

A bill to be entitled

An act relating to insurance; amending s. 626.854, F.S.; providing an exclusion to the post-claim 48 hour notice requirement; amending s. 626.601, F.S.; revising terminology relating to investigations conducted by the Department of Financial Services and the Office of Insurance Regulation with respect to individuals and entities involved in the insurance industry; amending s. 627.4133, F.S.; prohibiting the cancellation of certain policies that have been in effect for a specified amount of time except under certain circumstances; amending s. 627.422, F.S.; providing requirements for a valid assignment of benefits under a property insurance policy; amending s. 627.7015, F.S.; revising the rulemaking authority of the department with respect to qualifications and specified types of penalties covered under the property insurance mediation program; creating s. 627.70151, F.S.; providing criteria for an insurer or policyholder to challenge the impartiality of a loss appraisal umpire for purposes of disqualifying such umpire; creating s. 627.70152, F.S.; authorizing a repair program that may be offered by insurers; requiring certain language in 18 point type to be included in the policy form; requiring insurers offering a contractual repair program to guarantee proper licensure of vendors, acquisition of required building permits, and a warranty of at least three years for work performed; requiring insurers to establish and maintain a complaint resolution program; requiring insurers to maintain electronic data of claims and complaints within a mineable database; requiring the office to promulgate rules necessary to implement this section; requiring the office to establish a limited scope market review of companies implementing contractual repair programs; amending s. 627.706, F.S.; revising the definition of the term “neutral evaluator”; amending s. 627.7074, F.S.; requiring the department to adopt rules relating to the certification of neutral evaluators; creating s. 627.7142, F.S., establishing the residential insurance policyholder claims bill of rights; providing policyholders have the right to be treated fairly when filing a claim; listing actions insurers must do and what insurers must not do when a claim is filed; describing information that is not required for claims processing; acknowledging the alternative dispute resolution program for property and sinkhole claims administered by the Department of Financial Services; describing reasonable notice and scope of inquiry for an examination under oath; describing the information that should accompany a contract for repair; describing emergency repair services and minimal qualifications for those who provide emergency repair services; describing what an assignment of rights covers and does not cover and elements needed for a valid assignment; limiting what an insurer may do with an individual’s credit information; acknowledging certain rights under a right to repair and contractual repair program; acknowledging mortgagees may withhold claim funds in certain circumstances; creating s. 627.7143, F.S.; establishing notice requirements for examination under oath; providing reasonable standards for conduct and for scope of inquiry at examinations; providing rulemaking authority; creating s. 627.715, F.S., establishing requirements for mitigation or repair contracts to which insurance proceeds may be applied; providing definitions for the terms “emergency mitigation service” and “emergency mitigation contractor”; establishing requirements for companies or individuals providing emergency mitigation or repair services; providing requirements for an assignment of rights under the policy; prohibiting referral fees; providing rulemaking authority; amending s. 627.745, F.S.; revising qualifications for approval as a mediator by the department; providing grounds for the department to deny an application, or

suspend or revoke approval of a mediator or certification of a neutral evaluator; authorizing the department to adopt rules; providing an effective date.

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

Section 1. Subsection (14) of section 626.854, Florida Statutes, is amended to read:

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

(1)...

(2)...

(14) A company representative, such as, employee adjuster, independent adjuster, attorney, investigator, or other persons acting on behalf of an insurer that needs access to an insured or claimant or to the insured property that is the subject of a claim must provide at least 48 hours’ notice to the insured, public adjuster, or legal representative before scheduling a meeting with the claimant or an onsite inspection of the insured property. The insured or claimant may deny access to the property if the notice has not been provided. The insured or claimant may waive the 48-hour notice. The 48 hours’ notice does not apply in the event of a reported claim in which goods or services are needed to mitigate damage that is caused by fire, water or catastrophic events, when delay may exacerbate the damage.

