensed agent for payment
108 of a premium, ~~even if the agent has previously delivered or~~
109 transferred the premium to the insurer. If a dishonored check
110 represents the initial premium payment, the contract and all
111 contractual obligations are void ab initio unless the nonpayment
112 is cured within the earlier of 5 days after actual notice by
113 certified mail is received by the applicant or 15 days after
114 notice is sent to the applicant by certified mail or registered
115 mail. ~~and~~ If the contract is void, any premium received by the
116 insurer from a third party must be refunded to that party in

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117 full.

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

126 4. After a policy or contract has been in effect for more
127 than 90 days, the insurer may not cancel or terminate the policy
128 or contract based on credit information available in public
129 records.

130 ~~5.4.~~ The requirement for providing written notice by June 1
131 of any nonrenewal that would be effective between June 1 and
132 November 30 does not apply to the following situations, but the
133 insurer remains subject to the requirement to provide such
134 notice at least 100 days before the effective date of
135 nonrenewal:

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

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

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146 of the nonrenewal.

147
148 After the policy has been in effect for 90 days, the policy may
149 not be canceled by the insurer unless there has been a material
150 misstatement, a nonpayment of premium, a failure to comply with
151 underwriting requirements established by the insurer within 90
152 days after the date of effectuation of coverage, ~~or~~ a
153 substantial change in the risk covered by the policy, or ~~if~~ the
154 cancellation is for all insureds under such policies for a given
155 class of insureds. This paragraph does not apply to individually
156 rated risks that have ~~having~~ a policy term of less than 90 days.

157 ~~6.5.~~ Notwithstanding any other provision of law, an insurer
158 may cancel or nonrenew a property insurance policy after at
159 least 45 days' notice if the office finds that the early
160 cancellation of some or all of the insurer's policies is
161 necessary to protect the best interests of the public or
162 policyholders and the office approves the insurer's plan for
163 early cancellation or nonrenewal of some or all of its policies.
164 The office may base such finding upon the financial condition of
165 the insurer, lack of adequate reinsurance coverage for hurricane
166 risk, or other relevant factors. The office may condition its
167 finding on the consent of the insurer to be placed under
168 administrative supervision pursuant to s. 624.81 or to the
169 appointment of a receiver under chapter 631.

170 ~~7.6.~~ A policy covering both a home and a motor vehicle may
171 be nonrenewed for any reason applicable to ~~either~~ the property
172 or motor vehicle insurance after providing 90 days' notice.

173 Section 4. Paragraph (b) of subsection (4) of section
174 627.7015, Florida Statutes, is amended to read:

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175 627.7015 Alternative procedure for resolution of disputed
176 property insurance claims.—

177 (4) The department shall adopt by rule a property insurance
178 mediation program to be administered by the department or its
179 designee. The department may also adopt special rules which are
180 applicable in cases of an emergency within the state. The rules
181 shall be modeled after practices and procedures set forth in
182 mediation rules of procedure adopted by the Supreme Court. The
183 rules shall provide for:

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

190 Section 5. Section 627.70151, Florida Statutes, is created
191 to read:

192 627.70151 Appraisal; conflicts of interest.—An insurer that
193 offers residential coverage as defined in s. 627.4025, or a
194 policyholder that uses an appraisal clause in a property
195 insurance contract to establish a process for estimating or
196 evaluating the amount of loss through the use of an impartial
197 umpire, may challenge an umpire's impartiality and disqualify
198 the proposed umpire only if:

199 (1) A familial relationship within the third degree exists
200 between the umpire and a party or a representative of a party;

201 (2) The umpire has previously represented a party in a
202 professional capacity in the same claim or matter involving the
203 same property;

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204 (3) The umpire has represented another person in a
205 professional capacity on the same or a substantially related
206 matter that includes the claim, the same property or an adjacent
207 property, and the other person's interests are materially
208 adverse to the interests of a party; or

209 (4) The umpire has worked as an employer or employee of a
210 party within the preceding 5 years.

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

213 627.706 Sinkhole insurance; catastrophic ground cover
214 collapse; definitions.-

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

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

228 (f) "Professional engineer" means a person, as defined in
229 s. 471.005, who has a bachelor's degree or higher in
230 engineering. A professional engineer must also have experience
231 and expertise in the identification of sinkhole activity or ~~as~~
232 ~~well as~~ other potential causes of structural damage.

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

235 627.7074 Alternative procedure for resolution of disputed
236 sinkhole insurance claims.—

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

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

243 1. A familial relationship within the third degree exists
244 between the neutral evaluator and either party or a
245 representative of either party ~~within the third degree~~.

246 2. The proposed neutral evaluator has, in a professional
247 capacity, previously represented either party or a
248 representative of either party, ~~in the same or a substantially~~
249 related matter.

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

257 4. The proposed neutral evaluator has, within the preceding
258 5 years, worked as an employer or employee of any party to the
259 case.

