

1 A bill to be entitled
 2 An act relating to property insurance; amending s.
 3 627.0629, F.S.; revising the criteria applicable to
 4 when the office may hold a public hearing regarding a
 5 rate filing; amending s. 626.854, F.S.; revising the
 6 restrictions on public adjuster compensation, payment,
 7 commission, fee, or any other thing of value;
 8 providing penalties; deleting a provision requiring
 9 the public adjuster to ensure prompt notice of
 10 property loss claims; requiring a public adjuster to
 11 ensure that prompt notice is given of a claim to the
 12 insurer; requiring a public adjuster to meet or
 13 communicate with the insurer for a specified purpose;
 14 prohibiting a public adjuster, a public adjuster
 15 apprentice, or any person acting on behalf of a public
 16 adjuster or apprentice to enter into a contract or
 17 accept a power of attorney relating to repair work;
 18 prohibiting a public adjuster from acquiring any
 19 interest in salvaged property; providing an exception;
 20 amending s. 627.351, F.S.; deleting a provision that
 21 limits the amount that a public adjuster may charge,
 22 agree to, or accept as compensation with respect to a
 23 claim filed under a policy of the Citizens Property
 24 Insurance Corporation; requiring the corporation to
 25 prepare a report for each calendar year relating to
 26 the loss ratio attributable to losses that are not
 27 catastrophic losses for residential coverage provided
 28 by the corporation; amending s. 627.422, F.S.;

29 | authorizing a property insurance policy to prohibit
 30 | the post-loss assignment of rights, benefits, causes
 31 | of action, or choses in action, except for a specified
 32 | purpose; voiding coverage if certain post-loss
 33 | assignments are made under a policy that prohibits
 34 | such acts; amending s. 627.706, F.S.; requiring
 35 | insurers to offer sinkhole loss coverage with
 36 | specified coverage limits; requiring discounts for the
 37 | coverage limits; requiring insurers to offer sinkhole
 38 | loss deductibles in specified percentages of policy
 39 | dwelling limits; amending s. 627.707, F.S.; revising
 40 | provisions relating to the payment of lienholders and
 41 | other persons for stabilization and repair; amending
 42 | s. 627.7074, F.S.; deleting a provision that allows a
 43 | policyholder to obtain attorney fees under certain
 44 | circumstances; providing an effective date.

45 |
 46 | Be It Enacted by the Legislature of the State of Florida:

47 |
 48 | Section 1. Subsection (6) of section 627.0629, Florida
 49 | Statutes, is amended to read:

50 | 627.0629 Residential property insurance; rate filings.—

51 | (6) The office may hold a public hearing for a ~~Any~~ rate
 52 | filing that is based in whole or in part on data from a computer
 53 | model ~~may not exceed 15 percent unless there is a public~~
 54 | ~~hearing.~~

55 | Section 2. Present subsections (11), (15), and (17) of
 56 | section 626.854, Florida Statutes, are amended, and new

57 subsections (17) and (18) are added to that section to read:

58 626.854 "Public adjuster" defined; prohibitions.—The
59 Legislature finds that it is necessary for the protection of the
60 public to regulate public insurance adjusters and to prevent the
61 unauthorized practice of law.

62 (11) (a) If a public adjuster enters into a contract with
63 an insured or claimant to reopen a claim or file a supplemental
64 claim that seeks additional payments for a claim that has been
65 previously paid in part or in full or settled by the insurer,
66 the public adjuster may not charge, agree to, or accept from any
67 source ~~any~~ compensation, payment, commission, fee, or any other
68 thing of value based on a previous settlement or previous claim
69 payments by the insurer for the same cause of loss. The charge,
70 compensation, payment, commission, fee, or any other thing of
71 value must be based only on the claim payments or settlement
72 obtained through the work of the public adjuster after entering
73 into the contract with the insured or claimant. Compensation for
74 the reopened or supplemental claim may not exceed 20 percent of
75 the reopened or supplemental claim payment. In no event shall
76 the contracts described in this paragraph exceed ~~are not subject~~
77 ~~to~~ the limitations in paragraph (b).

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

- 81 1. Ten percent of the amount of insurance claim payments
82 made by the insurer for claims based on events that are the
83 subject of a declaration of a state of emergency by the
84 Governor. ~~This provision applies to claims made during the year~~

85 ~~after the declaration of emergency. After that year, the~~
86 ~~limitations in subparagraph 2. apply.~~

87 2. Fifteen ~~Twenty~~ percent of the amount of insurance claim
88 payments made by the insurer for claims that are not based on
89 events that are the subject of a declaration of a state of
90 emergency by the Governor.

91 (c) Any maneuver, shift, or device through which the
92 limits on compensation set forth in this subsection are exceeded
93 is a violation of this chapter punishable as provided under s.
94 626.8698.

