

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. 627.7015, 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 term "neutral evaluator"; amending s.  
16          627.7074, F.S.; specifying grounds for denying,  
17          suspending, or revoking approval of a neutral  
18          evaluator; creating s. 627.7142, F.S.; establishing a  
19          Homeowner Claims Bill of Rights for personal lines  
20          residential property insurance policyholders;  
21          providing that such bill of rights does not provide a  
22          cause of action; creating s. 627.715, F.S.; defining  
23          terms; providing requirements for emergency mitigation  
24          repair agreements; requiring an emergency mitigation  
25          contractor to be appropriately certified or to possess  
26          a contracting license; providing an effective date.

27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52

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

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

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

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

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

627.409 Representations in applications; warranties.—

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

(a) The misrepresentation, omission, concealment, or statement is fraudulent or is material ~~either~~ to the acceptance

53 of the risk or to the hazard assumed by the insurer.

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

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

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

72 Section 3. Paragraph (b) of subsection (2) of section  
 73 627.4133, Florida Statutes, is amended to read:

74 627.4133 Notice of cancellation, nonrenewal, or renewal  
 75 premium.—

76 (2) With respect to any personal lines or commercial  
 77 residential property insurance policy, including, but not  
 78 limited to, any homeowner's, mobile home owner's, farmowner's,

79 condominium association, condominium unit owner's, apartment  
 80 building, or other policy covering a residential structure or  
 81 its contents:

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

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

98 2. If cancellation is for nonpayment of premium, at least  
 99 10 days' written notice of cancellation accompanied by the  
 100 reason therefor must be given. As used in this subparagraph, the  
 101 term "nonpayment of premium" means failure of the named insured  
 102 to discharge when due her or his obligations for paying the  
 103 premium ~~in connection with the payment of premiums~~ on a policy  
 104 or an ~~any~~ installment of such premium, whether the premium is

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

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

129 4. After a policy or contract is in effect for 90 days,  
 130 the insurer may not cancel or terminate the policy or contract

131 based on credit information available in public records.

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

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

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

149  
 150 After the policy has been in effect for 90 days, the policy may  
 151 not be canceled by the insurer unless there has been a material  
 152 misstatement, a nonpayment of premium, a failure to comply with  
 153 underwriting requirements established by the insurer within 90  
 154 days after the date of effectuation of coverage, ~~or~~ a  
 155 substantial change in the risk covered by the policy, or ~~if~~ the  
 156 cancellation is for all insureds under such policies for a given

157 class of insureds. This paragraph does not apply to individually  
 158 rated risks that have ~~having~~ a policy term of less than 90 days.

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

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

175 Section 4. Paragraph (b) of subsection (4) of section  
 176 627.7015, Florida Statutes, is amended to read:

177 627.7015 Alternative procedure for resolution of disputed  
 178 property insurance claims.—

179 (4) The department shall adopt by rule a property  
 180 insurance mediation program to be administered by the department  
 181 or its designee. The department may also adopt special rules  
 182 which are applicable in cases of an emergency within the state.

183 The rules shall be modeled after practices and procedures set  
 184 forth in mediation rules of procedure adopted by the Supreme  
 185 Court. The rules shall provide for:

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

192 Section 5. Section 627.70151, Florida Statutes, is created  
 193 to read:

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

201 (1) A familial relationship within the third degree exists  
 202 between the umpire and any party or a representative of any  
 203 party;

204 (2) The umpire has previously represented any party in a  
 205 professional capacity in the same claim or matter involving the  
 206 same property;

207 (3) The umpire has represented another person in a  
 208 professional capacity on the same or a substantially related

209 matter, which includes the claim, same property, or an adjacent  
 210 property and that other person's interests are materially  
 211 adverse to the interests of any party; or

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

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

216 627.706 Sinkhole insurance; catastrophic ground cover  
 217 collapse; definitions.—

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

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

231 (f) "Professional engineer" means a person, as defined in  
 232 s. 471.005, who has a bachelor's degree or higher in  
 233 engineering. A professional engineer must also have experience

234 and expertise in the identification of sinkhole activity or ~~as~~  
 235 ~~well as~~ other potential causes of structural damage.

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

238 627.7074 Alternative procedure for resolution of disputed  
 239 sinkhole insurance claims.—

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

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

246 1. A familial relationship exists between the neutral  
 247 evaluator and either party or a representative of either party  
 248 within the third degree.

249 2. The proposed neutral evaluator has, in a professional  
 250 capacity, previously represented either party or a  
 251 representative of either party, in the same or a substantially  
 252 related matter.

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

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

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

267 1. Lack of one or more of the qualifications for  
 268 certification specified in this section.

269 2. Material misstatement, misrepresentation, or fraud in  
 270 obtaining or attempting to obtain the certification.

271 3. Demonstrated lack of fitness or trustworthiness to act  
 272 as a neutral evaluator.

273 4. Fraudulent or dishonest practices in the conduct of an  
 274 evaluation or in the conduct of business in the financial  
 275 services industry.

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

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

286 refer the request to the neutral evaluator.

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

297 (18) The department shall adopt rules of procedure for the  
 298 neutral evaluation process and adopt rules for certifying,  
 299 denying certification of, suspending certification of, and  
 300 revoking the certification of a neutral evaluator.