Section 2. Section 626.601, Florida Statutes, is amended to read:

626.601 Improper conduct; inquiry; fingerprinting.—

(1) The department or office may, upon its own motion or upon a written complaint signed by any interested person and filed with the department or office, inquire into any alleged improper conduct of any licensed, approved, or certified insurance agency, agent, adjuster, service representative, managing general agent, customer representative, title insurance agent, title insurance agency, mediator, neutral evaluator, continuing education course provider, instructor, school official, or monitor group under this code. The department or office may thereafter initiate an investigation of any such individual or entity licensee if it has reasonable cause to believe that the individual or entity licensee has violated any provision of the insurance code. During the course of its investigation, the department or office shall contact the individual or entity licensee being investigated unless it determines that contacting such individual or entity person could jeopardize the successful completion of the investigation or cause injury to the public.

(2) In the investigation by the department or office of the alleged misconduct, the individual or entity licensee shall, whenever so required by the department or office, cause the individual’s or entity’s ~~his or her~~ books and records to be open for inspection for the purpose of such inquiries.

(3) The complaints against any individual or entity licensee may be informally alleged and need not be in any such language as is necessary to charge a crime on an indictment or information.

(4) The expense for any hearings or investigations under this law, as well as the fees and mileage of witnesses, may be paid out of the appropriate fund.

(5) If the department or office, after investigation, has reason to believe that an individual or entity licensee may have been found guilty of or pleaded guilty or nolo contendere to a felony or a crime related to the business of insurance in this or any other state or jurisdiction, the department or office may require the individual licensee to file with the department or office a complete set of his or her fingerprints, which shall be accompanied by the fingerprint processing fee set forth in s. 624.501. The fingerprints shall be taken by an authorized law enforcement agency or other department-approved entity.

(6) The complaint and any information obtained pursuant to the investigation by the department or office are confidential and are exempt from ~~the provisions of s. 119.07,~~ unless the department or office files a formal administrative complaint, emergency order, or consent order against the individual or entity licensee. ~~Nothing in~~ This subsection does not shall be construed to prevent the department or office from disclosing the complaint or such information as it deems necessary to conduct the investigation, to update the complainant as to the status and outcome of the complaint, or to share such information with any law enforcement agency.

Section 3. Subsections (4), (5), (6), (7) and (8) are renumbered as subsections (5), (6), (7), (8) and (9), respectively, and new language is created for subsection (4), to read:

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

(1) Except as provided in subsection (2):

(a) An insurer issuing a policy providing coverage for workers' compensation and employer's liability insurance, property, casualty, except mortgage guaranty, surety, or marine insurance, other than motor vehicle insurance subject to s. 627.728, shall give the first-named insured at least 45 days' advance written notice of nonrenewal or of the renewal premium. If the policy is not to be renewed, the written notice shall state the reason or reasons as to why the policy is not to be renewed. This requirement applies only if the insured has furnished all of the necessary information so as to enable the insurer to develop the renewal premium prior to the expiration date of the policy to be renewed.

(b) An insurer issuing a policy providing coverage for property, casualty, except mortgage guaranty, surety, or marine insurance, other than motor vehicle insurance subject to s. 627.728 or s. 627.7281, shall give the first-named insured written notice of cancellation or termination other than nonrenewal at least 45 days prior to the effective date of the cancellation or termination, including in the written notice the reason or reasons for the cancellation or termination, except that:

1. When cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor shall be given. As used in this subparagraph and s. 440.42(3), the term "nonpayment of premium" means failure of the named insured to discharge when due any of her or his obligations in connection with the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. "Nonpayment of premium" also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations shall be void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail, and if the contract is void, any premium received by the insurer from a third party shall be refunded to that party in full; and

2. When such cancellation or termination occurs during the first 90 days during which the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor shall be given except where there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer.

After the policy has been in effect for 90 days, no such policy shall be canceled by the insurer except when there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days of the date of effectuation of coverage, or a substantial change in the risk covered by the policy or when the cancellation is for all insureds under such policies for a given class of insureds. This subsection does not apply to individually rated risks having a policy term of less than 90 days.

(c) If an insurer fails to provide the 45-day or 20-day written notice required under this section, the coverage provided to the named insured shall remain in effect until 45 days after the notice is given or until the effective date of replacement coverage obtained by the named insured, whichever occurs first. The premium for the coverage shall remain the same during any such extension period except that, in the event of failure to provide notice of nonrenewal, if the rate filing then in effect would have resulted in a premium reduction, the premium during such extension of coverage shall be calculated based upon the later rate filing.