95 (15) ~~A public adjuster must ensure prompt notice of~~
96 ~~property loss claims submitted to an insurer by or through a~~
97 ~~public adjuster or on which a public adjuster represents the~~
98 ~~insured at the time the claim or notice of loss is submitted to~~
99 ~~the insurer.~~ The public adjuster must ensure that prompt notice
100 is given of the claim to the insurer, the public adjuster's
101 contract is provided to the insurer, the property is available
102 for inspection of the loss or damage by the insurer, and the
103 insurer is given an opportunity to interview the insured
104 directly about the loss and claim. The insurer must be allowed
105 to obtain necessary information to investigate and respond to
106 the claim.

107 (a) The insurer may not exclude the public adjuster from
108 its in-person meetings with the insured. The insurer shall meet
109 or communicate with the public adjuster in an effort to reach
110 agreement as to the scope of the covered loss under the
111 insurance policy. The public adjuster shall meet or communicate
112 with the insurer in an effort to reach agreement as to the scope

113 of the covered loss under the insurance policy. This section
114 does not impair the terms and conditions of the insurance policy
115 in effect at the time the claim is filed.

116 (b) A public adjuster may not restrict or prevent an
117 insurer, company employee adjuster, independent adjuster,
118 attorney, investigator, or other person acting on behalf of the
119 insurer from having reasonable access at reasonable times to any
120 ~~an~~ insured or claimant or to the insured property that is the
121 subject of a claim.

122 (c) A public adjuster may not act or fail to reasonably
123 act in any manner that obstructs or prevents an insurer or
124 insurer's adjuster from timely conducting an inspection of any
125 part of the insured property for which there is a claim for loss
126 or damage. The public adjuster representing the insureds ~~insured~~
127 may be present for the insurer's inspection, but if the
128 unavailability of the public adjuster otherwise delays the
129 insurer's timely inspection of the property, the public adjuster
130 or the insureds ~~insured~~ must allow the insurer to have access to
131 the property without the participation or presence of the public
132 adjuster or insureds ~~insured~~ in order to facilitate the
133 insurer's prompt inspection of the loss or damage.

134 (17) A public adjuster, public adjuster apprentice, or any
135 person acting on behalf of a public adjuster or apprentice may
136 not enter into a contract or accept a power of attorney which
137 vests in the public adjuster, public adjuster apprentice, or any
138 person acting on behalf of a public adjuster or apprentice the
139 effective authority to choose the persons, entities, or
140 companies that will perform repair work.

141 (18) A public adjuster shall not acquire any interest in
 142 salvaged property, except with the written consent and
 143 permission of the insured through a signed affidavit.

144 ~~(19)-(17)~~ The provisions of subsections ~~(5)-(18)~~ ~~(5)-(16)~~
 145 apply only to residential property insurance policies and
 146 condominium unit owner policies as defined in s. 718.111(11).

147 Section 3. Paragraph (a) of subsection (6) of section
 148 627.351, Florida Statutes, is amended, and paragraph (gg) is
 149 added to that subsection, to read:

150 627.351 Insurance risk apportionment plans.—

151 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

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

155 1. The Legislature finds that private insurers are
 156 unwilling or unable to provide affordable property insurance
 157 coverage in this state to the extent sought and needed. The
 158 absence of affordable property insurance threatens the public
 159 health, safety, and welfare and likewise threatens the economic
 160 health of the state. The state therefore has a compelling public
 161 interest and a public purpose to assist in assuring that
 162 property in the state is insured and that it is insured at
 163 affordable rates so as to facilitate the remediation,
 164 reconstruction, and replacement of damaged or destroyed property
 165 in order to reduce or avoid the negative effects otherwise
 166 resulting to the public health, safety, and welfare, to the
 167 economy of the state, and to the revenues of the state and local
 168 governments which are needed to provide for the public welfare.

169 It is necessary, therefore, to provide affordable property
170 insurance to applicants who are in good faith entitled to
171 procure insurance through the voluntary market but are unable to
172 do so. The Legislature intends, therefore, that affordable
173 property insurance be provided and that it continue to be
174 provided, as long as necessary, through Citizens Property
175 Insurance Corporation, a government entity that is an integral
176 part of the state, and that is not a private insurance company.
177 To that end, the corporation shall strive to increase the
178 availability of affordable property insurance in this state,
179 while achieving efficiencies and economies, and while providing
180 service to policyholders, applicants, and agents which is no
181 less than the quality generally provided in the voluntary
182 market, for the achievement of the foregoing public purposes.
183 Because it is essential for this government entity to have the
184 maximum financial resources to pay claims following a
185 catastrophic hurricane, it is the intent of the Legislature that
186 the corporation continue to be an integral part of the state and
187 that the income of the corporation be exempt from federal income
188 taxation and that interest on the debt obligations issued by the
189 corporation be exempt from federal income taxation.