260 (b) The department shall deny an application for, or
261 suspend or revoke its certification of, a neutral evaluator if

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262 the department finds that any of the following grounds exist:

263 1. Lack of one or more of the qualifications specified in
264 this section for approval or certification.

265 2. Material misstatement, misrepresentation, or fraud in
266 obtaining or attempting to obtain approval or certification.

267 3. Demonstrated lack of fitness or trustworthiness to act
268 as a neutral evaluator.

269 4. Fraudulent or dishonest practices in the conduct of an
270 evaluation or in the conduct of financial services business.

271 5. Violation of any provision of this code or of a lawful
272 order or rule of the department, or aiding, instructing, or
273 encouraging another party in committing such a violation.

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

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

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291 neutral evaluation conference held outside this timeframe.

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

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

298 627.7142 Homeowner Claims Bill of Rights.—An insurer
299 issuing a personal lines residential property insurance policy
300 in this state must provide a Homeowner Claims Bill of Rights to
301 a policyholder within 14 days after receiving an initial
302 communication with respect to a claim, unless the claim follows
303 an event that is the subject of a declaration of a state of
304 emergency by the Governor. The purpose of the bill of rights is
305 to summarize, in simple, nontechnical terms, existing Florida
306 law regarding the rights of a personal lines residential
307 property insurance policyholder who files a claim of loss. The
308 Homeowner Claims Bill of Rights is specific to the claims
309 process and does not represent all of a policyholder's rights
310 under Florida law regarding the insurance policy. The Homeowner
311 Claims Bill of Rights does not create a civil cause of action by
312 any individual policyholder or class of policyholders against an
313 insurer or insurers. The failure of an insurer to properly
314 deliver the Homeowner Claims Bill of Rights is subject to
315 administrative enforcement by the office, but is not admissible
316 as evidence in a civil action against an insurer. The Homeowner
317 Claims Bill of Rights does not enlarge, modify, or contravene
318 statutory requirements, including, but not limited to, ss.
319 626.854, 626.9541, 627.70131, 627.7015, and 627.7074, and does

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320 not prohibit an insurer from exercising its right to repair
321 damaged property in compliance with the terms of an applicable
322 policy or ss. 627.7011(5) (e) and 627.702(7). The Homeowner
323 Claims Bill of Rights must state:

324
325 HOMEOWNER CLAIMS

326 BILL OF RIGHTS

327 This Bill of Rights is specific to the claims process
328 and does not represent all of your rights under
329 Florida law regarding your policy. There are also
330 exceptions to the stated timelines when conditions are
331 beyond your insurance company's control. This document
332 does not create a civil cause of action by an
333 individual policyholder, or a class of policyholders,
334 against an insurer or insurers and does not prohibit
335 an insurer from exercising its right to repair damaged
336 property in compliance with the terms of an applicable
337 policy.

338
339 YOU HAVE THE RIGHT TO:

340 1. Receive from your insurance company an
341 acknowledgment of your reported claim within 14 days
342 after the time you communicated the claim.

343 2. Upon written request, receive from your
344 insurance company within 30 days after you have
345 submitted a complete proof-of-loss statement to your
346 insurance company, confirmation that your claim is
347 covered in full, partially covered, or denied, or
348 receive a written statement that your claim is being

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349 investigated.

350 3. Within 90 days, subject to any dual interest
351 noted in the policy, receive full settlement payment
352 for your claim or payment of the undisputed portion of
353 your claim, or your insurance company's denial of your
354 claim.

355 4. Free mediation of your disputed claim by the
356 Florida Department of Financial Services Division of
357 Consumer Services, under most circumstances and
358 subject to certain restrictions.

359 5. Neutral evaluation of your disputed claim, if
360 your claim is for damage caused by a sinkhole and is
361 covered by your policy.

362 6. Contact the Florida Department of Financial
363 Services Division of Consumer Services' toll-free
364 helpline for assistance with any insurance claim or
365 questions pertaining to the handling of your claim.
366 You can reach the Helpline by phone at...toll free
367 phone number..., or you can seek assistance online at
368 the Florida Department of Financial Services Division
369 of Consumer Services' website at...website address....

370
371 YOU ARE ADVISED TO:

372 1. Contact your insurance company before entering
373 into any contract for repairs to confirm any managed
374 repair policy provisions or optional preferred
375 vendors.

376 2. Make and document emergency repairs that are
377 necessary to prevent further damage. Keep the damaged

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378 property, if feasible, keep all receipts, and take
379 photographs of damage before and after any repairs.

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

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

391 5. Require all contractors to provide proof of
392 insurance before beginning repairs.

393 6. Take precautions if the damage requires you to
394 leave your home, including securing your property and
395 turning off your gas, water, and electricity, and
396 contacting your insurance company and provide a phone
397 number where you can be reached.

398
399 Section 9. Except as otherwise expressly provided in this
400 act, this act shall take effect July 1, 2014.