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

(a) The insurer shall give the first-named insured at least 45 days' advance written notice of the renewal premium.

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

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

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

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

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

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

b. A policy that is nonrenewed by Citizens Property Insurance Corporation, pursuant to s. 627.351(6), for a policy that has been assumed by an authorized insurer offering replacement coverage to the policyholder is exempt from the notice requirements of paragraph (a) and this

paragraph. In such cases, the corporation must give the named insured written notice of nonrenewal at least 45 days before the effective date of the nonrenewal.

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

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

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

(c) If the insurer fails to provide the notice required by this subsection, other than the 10-day notice, the coverage provided to the named insured shall remain in effect until the effective date of replacement coverage or until the expiration of a period of days after the notice is given equal to the required notice period, whichever occurs first. The premium for the coverage shall remain the same during any such extension period except that, in the event of failure to provide notice of nonrenewal, if the rate filing then in effect would have resulted in a premium reduction, the premium during such extension shall be calculated based on the later rate filing.

(d)1. Upon a declaration of an emergency pursuant to s. 252.36 and the filing of an order by the Commissioner of Insurance Regulation, an insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property located in this state which has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency for a period of 90 days after the dwelling or residential property has been repaired. A structure is deemed to be repaired when substantially completed and restored to the extent that it is insurable by another authorized insurer that is writing policies in this state.

2. However, an insurer or agent may cancel or nonrenew such a policy prior to the repair of the dwelling or residential property:

- a. Upon 10 days' notice for nonpayment of premium; or
- b. Upon 45 days' notice:

(I) For a material misstatement or fraud related to the claim;

(II) If the insurer determines that the insured has unreasonably caused a delay in the repair of the dwelling; or

(III) If the insurer has paid policy limits.

3. If the insurer elects to nonrenew a policy covering a property that has been damaged, the insurer shall provide at least 90 days' notice to the insured that the insurer intends to nonrenew the policy 90 days after the dwelling or residential property has been repaired. Nothing in this paragraph shall prevent the insurer from canceling or nonrenewing the policy 90 days after the repairs are complete for the same reasons the insurer would otherwise have canceled or nonrenewed the policy but for the limitations of subparagraph 1. The Financial Services Commission may adopt rules, and the Commissioner of Insurance Regulation may issue orders, necessary to implement this paragraph.

4. This paragraph shall also apply to personal residential and commercial residential policies covering property that was damaged as the result of Tropical Storm Bonnie, Hurricane Charley, Hurricane Frances, Hurricane Ivan, or Hurricane Jeanne.

(e) If any cancellation or nonrenewal of a policy subject to this subsection is to take effect during the duration of a hurricane as defined in s. 627.4025(2)(c), the effective date of such cancellation or nonrenewal is extended until the end of the duration of such hurricane. The insurer may collect premium at the prior rates or the rates then in effect for the period of time for which coverage is extended. This paragraph does not apply to any property with respect to which replacement coverage has been obtained and which is in effect for a claim occurring during the duration of the hurricane.

(3) Claims on property insurance policies that are the result of an act of God may not be used as a cause for cancellation or nonrenewal, unless the insurer can demonstrate, by claims frequency or otherwise, that the insured has failed to take action reasonably necessary as requested by the insurer to prevent recurrence of damage to the insured property.

(4) An insurer that uses a credit report or information available in the public record to determine whether there is a misrepresentation or omission in the application for insurance related to the applicant's credit history must make such determination within 90 days after the policy has been in effect. After such 90-day period, the insurer may not cancel or rescind the policy or deny coverage for a claim based on a misstatement or omission in the application regarding credit history that the insurer could reasonably have discovered by a review of credit history or public record.

~~(4)~~ (5) Notwithstanding s. 440.42(3), if cancellation of a policy providing coverage for workers' compensation and employer's liability insurance is requested in writing by the insured, such cancellation shall be effective on the date requested by the insured or, if no date is specified by the insured, cancellation shall be effective on the date of the written request. The carrier is not required to send notice of cancellation to the insured if the cancellation is requested in writing by

the insured. Any retroactive assumption of coverage and liabilities under a policy providing workers' compensation and employer's liability insurance may not exceed 21 days.

