

By Senator Fasano

11-1063A-04

1 A bill to be entitled
2 An act relating to consumers' insurance rights;
3 amending s. 20.121, F.S.; providing that an
4 employee of the Division of Consumer Services
5 of the Department of Financial Services be
6 designated as primary contact for consumers on
7 issues involving sinkholes; amending s.
8 626.9541, F.S.; providing that, under certain
9 circumstances mandating arbitration pursuant to
10 an insurance contract is an unfair claim
11 settlement practice; providing that the refusal
12 to insure based on certain prior water damage
13 and prior claims resulting from an act of God
14 are unfair or deceptive acts; amending s.
15 626.9641, F.S.; requiring that personal and
16 commercial residential insurers offer
17 comprehensive coverage to consumers; providing
18 rulemaking authority; creating s. 626.9742,
19 F.S.; requiring certain information to be
20 provided to consumers related to loss
21 underwriting; creating s. 625.9743, F.S.,
22 relating to claim settlement practices for
23 motor vehicle insurance; prescribing standards
24 to be followed by insurers; providing
25 rulemaking authority; creating s. 626.9744,
26 F.S., relating to claim settlement practices
27 for residential and commercial property
28 insurance; prescribing standards to be followed
29 by insurers; providing rulemaking authority;
30 amending s. 627.4133, F.S.; requiring notice to
31 a mortgage company for its failure to timely

1 pay a homeowner's premium pursuant to an escrow
2 agreement; providing that the mortgage company
3 is responsible for any additional costs
4 relating to policy lapse or reinstatement and
5 for any loss to the insured property during the
6 period of lapse; prohibiting cancellation or
7 nonrenewal of property insurance as a result of
8 claims for water damage under certain
9 conditions; providing severability; providing
10 an 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. Paragraph (h) of subsection (2) of section
15 20.121, Florida Statutes, is amended to read:

16 20.121 Department of Financial Services.--There is
17 created a Department of Financial Services.

18 (2) DIVISIONS.--The Department of Financial Services
19 shall consist of the following divisions:

20 (h) The Division of Consumer Services, which shall
21 include a Bureau of Funeral and Cemetery Services.

22 1. The Division of Consumer Services shall perform the
23 following functions concerning products or services regulated
24 by the Department of Financial Services or by either office of
25 the Financial Services Commission:

26 a. Receive inquiries and complaints from consumers.†

27 b. Prepare and disseminate such information as the
28 department deems appropriate to inform or assist consumers.†

29 c. Provide direct assistance and advocacy for
30 consumers who request such assistance or advocacy.†

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1 d. With respect to apparent or potential violations of
2 law or applicable rules by a person or entity licensed by the
3 department or by either office of the commission, report such
4 apparent or potential violation to the appropriate division of
5 the department or office of the commission, which may take
6 such further action as it deems appropriate.

7 e. Designate an employee of the division as primary
8 contact for consumers on issues relating to sinkholes.

9 2. Any person licensed or issued a certificate of
10 authority by the department or by the Office of Insurance
11 Regulation shall respond, in writing, to the Division of
12 Consumer Services within 20 days after receipt of a written
13 request for information from the division concerning a
14 consumer complaint. The response must address the issues and
15 allegations raised in this complaint. The division may, in its
16 discretion, impose an administrative penalty for failure to
17 comply with this subparagraph in an amount up to \$2,500 per
18 violation upon any entity licensed by the department or the
19 Office of Insurance Regulation and \$250 for the first
20 violation, \$500 for the second violation and up to \$1,000 per
21 violation thereafter upon any individual licensed by the
22 department or the Office of Insurance Regulation.

23 3. The department may adopt rules to implement the
24 provisions of this paragraph.

25 4. The powers, duties, and responsibilities expressed
26 or granted in this paragraph shall not limit the powers,
27 duties, and responsibilities of the Department of Financial
28 Services, the Financial Services Commission, the Office of
29 Insurance Regulation, or the Office of Financial Regulation
30 set forth elsewhere in the Florida Statutes.

