

1                   A bill to be entitled  
2           An act relating to insurance; amending s.  
3           627.4035, F.S.; providing for payment of  
4           insurance claims by debit card or other form of  
5           electronic funds transfer; amending s. 624.426,  
6           F.S.; providing an exemption to the  
7           countersignature law; amending s. 627.7015,  
8           F.S.; defining the term "claim" for purposes of  
9           property claim mediation; providing an  
10          effective date.

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

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14           Section 1. Subsection (3) of section 627.4035, Florida  
15 Statutes, is amended to read:

16           627.4035 Cash payment of premiums; claims.--

17           (3) All payments of claims made in this state under  
18 any contract of insurance shall be paid in cash consisting of  
19 coins, currency, checks, drafts, or money orders and, if by  
20 check or draft, shall be in such form as will comply with the  
21 standards for cash items adopted by the Federal Reserve System  
22 to facilitate the sorting, routing, and mechanized processing  
23 of such items. If authorized by the recipient, payment of  
24 claims may be made by debit card or other forms of electronic  
25 transfer.

26           Section 2. Subsection (5) is added to section 624.426,  
27 Florida Statutes, 1998 Supplement, to read:

28           624.426 Exceptions to resident agent and  
29 countersignature law.--Section 624.425 does not apply to:

30           (5) Policies of insurance issued by insurers whose  
31 agents represent only one company or group of companies under

1 common ownership and for which a Florida resident agent or  
2 customer representative has lawfully signed the application  
3 for insurance before submitting the application to the  
4 insurer.

5 Section 3. Section 627.7015, Florida Statutes, is  
6 amended to read:

7 627.7015 Alternative procedure for resolution of  
8 disputed property insurance claims.--

9 (1) ~~PURPOSE AND SCOPE.~~ This section sets forth a  
10 nonadversarial alternative dispute resolution procedure for a  
11 mediated claim resolution conference prompted by the need for  
12 effective, fair, and timely handling of property insurance  
13 claims. There is a particular need for an informal,  
14 nonthreatening forum for helping parties who elect this  
15 procedure to resolve their claims disputes because most  
16 homeowner's insurance policies obligate insureds to  
17 participate in a potentially expensive and time-consuming  
18 adversarial appraisal process prior to litigation. The  
19 procedure set forth in this section is designed to bring the  
20 parties together for a mediated claims settlement conference  
21 without any of the trappings or drawbacks of an adversarial  
22 process. Before resorting to these procedures, insureds and  
23 insurers are encouraged to resolve claims as quickly and  
24 fairly as possible. This section is available with respect to  
25 claims under personal lines policies for all claimants and  
26 insurers prior to commencing the appraisal process, or  
27 commencing litigation. If requested by the insured,  
28 participation by legal counsel shall be permitted. Mediation  
29 under this section is also available to litigants referred to  
30 the department by a county court or circuit court. This  
31 section does not apply to commercial coverages, to private

1 passenger motor vehicle insurance coverages, or to disputes  
2 relating to liability coverages in policies of property  
3 insurance.

4 (2) At the time a first-party claim within the scope  
5 of this section is filed, the insurer shall notify all  
6 first-party claimants of their right to participate in the  
7 mediation program under this section. The department shall  
8 prepare a consumer information pamphlet for distribution to  
9 persons participating in mediation under this section.

10 (3) The costs of mediation shall be reasonable, and  
11 the insurer shall bear all of the cost of conducting mediation  
12 conferences, except as otherwise provided in this section. If  
13 an insured fails to appear at the conference, the conference  
14 shall be rescheduled upon the insured's payment of the costs  
15 of a rescheduled conference. If the insurer fails to appear at  
16 the conference, the insurer shall pay the insured's actual  
17 cash expenses incurred in attending the conference if the  
18 insurer's failure to attend was not due to a good cause  
19 acceptable to the department. An insurer will be deemed to  
20 have failed to appear if the insurer's representative lacks  
21 authority to settle the full value of the claim. The insurer  
22 shall incur an additional fee for a rescheduled conference  
23 necessitated by the insurer's failure to appear at a scheduled  
24 conference. The fees assessed by the administrator shall  
25 include a charge necessary to defray the expenses of the  
26 department related to its duties under this section and shall  
27 be deposited in the Insurance Commissioner's Regulatory Trust  
28 Fund.

29 (4) The department shall adopt by rule a property  
30 insurance mediation program to be administered by the  
31 department or its designee. The department may also adopt

1 special rules which are applicable in cases of an emergency  
2 within the state. The rules shall be modeled after practices  
3 and procedures set forth in mediation rules of procedure  
4 adopted by the Supreme Court. The rules shall provide for:

5 (a) Reasonable requirement for processing and  
6 scheduling of requests for mediation.

7 (b) Qualifications of mediators as provided in s.  
8 627.745 and in the Florida Rules of Certified and Court  
9 Appointed Mediators, and for such other individuals as are  
10 qualified by education, training, or experience as the  
11 department determines to be appropriate.

12 (c) Provisions governing who may attend mediation  
13 conferences.

14 (d) Selection of mediators.

15 (e) Criteria for the conduct of mediation conferences.

16 (f) Right to legal counsel.

17 (5) All statements made and documents produced at a  
18 mediation conference shall be deemed to be settlement  
19 negotiations in anticipation of litigation within the scope of  
20 s. 90.408. All parties to the mediation must negotiate in good  
21 faith and must have the authority to immediately settle the  
22 claim. Mediators are deemed to be agents of the department and  
23 shall have the immunity from suit provided in s. 44.107.

24 (6) Mediation is nonbinding; however, if a written  
25 settlement is reached, the insured has 3 business days within  
26 which the insured may rescind the settlement unless the  
27 insured has cashed or deposited any check or draft disbursed  
28 to the insured for the disputed matters as a result of the  
29 conference. If a settlement agreement is reached and is not  
30 rescinded, it shall be binding and act as a release of all

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1 specific claims that were presented in that mediation  
2 conference.

3 (7) If the insurer requests the mediation, and the  
4 mediation results are rejected by either party, the insured  
5 shall not be required to submit to or participate in any  
6 contractual loss appraisal process of the property loss damage  
7 as a precondition to legal action for breach of contract  
8 against the insurer for its failure to pay the policyholder's  
9 claims covered by the policy.

10 (8) The department may designate an entity or person  
11 to serve as administrator to carry out any of the provisions  
12 of this section and may take this action by means of a written  
13 contract or agreement.

14 (9) For purposes of this section, the term "claim"  
15 refers to any dispute between an insurer and an insured  
16 relating to a material issue of fact other than a dispute:

17 (a) With respect to which the insurer has a reasonable  
18 basis to suspect fraud;

19 (b) Where, based on agreed-upon facts as to the cause  
20 of loss, there is no coverage under the policy; or

21 (c) With respect to which the insurer has a reasonable  
22 basis to believe that the claimant has intentionally made a  
23 material misrepresentation of fact which is relevant to the  
24 claim, and the entire request for payment of a loss has been  
25 denied on the basis of the material misrepresentation.

26 (d) Where the amount in controversy is less than \$500,  
27 unless the parties agree to mediate a dispute involving a  
28 lesser amount.

29 Section 4. This act shall take effect upon becoming a  
30 law.

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