-Renumber subsequent subsections-

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

627.422 Assignment of policies.—

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

(2) Subject to its terms relating to assignability, assignments of or under a policy of insurance for property, or any interest arising under such policy, must be in writing and signed by all parties at interest under the policy. An insurance company must be notified within 72 hours of your signing an assignment of benefits for it to be valid. Contractors are permitted to interact with the insurer to establish the proper reimbursement under the claim; however, they may not act as an “adjuster” on the claim, as that term is defined by s.626.854. Any contractor obtaining an assignment of benefits is subject to an Examination Under Oath.

(a) In order for an assignment of benefits contained within or appended to a contract for service to be a valid assignment:

1. The contract must include a detailed estimate of the scope of work to be done and a quote for all materials and services to be rendered.
2. The contract must provide notice that the policyholder retains all other rights and responsibilities under the contract.
3. The homeowner must be given notice of all information regarding the claim submitted by the vendor to the insurance company and any action taken by the vendor to secure payment from the insurance company for work performed.
4. Any changes or modifications to the scope of work under a contract containing an assignment of benefits must be presented to the homeowner for written approval for the assignment to remain valid.
5. The assignee must notify the insurance company in writing within 72 hours of the execution of the assignment.
6. An assignment of benefits acquired by the contractor must be limited to the contracted work performed and is restricted to claims brought only under Coverage A: Dwelling and Coverage B: Other Structures.



- (b) No contract with the assignment shall contain any language that purports to give the contractor assignee the authority to act as an “adjuster” on behalf of the consumer.
- (c) Any assignment in violation or derogation of this subsection or any other statutory provision is unenforceable.

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

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

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

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

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

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

- (1) A familial relationship within the third degree exists between the umpire and any party or a representative of any party;
- (2) The umpire has previously represented any party or a representative of any party in a professional capacity in the same or a substantially related matter;
- (3) The umpire has represented another person in a professional capacity on the same or a substantially related matter, including the claim, on the same property, or on an adjacent property and that other person’s interests are materially adverse to the interests of any party; or
- (4) The umpire has worked as an employer or employee of any party within the preceding 5 years.

Section 7. Section 627.70152, Florida Statutes, is created to read:

627.70152 Contractual Repair Program. —

- (1) An insurer may offer residential coverage, as defined in s. 627.4025, with policy language voluntarily selected by the insured, in exchange for some incentive, to change the Loss Settlement clause of the insurance contract to allow for only repair or

replacement of the damaged property, unless the carrier chooses to tender the dollar value of the repair or replacement. The policy form must be approved by the office and must include must include in bold type no smaller than 18 points the following statement:

“YOU HAVE ELECTED A CONTRACTUAL REPAIR PROGRAM. IN THE EVENT OF A COVERED LOSS TO YOUR DWELLING [name of company] WILL HAVE THE OPTION TO SELECT LICENSED CONTRACTOR(S) TO PERFORM THE REPAIRS, UNLESS WE ELECT TO TENDER THE DOLLAR VALUE OF THE REPAIR OR REPLACEMENT. PLEASE DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT.”

- (2) The contract for the repairs must be between the contractor and the insurer. The insurer must guarantee that all vendors performing work on its policyholder’s dwellings maintain appropriate licensure, obtain all required permits for the work performed, and provide a warranty for a period of no less than three years for the work performed. The insurer must establish and maintain a complaint resolution protocol. The insurer must maintain a mineable database of all claims under the program, including the disposition of all complaints.
- (3) The office must adopt rules to implement this section with regard to appropriate forms, auditable safeguards for consumers, and appropriate sanctions for violations of the qualifications specified in this section. The office must establish a limited scope market review every three years for companies implementing such programs as standard business practice.

Section 8. Subsection (1) and paragraph (c) of subsection (2) of section 627.706, Florida Statutes, are amended to read:

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

(1)(a) Every insurer authorized to transact property insurance in this state must provide coverage for a catastrophic ground cover collapse.