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1 Section 2. Paragraphs (i) and (x) of subsection (1) of
2 section 626.9541, Florida Statutes, are amended to read:

3 626.9541 Unfair methods of competition and unfair or
4 deceptive acts or practices defined.--

5 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR
6 DECEPTIVE ACTS.--The following are defined as unfair methods
7 of competition and unfair or deceptive acts or practices:

8 (i) Unfair claim settlement practices.--

9 1. Attempting to settle claims on the basis of an
10 application, when serving as a binder or intended to become a
11 part of the policy, or any other material document which was
12 altered without notice to, or knowledge or consent of, the
13 insured.+

14 2. A material misrepresentation made to an insured or
15 any other person having an interest in the proceeds payable
16 under such contract or policy, for the purpose and with the
17 intent of effecting settlement of such claims, loss, or damage
18 under such contract or policy on less favorable terms than
19 those provided in, and contemplated by, such contract or
20 policy.+~~or~~

21 3. Committing or performing with such frequency as to
22 indicate a general business practice any of the following:

23 a. Failing to adopt and implement standards for the
24 proper investigation of claims;

25 b. Misrepresenting pertinent facts or insurance policy
26 provisions relating to coverages at issue;

27 c. Failing to acknowledge and act promptly upon
28 communications with respect to claims;

29 d. Denying claims without conducting reasonable
30 investigations based upon available information;

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1 e. Failing to affirm or deny full or partial coverage
2 of claims, and, as to partial coverage, the dollar amount or
3 extent of coverage, or failing to provide a written statement
4 that the claim is being investigated, upon the written request
5 of the insured within 30 days after proof-of-loss statements
6 have been completed;

7 f. Failing to promptly provide a reasonable
8 explanation in writing to the insured of the basis in the
9 insurance policy, in relation to the facts or applicable law,
10 for denial of a claim or for the offer of a compromise
11 settlement;

12 g. Failing to promptly notify the insured of any
13 additional information necessary for the processing of a
14 claim; or

15 h. Failing to clearly explain the nature of the
16 requested information and the reasons why such information is
17 necessary.

18 4. Mandating arbitration in an insurance contract or
19 policy with the intent of effecting settlement of claims,
20 losses, or damages under such contract unless the company
21 offers the consumer the ability to enter into a contract
22 without this provision.

23 (x) Refusal to insure.--In addition to other
24 provisions of this code, the refusal to insure, or continue to
25 insure, any individual or risk solely because of:

26 1. Race, color, creed, marital status, sex, or
27 national origin;

28 2. The residence, age, or lawful occupation of the
29 individual or the location of the risk, unless there is a
30 reasonable relationship between the residence, age, or lawful
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1 occupation of the individual or the location of the risk and
2 the coverage issued or to be issued;

3 3. The insured's or applicant's failure to agree to
4 place collateral business with any insurer, unless the
5 coverage applied for would provide liability coverage which is
6 excess over that provided in policies maintained on property
7 or motor vehicles;

8 4. The insured's or applicant's failure to purchase
9 noninsurance services or commodities, including automobile
10 services as defined in s. 624.124;

11 5. The fact that the insured or applicant is a public
12 official; ~~or~~

13 6. The fact that the insured or applicant had been
14 previously refused insurance coverage by any insurer, when
15 such refusal to insure or continue to insure for this reason
16 occurs with such frequency as to indicate a general business
17 practice; ~~or~~

18 7. The existence of any water damage loss at a private
19 residence which was subsequently repaired and which occurred
20 prior to the current or prospective ownership of the property;
21 or

22 8. Prior claims resulting from an act of God.

23 Section 3. Section 626.9641, Florida Statutes, is
24 amended to read:

25 626.9641 Policyholders, bill of rights.--

26 (1) The principles expressed in the following
27 statements shall serve as standards to be followed by the
28 department, commission, and office in exercising their powers
29 and duties, in exercising administrative discretion, in
30 dispensing administrative interpretations of the law, and in
31 adopting rules:

1 (a) Policyholders shall have the right to competitive
2 pricing practices and marketing methods that enable them to
3 determine the best value among comparable policies.

4 (b) Policyholders shall have the right to obtain
5 comprehensive coverage.

6 (c) Policyholders shall have the right to insurance
7 advertising and other selling approaches that provide accurate
8 and balanced information on the benefits and limitations of a
9 policy.

10 (d) Policyholders shall have a right to an insurance
11 company that is financially stable.

