

1 A bill to be entitled

2 An act relating to property insurance; amending s.
3 627.3518, F.S.; conforming a cross-reference; amending
4 s. 627.409, F.S.; providing that a claim for
5 residential property insurance cannot be denied based
6 on certain credit information; amending s. 627.4133,
7 F.S.; providing that a policy or contract may not be
8 cancelled based on certain credit information;
9 amending s. 627.422, F.S.; authorizing a property
10 insurance policy to prohibit the post-loss assignment
11 of rights, benefits, causes of action, or other
12 contractual rights under the policy; providing
13 exceptions; amending s. 627.7015, F.S.; revising the
14 rule requirements relating to the property insurance
15 mediation program administered by the department;
16 creating s. 627.70151, F.S.; providing grounds for
17 challenging an umpire's impartiality in estimating the
18 amount of a property loss; amending s. 627.706, F.S.;
19 redefining the term "neutral evaluator"; amending s.
20 627.7074, F.S.; specifying grounds for denying,
21 suspending, or revoking approval of a neutral
22 evaluator; creating s. 627.7142, F.S.; establishing a
23 Homeowner Claims Bill of Rights for personal lines
24 residential property insurance policyholders;
25 providing that such bill of rights does not provide a
26 cause of action; creating s. 627.715, F.S.; defining

27 terms; providing requirements for emergency mitigation
 28 repair agreements; requiring an emergency mitigation
 29 contractor to be appropriately certified or to possess
 30 a contracting license; providing an effective date.

31

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

33

34 Section 1. Subsection (9) of section 627.3518, Florida
 35 Statutes, is amended to read:

36 627.3518 Citizens Property Insurance Corporation
 37 policyholder eligibility clearinghouse program.—The purpose of
 38 this section is to provide a framework for the corporation to
 39 implement a clearinghouse program by January 1, 2014.

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

45 Section 2. Section 627.409, Florida Statutes, is amended
 46 to read:

47 627.409 Representations in applications; warranties.—

48 (1) Any statement or description made by or on behalf of
 49 an insured or annuitant in an application for an insurance
 50 policy or annuity contract, or in negotiations for a policy or
 51 contract, is a representation and ~~is~~ not a warranty. Except as
 52 provided in subsection (3), a misrepresentation, omission,

53 concealment of fact, or incorrect statement may prevent recovery
54 under the contract or policy only if any of the following apply:

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

58 (b) If the true facts had been known to the insurer
59 pursuant to a policy requirement or other requirement, the
60 insurer in good faith would not have issued the policy or
61 contract, would not have issued it at the same premium rate,
62 would not have issued a policy or contract in as large an
63 amount, or would not have provided coverage with respect to the
64 hazard resulting in the loss.

65 (2) A breach or violation by the insured of a ~~any~~
66 warranty, condition, or provision of a ~~any~~ wet marine or
67 transportation insurance policy, contract of insurance,
68 endorsement, or application ~~therefor~~ does not void the policy or
69 contract, or constitute a defense to a loss thereon, unless such
70 breach or violation increased the hazard by any means within the
71 control of the insured.

72 (3) For residential property insurance, if a policy or
73 contract is in effect for more than 90 days, a claim filed by
74 the insured may not be denied based on credit information
75 available in public records.

76 Section 3. Paragraph (b) of subsection (2) of section
77 627.4133, Florida Statutes, is amended to read:

78 627.4133 Notice of cancellation, nonrenewal, or renewal

79 premium.—

80 (2) With respect to any personal lines or commercial
81 residential property insurance policy, including, but not
82 limited to, any homeowner's, mobile home owner's, farmowner's,
83 condominium association, condominium unit owner's, apartment
84 building, or other policy covering a residential structure or
85 its contents:

86 (b) The insurer shall give the first-named insured written
87 notice of nonrenewal, cancellation, or termination at least 100
88 days before the effective date of the nonrenewal, cancellation,
89 or termination. However, the insurer shall give at least 100
90 days' written notice, or written notice by June 1, whichever is
91 earlier, for any nonrenewal, cancellation, or termination that
92 would be effective between June 1 and November 30. The notice
93 must include the reason ~~or reasons~~ for the nonrenewal,
94 cancellation, or termination, except that:

95 1. The insurer shall give the first-named insured written
96 notice of nonrenewal, cancellation, or termination at least 120
97 days before ~~prior to~~ the effective date of the nonrenewal,
98 cancellation, or termination for a first-named insured whose
99 residential structure has been insured by that insurer or an
100 affiliated insurer for at least 5 years before ~~a 5-year period~~
101 ~~immediately prior to~~ the date of the written notice.

102 2. If cancellation is for nonpayment of premium, at least
103 10 days' written notice of cancellation accompanied by the
104 reason therefor must be given. As used in this subparagraph, the

105 term "nonpayment of premium" means failure of the named insured
106 to discharge when due her or his obligations for paying the
107 premium ~~in connection with the payment of premiums~~ on a policy
108 or an ~~any~~ installment of such premium, whether the premium is
109 payable directly to the insurer or its agent or indirectly under
110 a ~~any~~ premium finance plan or extension of credit, or failure to
111 maintain membership in an organization if such membership is a
112 condition precedent to insurance coverage. The term also means
113 the failure of a financial institution to honor an insurance
114 applicant's check after delivery to a licensed agent for payment
115 of a premium, ~~7~~ even if the agent has previously delivered or
116 transferred the premium to the insurer. If a dishonored check
117 represents the initial premium payment, the contract and all
118 contractual obligations are void ab initio unless the nonpayment
119 is cured within the earlier of 5 days after actual notice by
120 certified mail is received by the applicant or 15 days after
121 notice is sent to the applicant by certified mail or registered
122 mail. ~~7~~ ~~and~~ If the contract is void, any premium received by the
123 insurer from a third party must be refunded to that party in
124 full.

125 3. If ~~such~~ cancellation or termination occurs during the
126 first 90 days the insurance is in force and the insurance is
127 canceled or terminated for reasons other than nonpayment of
128 premium, at least 20 days' written notice of cancellation or
129 termination accompanied by the reason therefor must be given
130 unless there has been a material misstatement or

131 misrepresentation or a failure to comply with the underwriting
 132 requirements established by the insurer.

133 4. After a policy or contract is in effect for 90 days,
 134 the insurer may not cancel or terminate the policy or contract
 135 based on credit information available in public records.

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

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

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

153
 154 After the policy has been in effect for 90 days, the policy may
 155 not be canceled by the insurer unless there has been a material
 156 misstatement, a nonpayment of premium, a failure to comply with

157 | underwriting requirements established by the insurer within 90
158 | days after the date of effectuation of coverage, ~~or~~ a
159 | substantial change in the risk covered by the policy, or ~~if~~ the
160 | cancellation is for all insureds under such policies for a given
161 | class of insureds. This paragraph does not apply to individually
162 | rated risks that have ~~having~~ a policy term of less than 90 days.

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

176 | ~~7.6.~~ A policy covering both a home and a motor vehicle may
177 | be nonrenewed for any reason applicable to ~~either~~ the property
178 | or motor vehicle insurance after providing 90 days' notice.

179 | Section 4. Section 627.422, Florida Statutes, is amended
180 | to read:

181 | 627.422 Assignment of policies; prohibition on the post-
182 | loss assignment of rights, benefits, causes of action, or other

183 contractual rights.—A policy may be assignable, or not
184 assignable, as provided by its terms.

185 (1) Subject to its terms relating to assignability, any
186 life or health insurance policy under the terms of which the
187 beneficiary may be changed upon the sole request of the
188 policyowner may be assigned either by pledge or transfer of
189 title, by an assignment executed by the policyowner alone and
190 delivered to the insurer, whether or not the pledgee or assignee
191 is the insurer. Any such assignment shall entitle the insurer to
192 deal with the assignee as the owner or pledgee of the policy in
193 accordance with the terms of the assignment, until the insurer
194 has received at its home office written notice of termination of
195 the assignment or pledge or written notice by or on behalf of
196 some other person claiming some interest in the policy in
197 conflict with the assignment.