(b) The insurer shall make available, for an appropriate additional premium, coverage for sinkhole losses on any structure, including the contents of personal property contained therein, to the extent provided in the form to which the coverage attaches. The insurer may require an inspection of the property before issuance of sinkhole loss coverage. A policy for residential property insurance may include a deductible amount applicable to sinkhole losses equal to 1 percent, 2 percent, 5 percent, or 10 percent of the policy dwelling limits, with appropriate premium discounts offered with each deductible amount.

(c) The insurer may restrict catastrophic ground cover collapse and sinkhole loss coverage to the principal building, as defined in the applicable policy.

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

(c) “Neutral evaluator” means a professional engineer or a professional geologist who has completed a course of study in 1040 alternative dispute resolution designed or approved by the department for use in the neutral evaluation process, ~~and~~ who is determined by the department to

be fair and impartial, and who is not otherwise ineligible for certification as provided in s. 627.7074.

Section 9. Subsection (1) of section 627.7074, Florida Statutes, is amended to read:

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

(1) The department shall:

(a) Certify and maintain a list of persons who are neutral evaluators.

(b) Adopt rules for certifying, denying certification, suspending certification, and revoking certification as a neutral evaluator, in keeping with qualifications specified in this section and ss. 627.706 and 627.745(4).

~~(c)~~ Prepare a consumer information pamphlet for distribution by insurers to policyholders which clearly describes the neutral evaluation process and includes information necessary for the policyholder to request a neutral evaluation.

Section 10. Paragraph (b) of subsection (4) of section 627.7015, Florida Statutes, is amended to read:

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

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

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

Section 11. Paragraph (c) of subsection (2) of section 627.706, Florida Statutes, is amended to read:

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

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

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

Section 12. Subsection (1) of section 627.7074, Florida Statutes, is amended to read:

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

(1) The department shall:

- (a) Certify and maintain a list of persons who are neutral evaluators.
- (b) Adopt rules for certifying, denying certification, suspending certification, and revoking certification as a neutral evaluator, in keeping with qualifications specified in this section and ss. 627.706 and 627.745(4).
- (c) ~~(b)~~ Prepare a consumer information pamphlet for distribution by insurers to policyholders which clearly describes the neutral evaluation process and includes information necessary for the policyholder to request a neutral evaluation.

Section 13. Section 627.7142, Florida Statutes, is created to read:

627.7142 Residential insurance policyholders claims bill of rights.--

(1) An insurer that furnishes forms for proof of loss to a person claiming to have a loss under an insurance contract issued by such insurer pursuant to s. 627.425, also must provide a copy of the Claims Bill of Rights to the insured claiming the loss. The Claims Bill of Rights must contain the following words, and no other language:

This Claims Bill of Rights is a summary of your rights and responsibilities when you file a claim under your homeowner's insurance policy. The Claims Bill of Rights has been adopted by the Florida Legislature and should be presented to you when you file a claim with your insurance company for damage to your home. This Claims Bill of Rights is specific to the claims process and does not represent all your rights under Florida law regarding your policy.

1. Fair Treatment. You have the right to be treated fairly and honestly when you file a claim. Florida law defines Unfair Insurance Trade Practices and prohibits Unfair Claim Settlement Practices by insurers.

Insurance companies must:

- a. Acknowledge and act promptly upon communications with respect to claims within 14 calendar days, your insurance company must acknowledge receipt of your claim unless your insurer's acknowledgment reasonably advises you that the claim appears not to be covered, the acknowledgment must also provide necessary claim forms, and instructions, including an appropriate telephone number for you to call.
- b. Promptly provide a reasonable explanation in writing to you regarding the basis for the denial of a claim or for the offer of a compromise settlement;
- c. Upon your written request within 30 days after the proof-of-loss statements have been completed, the insurance company must affirm or deny coverage of a claim, the dollar amount or the extent of coverage, or provide a written statement that the claim is being investigated;
- d. Promptly notify you of any additional information necessary for the processing of a claim;

e. Clearly explain to you the nature of the requested information and the reasons why such information is necessary; and

f. Pay undisputed amounts owed to you within 90 days after the insurer receives notice of a residential property insurance claim and determines the amount owed for a covered loss. [Note: there are some exceptions for situations in which it would be impossible for the company to pay on time].