12 (e) Policyholders shall have the right to be serviced
13 by a competent, honest insurance agent or broker.

14 (f) Policyholders shall have the right to a readable
15 policy.

16 (g) Policyholders shall have the right to an insurance
17 company that provides an economic delivery of coverage and
18 that tries to prevent losses.

19 (h) Policyholders shall have the right to a balanced
20 and positive regulation by the department, commission, and
21 office.

22 (2) With respect to paragraph (1)(b), personal and
23 commercial residential insurers shall make comprehensive
24 coverage available to policyholders, and the commission may
25 adopt rules to determine what constitutes comprehensive
26 coverage for those lines of insurance.

27 (3)~~(2)~~ This section does ~~shall~~ not ~~create~~ be construed
28 ~~as creating~~ a civil cause of action by any individual
29 policyholder against any individual insurer.

30 Section 4. Section 626.9742, Florida Statutes, is
31 created to read:

1 626.9742 Reporting by insurers related to loss
2 underwriting.--When an insurer refuses to provide coverage to
3 an applicant due to adverse underwriting information, the
4 insurer shall:

5 (1) Provide to the applicant specific information
6 regarding the reason or reasons for the refusal to insure; and

7 (2) When the reason for the refusal to insure is based
8 on a loss underwriting history or report, upon request by the
9 applicant, provide the applicant with a copy of the loss
10 underwriting history or report at no cost to the applicant.

11 Section 5. Section 626.9743, Florida Statutes, is
12 created to read:

13 626.9743 Claim settlement practices relating to motor
14 vehicle insurance.--

15 (1) This section shall apply to the adjustment and
16 settlement of both first-party and third-party personal and
17 commercial motor vehicle insurance claims.

18 (2) An insurer may not, when liability and damages
19 owed under the policy are reasonably clear, recommend that a
20 third-party claimant make a claim under his or her own policy
21 solely to avoid paying the claim under the policy issued by
22 that insurer.

23 (3) An insurer that elects to repair a motor vehicle
24 and designates a specific repair shop for vehicle repairs
25 shall cause the damaged vehicle to be restored to its physical
26 condition prior to the loss at no additional cost to the
27 insured or third-party claimant other than as stated in the
28 policy.

29 (4) An insurer may not require the use of replacement
30 parts in the repair of a motor vehicle which are not at least
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1 equal in kind and quality to the original parts in terms of
2 fit, quality, and performance.

3 (5) The department may adopt rules establishing
4 requirements applicable to the adjustment and settlement of
5 motor vehicle insurance claims. The rules may include, but
6 need not be limited to:

7 (a) Descriptions of methods that may be used by
8 insurers to adjust and settle motor vehicle total losses,
9 including cash settlements or replacement motor vehicles.

10 (b) Standards to require that a replacement motor
11 vehicle be comparable to the damaged motor vehicle, including
12 such factors as manufacturer, model type, model year, options,
13 mileage, and availability.

14 (c) Descriptions of methods that may be used by
15 insurers to derive the cost of cash settlements for purposes
16 of adjusting and settling motor vehicle total losses,
17 including the consideration of cost of comparable motor
18 vehicles in the applicable area, the cost as determined by an
19 applicable source for motor vehicle valuation, and the cost as
20 determined by licensed dealer quotes in the applicable area.

21 (d) Requirements that must be met by any source for
22 motor vehicle valuation used by insurers for purposes of
23 adjusting and settling motor vehicle total losses, including
24 the relative weight given to vehicle values determined by
25 geographic area, the number or percentage of vehicles and
26 model years included in the source, and the validity of values
27 determined by comparison to actual local vehicle values.

28 (e) Standards for claim reductions based on charges
29 for betterment or depreciation or other charges.

30 (f) Standards for the settlement of partial losses
31 based on written estimates obtained by insurers and claimants,

1 including options for cash settlements and agreements with
2 repair shops.

3 Section 6. Section 626.9744, Florida Statutes, is
4 created to read:

5 626.9744 Claim settlement practices relating to
6 property insurance.--Unless otherwise provided by the policy,
7 when a homeowner's insurance policy provides for the
8 adjustment and settlement of first-party losses based on
9 repair or replacement cost, the following requirements apply:

10 (1) When a loss requires repair or replacement of an
11 item or part, any consequential physical damage incurred in
12 making such repair or replacement which is covered and not
13 otherwise excluded by the policy shall be included in the
14 loss. The insured may not be required to pay for betterment
15 required by ordinance or code or any other cost except for the
16 applicable deductible, unless specifically excluded by the
17 policy.