198 (2) A property insurance policy may prohibit the post-loss
199 assignment of rights, benefits, causes of action, or other
200 contractual rights under the policy, except:

201 (a) An insured may assign the right for payment to a
202 person or entity providing services or materials to mitigate or
203 repair damage directly arising from a covered loss. The
204 assignment is limited solely to the right to be named as copayee
205 for the benefit of payment for services rendered and materials
206 provided.

207 (b) For the limited purpose of compensating a public
208 adjuster for services authorized by s. 626.854(11).

209 (c) For the payment of attorney fees for representation of
 210 the insured.

211 (3) Except as provided in subsection (2), any post-loss
 212 assignment of rights, benefits, causes of action, or other
 213 contractual rights under a property insurance policy that
 214 prohibits such assignment renders the assignment void.

215 Section 5. Paragraph (b) of subsection (4) of section
 216 627.7015, Florida Statutes, is amended to read:

217 627.7015 Alternative procedure for resolution of disputed
 218 property insurance claims.—

219 (4) The department shall adopt by rule a property
 220 insurance mediation program to be administered by the department
 221 or its designee. The department may also adopt special rules
 222 which are applicable in cases of an emergency within the state.
 223 The rules shall be modeled after practices and procedures set
 224 forth in mediation rules of procedure adopted by the Supreme
 225 Court. The rules shall provide for:

226 (b) Qualifications, denial of application, suspension,
 227 revocation of approval, and other penalties for ~~of~~ mediators as
 228 provided in s. 627.745 and ~~in~~ the Florida Rules for ~~of~~ Certified
 229 and Court-Appointed ~~Court Appointed~~ Mediators, ~~and for such~~
 230 ~~other individuals as are qualified by education, training, or~~
 231 ~~experience as the department determines to be appropriate.~~

232 Section 6. Section 627.70151, Florida Statutes, is created
 233 to read:

234 627.70151 Appraisal; conflicts of interest.—An insurer

235 that offers residential coverage, as defined in s. 627.4025, or
 236 a policyholder that uses an appraisal clause in a property
 237 insurance contract to establish a process of estimating or
 238 evaluating the amount of loss through the use of an impartial
 239 umpire may challenge an umpire's impartiality and disqualify the
 240 proposed umpire only if:

241 (1) A familial relationship within the third degree exists
 242 between the umpire and any party or a representative of any
 243 party;

244 (2) The umpire has previously represented any party or a
 245 representative of any party in a professional capacity in the
 246 same or a substantially related matter;

247 (3) The umpire has represented another person in a
 248 professional capacity on the same or a substantially related
 249 matter, which includes the claim, same property, or an adjacent
 250 property and that other person's interests are materially
 251 adverse to the interests of any party; or

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

254 Section 7. Paragraph (c) of subsection (2) of section
 255 627.706, Florida Statutes, is amended to read:

256 627.706 Sinkhole insurance; catastrophic ground cover
 257 collapse; definitions.—

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

261 (c) "Neutral evaluator" means a professional engineer or a
 262 professional geologist who has completed a course of study in
 263 alternative dispute resolution designed or approved by the
 264 department for use in the neutral evaluation process, ~~and~~ and who is
 265 determined by the department to be fair and impartial, and who
 266 is not otherwise ineligible for certification as provided in s.
 267 627.7074.

268 Section 8. Subsections (7) and (18) of section 627.7074,
 269 Florida Statutes, are amended to read:

270 627.7074 Alternative procedure for resolution of disputed
 271 sinkhole insurance claims.—

272 (7) Upon receipt of a request for neutral evaluation, the
 273 department shall provide the parties a list of certified neutral
 274 evaluators. The department shall allow the parties to submit
 275 requests to disqualify evaluators on the list for cause.