190 2. The Residential Property and Casualty Joint
191 Underwriting Association originally created by this statute
192 shall be known as the Citizens Property Insurance Corporation.
193 The corporation shall provide insurance for residential and
194 commercial property, for applicants who are entitled, but, in
195 good faith, are unable to procure insurance through the
196 voluntary market. The corporation shall operate pursuant to a

197 plan of operation approved by order of the Financial Services
198 Commission. The plan is subject to continuous review by the
199 commission. The commission may, by order, withdraw approval of
200 all or part of a plan if the commission determines that
201 conditions have changed since approval was granted and that the
202 purposes of the plan require changes in the plan. For the
203 purposes of this subsection, residential coverage includes both
204 personal lines residential coverage, which consists of the type
205 of coverage provided by homeowner's, mobile home owner's,
206 dwelling, tenant's, condominium unit owner's, and similar
207 policies; and commercial lines residential coverage, which
208 consists of the type of coverage provided by condominium
209 association, apartment building, and similar policies.

210 3. Effective January 1, 2009, a personal lines residential
211 structure that has a dwelling replacement cost of \$2 million or
212 more, or a single condominium unit that has a combined dwelling
213 and contents replacement cost of \$2 million or more is not
214 eligible for coverage by the corporation. Such dwellings insured
215 by the corporation on December 31, 2008, may continue to be
216 covered by the corporation until the end of the policy term.
217 However, such dwellings may reapply and obtain coverage if the
218 property owner provides the corporation with a sworn affidavit
219 from one or more insurance agents, on a form provided by the
220 corporation, stating that the agents have made their best
221 efforts to obtain coverage and that the property has been
222 rejected for coverage by at least one authorized insurer and at
223 least three surplus lines insurers. If such conditions are met,
224 the dwelling may be insured by the corporation for up to 3

225 | years, after which time the dwelling is ineligible for coverage.
226 | The office shall approve the method used by the corporation for
227 | valuing the dwelling replacement cost for the purposes of this
228 | subparagraph. If a policyholder is insured by the corporation
229 | before ~~prior to~~ being determined to be ineligible pursuant to
230 | this subparagraph and such policyholder files a lawsuit
231 | challenging the determination, the policyholder may remain
232 | insured by the corporation until the conclusion of the
233 | litigation.

234 | 4. It is the intent of the Legislature that policyholders,
235 | applicants, and agents of the corporation receive service and
236 | treatment of the highest possible level but never less than that
237 | generally provided in the voluntary market. It is also intended
238 | that the corporation be held to service standards no less than
239 | those applied to insurers in the voluntary market by the office
240 | with respect to responsiveness, timeliness, customer courtesy,
241 | and overall dealings with policyholders, applicants, or agents
242 | of the corporation.

243 | 5. Effective January 1, 2009, a personal lines residential
244 | structure that is located in the "wind-borne debris region," as
245 | defined in s. 1609.2, International Building Code (2006), and
246 | that has an insured value on the structure of \$750,000 or more
247 | is not eligible for coverage by the corporation unless the
248 | structure has opening protections as required under the Florida
249 | Building Code for a newly constructed residential structure in
250 | that area. A residential structure is ~~shall be~~ deemed to comply
251 | with this subparagraph if it has shutters or opening protections
252 | on all openings and if such opening protections complied with

253 the Florida Building Code at the time they were installed.

254 ~~6. For any claim filed under any policy of the~~
255 ~~corporation, a public adjuster may not charge, agree to, or~~
256 ~~accept any compensation, payment, commission, fee, or other~~
257 ~~thing of value greater than 10 percent of the additional amount~~
258 ~~actually paid over the amount that was originally offered by the~~
259 ~~corporation for any one claim.~~

260 (gg) The corporation must prepare a report for each
261 calendar year outlining both the statewide average and county-
262 specific details of the loss ratio attributable to losses that
263 are not catastrophic losses for residential coverage provided by
264 the corporation, which information must be presented to the
265 office and available for public inspection on the Internet
266 website of the corporation by January 15th of the following
267 calendar year.

268 Section 4. Section 627.422, Florida Statutes, is amended
269 to read:

270 627.422 Assignment of policies.—A policy may be
271 assignable, or not assignable, as provided by its terms.

272 (1) Subject to its terms relating to assignability, any
273 life or health insurance policy under the terms of which the
274 beneficiary may be changed upon the sole request of the
275 policyowner may be assigned either by pledge or transfer of
276 title, by an assignment executed by the policyowner alone and
277 delivered to the insurer, whether or not the pledgee or assignee
278 is the insurer. Any such assignment shall entitle the insurer to
279 deal with the assignee as the owner or pledgee of the policy in
280 accordance with the terms of the assignment, until the insurer

281 | has received at its home office written notice of termination of
 282 | the assignment or pledge or written notice by or on behalf of
 283 | some other person claiming some interest in the policy in
 284 | conflict with the assignment.