Insurance companies must not:

a. Make a material misrepresentation for the purpose of settling a claim on less favorable terms than those provided in the policy;

b. Misrepresent pertinent facts or insurance policy provisions relating to a coverage at issue;

c. Deny a claim without conducting a reasonable investigation based upon available information.

2. Information not required for claim processing. You have the right to refuse to provide your insurance company with information that does not relate to your claim. In addition, you may refuse to provide your federal income tax records unless your insurer gets a court order or your claim involves lost income or a fire loss.

3. Alternative dispute resolution. You have the right to request free Mediation of their homeowner's claim or request Neutral Evaluation of your sinkhole claim. The request can be made to DFS Consumer Services. Mediation and Neutral Evaluation are non-binding, and any settlement agreed upon during Mediation may be rescinded within 3 business days by you, the policyholder. If you seek resolution of a claim by Mediation, you must be present for the Mediation and may not elect to have any other representative as proxy, including a contractor or public adjuster.

4. Investigation of your claim. An insurance company is allowed to inspect your property following a report of a loss under your policy. Florida law requires an adjuster to provide 48 hours notice to you to schedule a time to inspect your property unless you need to meet a bona fide immediate personal emergency that is caused by fire, water or catastrophic events, when delay may exacerbate the damage to the covered property. The 48 hour notice requirement does not apply to the company's adjuster within the first 48 hours after a claim has been filed. In any event, you also have the right to waive this requirement for any adjuster.

5. Examination under oath. An insurance company is allowed to take recorded statements and request you undergo an Examination Under Oath (EUO), which should be limited to information that is relevant and reasonably necessary to investigate your claim. A request for an EUO by an insurance company should include the following:

- a. A copy of the Claims Bill of Rights
  - b. The reason and purpose of the EUO and any specific information required
  - c. A location and proposed times for conducting the EUO
  - d. Notice that the insurer will be represented by legal counsel and that you may be represented by private counsel at the EUO and may record the examination proceedings in their entirety.
  - e. Notice that you may request a copy, free of charge, of any transcript from the EUO and may make sworn corrections to the transcript to accurately reflect the testimony under oath. Refusing to attend an EUO may affect your rights to recovery under your insurance contract.
6. Contracts for repair. After a loss, you will need to contract for the repairs to your home. READ ANY CONTRACT CAREFULLY BEFORE SIGNING. Check with the Florida Department of Business and Professional Regulation to verify the contractor is licensed in Florida for the type of work to be performed on your home. All contracts for repair work to which insurance proceeds may be applied must be in the form of a written contract. The contract must include a detailed written estimate of the work to be performed and a quote for all materials and services to be rendered. If the scope and quote need to be revised, the contractor must notify you. The contract must include a provision allowing you to rescind the contract, in writing, within 72 hours of signing it.
7. Emergency remediation/mitigation or repair. Homeowners will often need to make emergency repairs and are often most vulnerable to fraud and abuse immediately following a loss. An Emergency Mitigation Contractor is defined as any individual or company who provides services regarding damages to any residential structure (or personal property contained therein) which requires timely mitigation or remediation, including removal of property, removal of water or other contaminants, cleaning, sanitizing, incidental demolition, or other treatment, including preventive activities, whenever the lack of immediate mitigation will cause further damage to the property. Emergency Mitigation Contractors must have a certification or qualification from a Department of Business and Professional Regulation-recognized organization related to scope of work performed. Any work beyond removal of certain debris and materials may require the work be performed by a licensed contractor. The contract with any Emergency Mitigation Contract must contain a detailed scope of work and quote for materials and services to be provided.
8. Assigning your rights to recovery. You may be asked by the contractor to assign your rights to payment for your losses under the insurance contract. If you elect to sign a contract with an assignment of benefits provision, the assignment must be limited to your home and other structures and must not apply to any other coverage for your personal belongings or additional living expenses. An insurance company must be

notified within 72 hours of your signing an assignment of benefits for it to be valid. Contractors are allowed to interact with your insurance company to establish the proper reimbursement under the claim; however, they may not act as an “adjuster” on the claim. Any contractor obtaining an assignment of benefits is subject to an Examination Under Oath.