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

278 1. A familial relationship exists between the neutral
 279 evaluator and either party or a representative of either party
 280 within the third degree.

281 2. The proposed neutral evaluator has, in a professional
 282 capacity, previously represented either party or a
 283 representative of either party, in the same or a substantially
 284 related matter.

285 3. The proposed neutral evaluator has, in a professional
 286 capacity, represented another person in the same or a

287 substantially related matter and that person's interests are
 288 materially adverse to the interests of the parties. The term
 289 "substantially related matter" means participation by the
 290 neutral evaluator on the same claim, property, or adjacent
 291 property.

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

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

299 1. Lack of one or more of the qualifications for
 300 certification specified in this section.

301 2. Material misstatement, misrepresentation, or fraud in
 302 obtaining or attempting to obtain the certification.

303 3. Demonstrated lack of fitness or trustworthiness to act
 304 as a neutral evaluator.

305 4. Fraudulent or dishonest practices in the conduct of an
 306 evaluation or in the conduct of business in the financial
 307 services industry.

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

311 (c) ~~(b)~~ The parties shall appoint a neutral evaluator from
 312 the department list and promptly inform the department. If the

313 parties cannot agree to a neutral evaluator within 14 business
314 days, the department shall appoint a neutral evaluator from the
315 list of certified neutral evaluators. The department shall allow
316 each party to disqualify two neutral evaluators without cause.
317 Upon selection or appointment, the department shall promptly
318 refer the request to the neutral evaluator.

319 (d)~~(e)~~ Within 14 business days after ~~the~~ referral, the
320 neutral evaluator shall notify the policyholder and the insurer
321 of the date, time, and place of the neutral evaluation
322 conference. The conference may be held by telephone, if feasible
323 and desirable. The neutral evaluator shall make reasonable
324 efforts to hold the conference within 90 days after the receipt
325 of the request by the department. Failure of the neutral
326 evaluator to hold the conference within 90 days does not
327 invalidate either party's right to neutral evaluation or to a
328 neutral evaluation conference held outside this timeframe.

329 (18) The department shall adopt rules of procedure for the
330 neutral evaluation process and adopt rules for certifying,
331 denying certification of, suspending certification of, and
332 revoking the certification of a neutral evaluator.

333 Section 9. Section 627.7142, Florida Statutes, is created
334 to read:

335 627.7142 Homeowner Claims Bill of Rights.—An insurer
336 issuing a personal lines residential property insurance policy
337 in this state must provide a Homeowner Claims Bill of Rights to
338 a policyholder when the policy is delivered to the policyholder.

339 The purpose of the bill of rights is to summarize, in simple,
 340 nontechnical terms, existing Florida law regarding the rights of
 341 a personal lines residential property insurance policyholder who
 342 files a claim of loss. The Homeowner Claims Bill of Rights is
 343 specific to the claims process and does not represent all of a
 344 policyholder's rights under Florida law regarding the insurance
 345 policy. The Homeowner Claims Bill of Rights does not create a
 346 civil cause of action by any individual policyholder or class of
 347 policyholders against an insurer or insurers and does not
 348 enlarge, modify, or contravene statutory requirements,
 349 including, but not limited to, ss. 626.854, 626.9541, 627.70131,
 350 627.7015, and 627.7074. The Homeowner Claims Bill of Rights does
 351 not prohibit an insurer from exercising its right to repair
 352 damaged property in compliance with the terms of an applicable
 353 policy or ss. 627.7011(5) (e) and 627.702(7). The Homeowner
 354 Claims Bill of Rights shall state:

355
 356 HOMEOWNER CLAIMS BILL OF RIGHTS

357 This Bill of Rights is specific to the claims process
 358 and does not represent all of your rights under
 359 Florida law regarding your policy. There are also
 360 exceptions to the stated timelines when conditions are
 361 beyond your insurance company's control. This document
 362 does not create a civil cause of action by an
 363 individual policyholder, or a class of policyholders,
 364 against an insurer or insurers and does not prohibit

365 an insurer from exercising its right to repair damaged
366 property in compliance with the terms of an applicable
367 policy.

