

By Representative Cosgrove

1 A bill to be entitled
2 An act relating to insurance; amending s.
3 624.426, F.S.; providing an exemption to the
4 countersignature law; amending s. 627.7015,
5 F.S.; defining the term "claim" for purposes of
6 property claim mediation; providing an
7 effective date.

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

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11 Section 1. Subsection (5) is added to section 624.426,
12 Florida Statutes, 1998 Supplement, to read:

13 624.426 Exceptions to resident agent and
14 countersignature law.--Section 624.425 does not apply to:
15 (5) Policies of insurance issued by insurers whose
16 agents represent only one company or group of companies under
17 common ownership and for which a Florida resident agent or
18 customer representative has lawfully signed the application
19 for insurance before submitting the application to the
20 insurer.

21 Section 2. Section 627.7015, Florida Statutes, is
22 amended to read:

23 627.7015 Alternative procedure for resolution of
24 disputed property insurance claims.--

25 (1) ~~PURPOSE AND SCOPE.~~--This section sets forth a
26 nonadversarial alternative dispute resolution procedure for a
27 mediated claim resolution conference prompted by the need for
28 effective, fair, and timely handling of property insurance
29 claims. There is a particular need for an informal,
30 nonthreatening forum for helping parties who elect this
31 procedure to resolve their claims disputes because most

1 homeowner's insurance policies obligate insureds to
2 participate in a potentially expensive and time-consuming
3 adversarial appraisal process prior to litigation. The
4 procedure set forth in this section is designed to bring the
5 parties together for a mediated claims settlement conference
6 without any of the trappings or drawbacks of an adversarial
7 process. Before resorting to these procedures, insureds and
8 insurers are encouraged to resolve claims as quickly and
9 fairly as possible. This section is available with respect to
10 claims under personal lines policies for all claimants and
11 insurers prior to commencing the appraisal process, or
12 commencing litigation. If requested by the insured,
13 participation by legal counsel shall be permitted. Mediation
14 under this section is also available to litigants referred to
15 the department by a county court or circuit court. This
16 section does not apply to commercial coverages, to private
17 passenger motor vehicle insurance coverages, or to disputes
18 relating to liability coverages in policies of property
19 insurance.

20 (2) At the time a first-party claim within the scope
21 of this section is filed, the insurer shall notify all
22 first-party claimants of their right to participate in the
23 mediation program under this section. The department shall
24 prepare a consumer information pamphlet for distribution to
25 persons participating in mediation under this section.

26 (3) The costs of mediation shall be reasonable, and
27 the insurer shall bear all of the cost of conducting mediation
28 conferences, except as otherwise provided in this section. If
29 an insured fails to appear at the conference, the conference
30 shall be rescheduled upon the insured's payment of the costs
31 of a rescheduled conference. If the insurer fails to appear at

1 the conference, the insurer shall pay the insured's actual
2 cash expenses incurred in attending the conference if the
3 insurer's failure to attend was not due to a good cause
4 acceptable to the department. An insurer will be deemed to
5 have failed to appear if the insurer's representative lacks
6 authority to settle the full value of the claim. The insurer
7 shall incur an additional fee for a rescheduled conference
8 necessitated by the insurer's failure to appear at a scheduled
9 conference. The fees assessed by the administrator shall
10 include a charge necessary to defray the expenses of the
11 department related to its duties under this section and shall
12 be deposited in the Insurance Commissioner's Regulatory Trust
13 Fund.

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

21 (a) Reasonable requirement for processing and
22 scheduling of requests for mediation.

23 (b) Qualifications of mediators as provided in s.
24 627.745 and in the Florida Rules of Certified and Court
25 Appointed Mediators, and for such other individuals as are
26 qualified by education, training, or experience as the
27 department determines to be appropriate.

28 (c) Provisions governing who may attend mediation
29 conferences.

30 (d) Selection of mediators.

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

1 (f) Right to legal counsel.

2 (5) All statements made and documents produced at a
3 mediation conference shall be deemed to be settlement
4 negotiations in anticipation of litigation within the scope of
5 s. 90.408. All parties to the mediation must negotiate in good
6 faith and must have the authority to immediately settle the
7 claim. Mediators are deemed to be agents of the department and
8 shall have the immunity from suit provided in s. 44.107.

9 (6) Mediation is nonbinding; however, if a written
10 settlement is reached, the insured has 3 business days within
11 which the insured may rescind the settlement unless the
12 insured has cashed or deposited any check or draft disbursed
13 to the insured for the disputed matters as a result of the
14 conference. If a settlement agreement is reached and is not
15 rescinded, it shall be binding and act as a release of all
16 specific claims that were presented in that mediation
17 conference.

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

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

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

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1 (a) With respect to which the insurer has a reasonable
2 basis to suspect fraud;

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

5 (c) With respect to which the insurer has a reasonable
6 basis to believe that the claimant has intentionally made a
7 material misrepresentation of fact which is relevant to the
8 claim, and the entire request for payment of a loss has been
9 denied on the basis of the material misrepresentation.

10 Section 3. This act shall take effect upon becoming a
11 law.

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14 SENATE SUMMARY

15 Provides an exception to insurance countersignature
16 requirements for policies issued by certain insurers with
17 Florida resident agents. Defines the term "claim" for
18 purposes of certain alternative procedures for resolving
19 disputed property insurance claims.
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