18 (2) When a loss requires repair or replacement of
19 portions of a home, the repair or replacement shall include
20 adjoining areas to the extent necessary to achieve a
21 reasonably uniform appearance. The commission may adopt rules
22 governing the determination of the area to which the
23 uniform-appearance requirement applies.

24 Section 7. Paragraph (b) of subsection (2) of section
25 627.4133, Florida Statutes, is amended, and subsection (4) is
26 added to that section, to read:

27 627.4133 Notice of cancellation, nonrenewal, or
28 renewal premium.--

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

1 condominium association, condominium unit owner's, apartment
2 building, or other policy covering a residential structure or
3 its contents:

4 (b) The insurer shall give the named insured written
5 notice of nonrenewal, cancellation, or termination at least 90
6 days prior to the effective date of the nonrenewal,
7 cancellation, or termination. The notice must include the
8 reason or reasons for the nonrenewal, cancellation, or
9 termination, except that:

10 1. When cancellation is for nonpayment of premium, at
11 least 10 days' written notice of cancellation accompanied by
12 the reason therefor shall be given. However:

13 a. When a residential property insurance premium
14 payment is the responsibility of a mortgage company pursuant
15 to an escrow agreement and the mortgage company does not pay
16 the premium in a timely manner, the insurer shall mail a
17 notice to the mortgage company, with a copy to the insured,
18 notifying the mortgage company that the policy has lapsed. It
19 is the responsibility of the mortgage company to make the
20 required premium payment, and the insurer shall reinstate the
21 policy upon receipt of the required premium.

22 b. During any period of time in which property
23 insurance coverage has lapsed due to failure of a mortgage
24 company to remit escrowed premiums, any loss to the insured
25 property is the responsibility of the mortgage company.

26 c. All additional costs or fees to reinstate insurance
27 coverage as the result of a failure of a mortgage company to
28 remit escrowed premiums are the sole responsibility of the
29 mortgage company and may not be passed on to the insured
30 mortgagor.

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

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10 After the policy has been in effect for 90 days, the policy
11 shall not be canceled by the insurer except when there has
12 been a material misstatement, a nonpayment of premium, a
13 failure to comply with underwriting requirements established
14 by the insurer within 90 days of the date of effectuation of
15 coverage, or a substantial change in the risk covered by the
16 policy or when the cancellation is for all insureds under such
17 policies for a given class of insureds. This paragraph does
18 not apply to individually rated risks having a policy term of
19 less than 90 days.

20 (4) Claims on property insurance policies which are
21 the result of water damage may not be used as a cause for
22 cancellation or nonrenewal unless the insurer can demonstrate,
23 by claims frequency or otherwise, that the insured has failed
24 to take action reasonably necessary as requested by the
25 insurer to prevent recurrence of damages to the insured
26 property.

27 Section 8. If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 invalidity does not affect other provisions or applications of
30 the act which can be given effect without the invalid

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1 provision or application, and to this end the provisions of
2 this act are declared severable.

3 Section 9. This act shall take effect July 1, 2004.

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6 SENATE SUMMARY

7 Requires the Division of Consumer Services of the
8 Department of Financial Services to designate an employee
9 as the primary contact for consumers with respect to
10 issues involving sinkholes. Declares mandatory
11 arbitration under an insurance contract an unfair claim
12 settlement practice and declares refusal to insure based
13 on previous water damage that has been repaired or on
14 claims resulting from acts of God unfair and deceptive.
15 Requires residential insurers to make comprehensive
16 coverage available. Requires insurers to share adverse
17 underwriting information with an applicant when insurance
18 is refused based on that information. Prescribes
19 practices to be followed by insurers with respect to
20 settlement of claims under motor vehicle and property
21 insurance. Prescribes responsibility of a mortgagee that
22 has failed to pay escrowed property insurance premium.
23 Limits the ability of an insurer to cancel insurance due
24 to claims for water damage.
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