285 | (2) A property insurance policy may prohibit the post-loss
 286 | assignment of rights, benefits, causes of action, choses in
 287 | action, or other contractual rights under the policy, except for
 288 | the limited purpose permitted by s. 626.854(11) of compensating
 289 | a public adjuster for services. Except as provided in this
 290 | subsection, any post-loss assignment of rights, benefits, causes
 291 | of action, choses in action, or other contractual rights under a
 292 | property insurance policy which prohibits such assignment shall
 293 | render the coverage void.

294 | Section 5. Paragraph (b) of subsection (1) of section
 295 | 627.706, Florida Statutes, is amended to read:

296 | 627.706 Sinkhole insurance; catastrophic ground cover
 297 | collapse; definitions.—

298 | (1)

299 | (b) The insurer shall make available, for an appropriate
 300 | additional premium, coverage for sinkhole losses on any
 301 | structure, including the contents of personal property contained
 302 | therein, to the extent provided in the form to which the
 303 | coverage attaches. The insurer must offer sinkhole loss coverage
 304 | for 50 percent, 75 percent, and 100 percent of the policy
 305 | dwelling limits, with appropriate premium discounts offered with
 306 | each coverage limit. The insurer may require an inspection of
 307 | the property before issuance of sinkhole loss coverage. ~~A policy~~
 308 | For residential property insurance, the insurer must offer ~~may~~

309 | ~~include~~ a deductible amount applicable to sinkhole losses equal
 310 | to ~~1 percent~~, 2 percent, 5 percent, or 10 percent of the policy
 311 | dwelling limits, with appropriate premium discounts offered with
 312 | each deductible amount.

313 | Section 6. Paragraph (e) of subsection (5) of section
 314 | 627.707, Florida Statutes, is amended to read:

315 | 627.707 Investigation of sinkhole claims; insurer payment;
 316 | nonrenewals.—Upon receipt of a claim for a sinkhole loss to a
 317 | covered building, an insurer must meet the following standards
 318 | in investigating a claim:

319 | (5) If a sinkhole loss is verified, the insurer shall pay
 320 | to stabilize the land and building and repair the foundation in
 321 | accordance with the recommendations of the professional engineer
 322 | retained pursuant to subsection (2), with notice to the
 323 | policyholder, subject to the coverage and terms of the policy.
 324 | The insurer shall pay for other repairs to the structure and
 325 | contents in accordance with the terms of the policy. If a
 326 | covered building suffers a sinkhole loss or a catastrophic
 327 | ground cover collapse, the insured must repair such damage or
 328 | loss in accordance with the insurer's professional engineer's
 329 | recommended repairs. However, if the insurer's professional
 330 | engineer determines that the repair cannot be completed within
 331 | policy limits, the insurer must pay to complete the repairs
 332 | recommended by the insurer's professional engineer or tender the
 333 | policy limits to the policyholder.

334 | (e) If there is any lienholder, upon the insurer's
 335 | obtaining the written approval of the ~~any~~ lienholder, the
 336 | insurer must ~~may~~ make all payments ~~payment~~ directly to the

337 persons selected by the policyholder to perform the land and
338 building stabilization and foundation repairs. If there is no
339 lienholder, the insurer must make all payments directly to the
340 persons selected by the policyholder to perform the land and
341 building stabilization and foundation repairs. The decision by
342 the insurer to make payment to such persons does not hold the
343 insurer liable for the work performed.

344 Section 7. Subsection (15) of section 627.7074, Florida
345 Statutes, is amended to read:

346 627.7074 Alternative procedure for resolution of disputed
347 sinkhole insurance claims.—

348 (15) If the insurer timely agrees in writing to comply and
349 timely complies with the recommendation of the neutral
350 evaluator, but the policyholder declines to resolve the matter
351 in accordance with the recommendation of the neutral evaluator
352 pursuant to this section:

353 (a) The insurer is not liable for extracontractual damages
354 related to a claim for a sinkhole loss but only as related to
355 the issues determined by the neutral evaluation process. This
356 section does not affect or impair claims for extracontractual
357 damages unrelated to the issues determined by the neutral
358 evaluation process contained in this section; and

359 (b) The actions of the insurer are not a confession of
360 judgment or admission of liability, and the insurer is not
361 liable for attorney ~~attorney's~~ fees under s. 627.428 or other
362 provisions of the insurance code ~~unless the policyholder obtains~~
363 ~~a judgment that is more favorable than the recommendation of the~~
364 ~~neutral evaluator.~~

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Section 8. This act shall take effect July 1, 2013.