9. Credit information. Insurance companies are allowed to use your credit history for underwriting and determining your premiums. Your claim should not be denied if the sole reason for denial was failure to disclose a credit related issue on your insurance application and the policy has been effect for more than 90 days.
10. Right to repair/contractual managed repair programs. If your policy contains language for a managed repair program, you are still entitled to fair treatment in the settlement of your claim. You are entitled to a fair complaint process and a warranty of the work performed on your home. If you experience any problems, please contact DFS Consumer Services.
11. Mortgage companies withholding funds. Mortgage companies will often be added as an additional payee on any settlement check from the insurance company. Federal guidelines allow mortgage companies to hold your settlement funds until your repair work has been performed and inspected. Mortgage companies may also apply your settlement funds toward your mortgages if you are behind on your payments.

(2) This section shall not be construed as creating a civil cause of action by any individual policyholder against any individual insurer.

Section 14. Section 627.7143, Florida Statutes, is created to read:

627.7143 Examination under oath; notice; conduct.--

(1) This section applies to an examination of an insured under oath pursuant to any policy that insures property and contains a provision for examining an insured under oath.

(2) An insurer that determines that it will conduct an examination under oath of a policyholder shall notify the policyholder of that determination in writing. The notification must include a copy of Claims Bill of Rights and must include the following:

(a) A proposed location that is easily accessible to the policyholder, a proposed date with two alternative dates, and a proposed time to start the examination.

(b) The reason and purpose for the examination under oath.

(c) Notice that the insurer will be represented by legal counsel at the examination under oath.

(d) Notice that the policyholder may be represented by his or her private legal counsel and may record the examination proceedings in their entirety.

(e) Identification of documentation the policyholder is requested to bring to the examination under oath. The insurer must provide the reasons why this documentation is necessary, and must disclose if the insurer is in possession of the requested documentation.

(3) Upon the policyholder’s request and free of charge, the insurer will provide the policyholder with a copy of the transcript of the proceedings and a tape of the proceedings, if one

exists. When a policyholder requests a copy of the transcript, the tape, or both, of the examination under oath, the insurer shall provide it within 10 business days of receipt by the insurer or its counsel of the transcript, the tape, or both. A policyholder may make sworn corrections to the transcript so it accurately reflects the testimony under oath.

(4) An insurer may conduct an examination under oath only to obtain information that is relevant and reasonably necessary to process or investigate the claim.

(5) In an examination under oath, a policyholder may assert any objection that can be made in a deposition under state or federal law. However, if as a result of asserting an objection a policyholder fails to provide an answer to a material question, and that failure prevents the insurer from being able to determine the extent of loss and validity of the claim, the rights of the policyholder under the contract may be affected.

The office may adopt rules to administer this section.

Section 15. Section 627.715, Florida Statutes, is created to read:

627.715 Repair contracts; emergency mitigation. --

(1) All contracts for mitigation, repair, and restoration work to which insurance proceeds may be applied must be in writing and include a detailed estimate of the scope of work to be done and a quote for all materials and services to be rendered. Any variance from the scope of work documented and agreed to in the original contract must be pre-approved in writing by the policyholder. The contract must include a provision allowing the policyholder to rescind the contract, in writing, within 72 hours of signing it and without penalty. A fee imposed by a mortgagee for an inspection of repair work performed on a private residence prior to a disbursement of claim funds shall be limited to \$25.

(2) As used in this subsection:

(a) Emergency Mitigation Contractor means an individual or company that, for compensation, undertakes to, submits a bid to, or does himself or herself or by others performs emergency mitigation services.

(b) Emergency Mitigation Services means the delivery of goods or services that are needed to mitigate damage that is caused by fire, water or catastrophic events, when delay may exacerbate the damage to the covered property. Services includes, but are not limited to, the removal of contents, removal of water or other contaminants, cleaning, sanitizing, incidental demolition, or other treatment, including preventive activities.

(3) In order to provide emergency mitigation services, solicit business, or publicly advertise as an emergency mitigation contractor in this state, or use the words “restoration”, “mitigation”, or “disaster” in an advertisement for services in this state, an individual or company must possess a valid certification or qualification from an organization that is recognized by the Florida Department of Business and Professional Regulation as one that provides mitigation standards that are widely used and accepted by the mitigation, restoration, and cleaning industry.