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

303 627.7142 Homeowner Claims Bill of Rights.—An insurer  
 304 issuing a personal lines residential property insurance policy  
 305 in this state must provide a Homeowner Claims Bill of Rights to  
 306 a policyholder within 14 days after receiving an initial  
 307 communication with respect to a claim, unless the claim follows  
 308 an event that is the subject of a declaration of a state of  
 309 emergency by the Governor. The purpose of the bill of rights is  
 310 to summarize, in simple, nontechnical terms, existing Florida  
 311 law regarding the rights of a personal lines residential

312 property insurance policyholder who files a claim of loss. The  
 313 Homeowner Claims Bill of Rights is specific to the claims  
 314 process and does not represent all of a policyholder's rights  
 315 under Florida law regarding the insurance policy. The Homeowner  
 316 Claims Bill of Rights does not create a civil cause of action by  
 317 any individual policyholder or class of policyholders against an  
 318 insurer or insurers. The failure of an insurer to properly  
 319 deliver the Homeowner Claims Bill of Rights is subject to  
 320 administrative enforcement by the office, but is not admissible  
 321 as evidence in any civil action against an insurer. The  
 322 Homeowner Claims Bill of Rights does not enlarge, modify, or  
 323 contravene statutory requirements, including, but not limited  
 324 to, ss. 626.854, 626.9541, 627.70131, 627.7015, and 627.7074.  
 325 The Homeowner Claims Bill of Rights does not prohibit an insurer  
 326 from exercising its right to repair damaged property in  
 327 compliance with the terms of an applicable policy or ss.  
 328 627.7011(5)(e) and 627.702(7). The Homeowner Claims Bill of  
 329 Rights shall state:

331 HOMEOWNER CLAIMS BILL OF RIGHTS

332 This Bill of Rights is specific to the claims process  
 333 and does not represent all of your rights under  
 334 Florida law regarding your policy. There are also  
 335 exceptions to the stated timelines when conditions are  
 336 beyond your insurance company's control. This document  
 337 does not create a civil cause of action by an

338 individual policyholder, or a class of policyholders,  
 339 against an insurer or insurers and does not prohibit  
 340 an insurer from exercising its right to repair damaged  
 341 property in compliance with the terms of an applicable  
 342 policy.

343  
 344 YOU HAVE THE RIGHT TO:

- 345 1. Receive from your insurance company an  
 346 acknowledgment of your reported claim within 14 days  
 347 after the time you communicated the claim.
- 348 2. Upon written request, receive from your insurance  
 349 company, within 30 days after you have submitted a  
 350 complete proof-of-loss statement to your insurance  
 351 company, confirmation that your claim is covered in  
 352 full, partially covered, or denied or receive a  
 353 written statement that your claim is being  
 354 investigated.
- 355 3. Within 90 days, subject to any dual interest noted  
 356 in the policy, receive full settlement payment for  
 357 your claim, payment of the undisputed portion of your  
 358 claim, or your insurance company's denial of your  
 359 claim.
- 360 4. Free mediation of your disputed claim by the  
 361 Florida Department of Financial Services Division of  
 362 Consumer Services under most circumstances and subject  
 363 to certain restrictions.

364 5. Neutral evaluation of your disputed claim, if your  
 365 claim is for damage caused by a sinkhole and is  
 366 covered by your policy.

367 6. Contact the Florida Department of Financial  
 368 Services Division of Consumer Services' toll-free  
 369 helpline for assistance with any insurance claim or  
 370 questions pertaining to the handling of your claim.  
 371 You can reach the helpline by telephone at ...(toll  
 372 free telephone number)..., or you can seek assistance  
 373 online at the Florida Department of Financial Services  
 374 Division of Consumer Services' website at ...(website  
 375 address)....

376  
 377 YOU ARE ADVISED TO:

378 1. Contact your insurance company before entering  
 379 into any contract for repairs to confirm any managed  
 380 repair policy provisions or optional preferred  
 381 vendors.

382 2. Make and document emergency repairs that are  
 383 necessary to prevent further damage. Keep the damaged  
 384 property, if feasible, keep all receipts, and take  
 385 photographs of damage before and after any repairs.

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

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

397 5. Require all contractors to provide proof of  
 398 insurance before beginning repairs.

399 6. Take precautions if the damage requires you to  
 400 leave your home, including securing your property and  
 401 turning off your gas, water, and electricity, and  
 402 contacting your insurance company and provide a  
 403 telephone number where you can be reached.

404  
 405 Section 9. Section 627.715, Florida Statutes, is created  
 406 to read:

407 627.715 Emergency mitigation services; agreements.-

408 (1) As used in this section, the term "emergency  
 409 mitigation services" means the delivery of goods or services  
 410 that are needed to mitigate damage caused by fire, water, or  
 411 catastrophic events when delay may exacerbate the damage to the  
 412 covered property. Services include the removal of contents,  
 413 removal of water or other contaminants, cleaning, sanitizing,  
 414 incidental demolition, or other treatment, including preventive  
 415 activities.

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

419       (a) The agreement entered into by the policyholder  
 420 complies with any managed repair or preferred vendor policy  
 421 provisions;

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

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

426       (d) The work is performed by an individual or company  
 427 possessing a valid certification consistent with the most recent  
 428 Standard and Reference Guide for Professional Water Damage  
 429 Restoration, as developed by the Institute of Inspection,  
 430 Cleaning and Restoration Certification and approved by the  
 431 American National Standards Institute, or by a company that  
 432 possesses a valid Division I license under chapter 489, which is  
 433 providing services within the scope of that license. A company  
 434 is considered to be certified for purposes of this paragraph if  
 435 the company representative who possesses a valid certification  
 436 personally supervises the emergency mitigation services  
 437 performed.

438       Section 10. This act shall take effect July 1, 2014.