368
369 YOU HAVE THE RIGHT TO:

- 370 1. Receive from your insurance company an
371 acknowledgment of your reported claim within 14 days
372 after the time you communicated the claim.
- 373 2. Upon written request, receive from your insurance
374 company, within 30 days after you have submitted a
375 complete proof-of-loss statement to your insurance
376 company, confirmation that your claim is covered in
377 full, partially covered, or denied or receive a
378 written statement that your claim is being
379 investigated.
- 380 3. Within 90 days, receive full settlement payment
381 for your claim, payment of the undisputed portion of
382 your claim, or your insurance company's denial of your
383 claim.
- 384 4. Free mediation of your disputed claim by the
385 Florida Department of Financial Services Division of
386 Consumer Services under most circumstances and subject
387 to certain restrictions.
- 388 5. Neutral evaluation of your disputed claim, if your
389 claim is for damage caused by a sinkhole and is
390 covered by your policy.

391 6. Contact the Florida Department of Financial
392 Services Division of Consumer Services' toll-free
393 helpline for assistance with any insurance claim or
394 questions pertaining to the handling of your claim.
395 You can reach the helpline by telephone at ...(toll
396 free telephone number)..., or you can seek assistance
397 online at the Florida Department of Financial Services
398 Division of Consumer Services' website at ...(website
399 address)....

400

401 YOU ARE ADVISED TO:

402 1. Contact your insurance company before entering
403 into any contract for repairs to confirm any managed
404 repair policy provisions or optional preferred
405 vendors.
406 2. Make and document emergency repairs that are
407 necessary to prevent further damage. Keep the damaged
408 property, if feasible, keep all receipts, and take
409 photographs of damage before and after any repairs.
410 3. Carefully read any contract that requires you to
411 pay out-of-pocket expenses or a fee that is based on a
412 percentage of the insurance proceeds that you will
413 receive for repairing or replacing your property.
414 4. Confirm that the contractor you choose is licensed
415 to do business in Florida. You can verify a
416 contractor's license and check to see if there are any

417 complaints against him or her by calling the Florida
418 Department of Business and Professional Regulation.
419 You should also ask the contractor for references from
420 previous work.

421 5. Require all contractors to provide proof of
422 insurance before beginning repairs.

423 6. Take precautions if the damage requires you to
424 leave your home, including securing your property and
425 turning off your gas, water, and electricity, and
426 contacting your insurance company and provide a
427 telephone number where you can be reached.

428

429 Section 10. Section 627.715, Florida Statutes, is created
430 to read:

431 627.715 Emergency mitigation services; agreements.—

432 (1) As used in this section, the term "emergency
433 mitigation services" means the delivery of goods or services
434 that are needed to mitigate damage caused by fire, water, or
435 catastrophic events when delay may exacerbate the damage to the
436 covered property. Services include the removal of contents,
437 removal of water or other contaminants, cleaning, sanitizing,
438 incidental demolition, or other treatment, including preventive
439 activities.

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

443 (a) The agreement entered into by the policyholder
444 complies with any managed repair or preferred vendor policy
445 provisions;

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

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

450 (d) The work is performed by an individual or company
451 possessing a valid certification consistent with the most recent
452 Standard and Reference Guide for Professional Water Damage
453 Restoration, as developed by the Institute of Inspection,
454 Cleaning and Restoration Certification and approved by the
455 American National Standards Institute, or by a company that
456 possesses a valid Division I license under chapter 489, which is
457 providing services within the scope of that license. A company
458 is considered to be certified for purposes of this paragraph if
459 the company representative who possesses a valid certification
460 personally supervises the emergency mitigation services
461 performed.

462 Section 11. This act shall take effect July 1, 2014.