- (a) A company is considered to be certified if a company representative who possesses a valid certification personally supervises emergency mitigation services performed.
  - (b) A company that possesses a valid Division 1 license or Division 2 license under Chapter 489, Florida Statutes, which is providing services within the scope of their license, is exempt from the certification requirement.
  - (c) Work to be performed that requires a license under Chapter 489, Florida Statutes, must be performed by a person or company that holds a valid license pursuant to that chapter.
- (4) Emergency mediation services may only be provided pursuant to a written contract that must include a detailed estimate of the scope of work to be done and a quote for all materials and services to be rendered. Any variance from the scope of work documented and agreed to in the original contract must be approved in writing by the policyholder. The contract must include a provision allowing the policyholder to rescind the contract, in writing, within 72 hours of signing it. The scope of work to be included in the contract for services by an emergency mitigation contractor must be reviewed, approved and inspected by the supervisor holding certification and must be consistent with the provisions set forth in ANSI/IICRC S500 Standard and Reference Guide for Professional Water Damage Restoration.
- (5) If the contract for emergency mitigation services contains an assignment of benefits under the policy:
- (a) The assignment must comply with s. 627.422, to be a valid assignment.
  - (b) The assignment is limited to the contracted work performed and is restricted to claims brought only under Coverage A: Dwelling and Coverage B: Other Structures.
  - (c) All documents submitted to the insurer for reimbursement must be consistent with the contracted scope of work and must meet the standards set forth in ANSI.IICRC S500 Standard and Reference Guide for Professional Water Damage Restoration.
- (6) An emergency mitigation contractor is prohibited from providing value of any kind to any individual or company that referred a policyholder to the contractor.
- (7) The Office of Insurance Regulation is authorized to promulgate administrative rules to implement this section with regard to the required elements of a contract for services, qualifications of emergency mitigation contractors, exemptions to certification, and forms.

Section 16. Subsection (3) of section 627.745, Florida Statutes, is amended, present subsections (4) and (5) of that section are renumbered as subsections (5) and (6), respectively, and a new subsection (4) is added to that section, to read:

627.745 Mediation of claims.—

(3)(a) The department shall approve mediators to conduct mediations pursuant to this section. All mediators must file an application under oath for approval as a mediator.

(b) To qualify for approval as a mediator, an individual ~~a person~~ must meet one of the following qualifications:

1. Possess an active certification as a Florida Circuit Court Mediator. A Florida Circuit Court Mediator in a lapsed, suspended, or decertified status is not eligible to participate in the mediation program ~~a masters or doctorate degree in psychology, counseling, business, accounting, or economics, be a member of The Florida Bar, be licensed as a certified accountant, or demonstrate that the applicant for approval has been actively engaged as a qualified mediator for at least 4 years prior to July 1, 1990.~~

2. Be an approved department mediator as of July 1, 2013, and have conducted at least one mediation on behalf of the department within 4 years immediately preceding that the date the application for approval is filed with the department, have completed a minimum of a 40 hour training program approved by the department and successfully passed a final examination included in the training program and approved by the department. The training program shall include and address all of the following:

- ~~a. Mediation theory.~~
- ~~b. Mediation process and techniques.~~
- ~~c. Standards of conduct for mediators.~~
- ~~d. Conflict management and intervention skills.~~
- ~~e. Insurance nomenclature.~~

(4) The department shall deny an application, or revoke its approval of a mediator or neutral evaluator to serve in such capacity, if the department finds that any of the following grounds exist:

(a) Lack of one or more of the qualifications specified in this section for approval or certification.

(b) Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain the approval or certification.

(c) Demonstrated lack of fitness or trustworthiness to act as a mediator or neutral evaluator.

(d) Fraudulent or dishonest practices in the conduct of mediation or neutral evaluation or in the conduct of business in the financial services industry.

(e) Violation of any provision of this code or of a lawful order or rule of the department or aiding, instructing, or encouraging another party in committing such a violation.

The department may adopt rules to administer this subsection.

Section 18. This act shall take effect upon becoming a law.