

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

1 Representative Legg offered the following:

2
3 **Amendment (with title amendment)**

4 Remove lines 184 through 334 and insert:

5 (2) Any insurer that has paid a claim for a sinkhole loss
6 shall file a copy of the report and certification, prepared
7 pursuant to subsection (1) and including the legal description
8 of the real property and the name of the property owner, with
9 the county clerk of court ~~property appraiser~~, who shall record
10 the report and certification ~~with the parcel number~~. The insurer
11 shall bear the cost of filing and recording the report and
12 certification. There shall be no cause of action or liability
13 against an insurer for compliance with this section. The
14 recording of the report and certification shall not constitute a
15 lien, encumbrance, or restriction on the title to the real
16 property nor constitute a defect in the title to the real
17 property, create any cause of action or liability against any

897805

5/1/2006 12:16:23 PM

Amendment No. (for drafter's use only)

18 grantor of the real property for breach of any warranty of good
19 title or warranty against encumbrances, or create any cause of
20 action or liability against any title insurer that insures the
21 title to the real property. The seller of real property upon
22 which a sinkhole claim has been made by the seller and paid by
23 the insurer shall disclose to the buyer of such property that a
24 claim has been paid and whether or not the full amount of the
25 proceeds were used to repair the sinkhole damage.

26 Section 5. Effective October 1, 2006, section 627.7074,
27 Florida Statutes, is created to read:

28 627.7074 Alternative procedure for resolution of disputed
29 sinkhole insurance claims.--

30 (1) As used in this section, the term:

31 (a) "Neutral evaluation" means the alternative dispute
32 resolution provided for in this section.

33 (b) "Neutral evaluator" means a professional engineer or a
34 professional geologist who has completed a course of study in
35 alternative dispute resolution designed or approved by the
36 department for use in the neutral evaluation process, who is
37 determined to be fair and impartial.

38 (2) (a) The department shall certify and maintain a list of
39 persons who are neutral evaluators.

40 (b) The department shall prepare a consumer information
41 pamphlet for distribution by insurers to policyholders which
42 clearly describes the neutral evaluation process and includes
43 information and forms necessary for the policyholder to request
44 a neutral evaluation.

45 (3) Following the receipt of the report provided under s.
46 627.7073 or the denial of a claim for a sinkhole loss, the
897805

5/1/2006 12:16:23 PM

Amendment No. (for drafter's use only)

47 insurer shall notify the policyholder of his or her right to
48 participate in the neutral evaluation program under this
49 section. Neutral evaluation supersedes the alternative dispute
50 resolution process under s. 627.7015. The insurer shall provide
51 to the policyholder the consumer information pamphlet prepared
52 by the department pursuant to paragraph (2)(b).

53 (4) Neutral evaluation is optional and nonbinding. Either
54 the policyholder or the insurer may decline to participate. A
55 request for neutral evaluation may be filed with the department
56 by the policyholder or the insurer on a form approved by the
57 department. The request for neutral evaluation must state the
58 reason for the request and must include an explanation of all
59 the issues in dispute at the time of the request. Filing a
60 request for neutral evaluation tolls the applicable time
61 requirements for filing suit for a period of 60 days following
62 the conclusion of the neutral evaluation process or the time
63 prescribed in s. 95.11, whichever is later.

64 (5) Neutral evaluation shall be conducted as an informal
65 process in which formal rules of evidence and procedure need not
66 be observed. A party to neutral evaluation is not required to
67 attend neutral evaluation if a representative of the party
68 attends and has the authority to make a binding decision on
69 behalf of the party. All parties shall participate in the
70 evaluation in good faith.

71 (6) The insurer shall pay the costs associated with the
72 neutral evaluation.

73 (7) Upon receipt of a request for neutral evaluation, the
74 department shall refer the request to a neutral evaluator. The
75 neutral evaluator shall notify the policyholder and the insurer

897805

5/1/2006 12:16:23 PM

Amendment No. (for drafter's use only)

76 of the date, time, and place of the neutral evaluation
77 conference. The conference may be held by telephone, if feasible
78 and desirable. The neutral evaluation conference shall be held
79 within 45 days after receipt of the request by the department.

80 (8) The department shall adopt rules of procedure for the
81 neutral evaluation process.

82 (9) For policyholders not represented by an attorney, a
83 consumer affairs specialist of the department or an employee
84 designated as the primary contact for consumers on issues
85 relating to sinkholes under s. 20.121 shall be available for
86 consultation to the extent that he or she may lawfully do so.

87 (10) Evidence of an offer to settle a claim during the
88 neutral evaluation process, as well as any relevant conduct or
89 statements made in negotiations concerning the offer to settle a
90 claim, is inadmissible to prove liability or absence of
91 liability for the claim or its value, except as provided in
92 subsection (13).

93 (11) Any court proceeding related to the subject matter of
94 the neutral evaluation shall be stayed pending completion of the
95 neutral evaluation.

96 (12) For matters that are not resolved by the parties at
97 the conclusion of the neutral evaluation, the neutral evaluator
98 shall prepare a report stating that in his or her opinion the
99 sinkhole loss has been verified or eliminated and, if verified,
100 the need for and estimated costs of stabilizing the land and any
101 covered structures or buildings and other appropriate
102 remediation or structural repairs. The evaluator's report shall
103 be sent to all parties in attendance at the neutral evaluation
104 and to the department.

897805

5/1/2006 12:16:23 PM

Amendment No. (for drafter's use only)

105 (13) The recommendation of the neutral evaluator is not
106 binding on any party, and the parties retain access to courts.
107 The neutral evaluator's written recommendation is admissible in
108 any subsequent action or proceeding relating to the claim or to
109 the cause of action giving rise to the claim only for purposes
110 of determining the award of attorney's fees.

111 (14) If the neutral evaluator first verifies the existence
112 of a sinkhole and, second, recommends the need for and estimates
113 costs of stabilizing the land and any covered structures or
114 buildings and other appropriate remediation or structural
115 repairs, which costs exceed the amount that the insurer has
116 offered to pay the policyholder, the insurer is liable to the
117 policyholder for up to \$2,500 in attorney's fees for the
118 attorney's participation in the neutral evaluation process. For
119 purposes of this subsection, the term "offer to pay" means a
120 written offer signed by the insurer or its legal representative
121 and delivered to the policyholder within 10 days after the
122 insurer receives notice that a request for neutral evaluation
123 has been made under this section.

124 (15) If the policyholder declines to participate in
125 neutral evaluation requested by the insurer or declines to
126 resolve the matter in accordance with the recommendation of the
127 neutral evaluator pursuant to this section, the insurer is not
128 liable for attorney's fees under s. 627.428 or other provisions
129 of the insurance code or for extra-contractual damages related
130 to a claim for a sinkhole loss.

131 Section 6. Subsection (2) of section 877.02, Florida
132 Statutes, is amended to read:

897805

5/1/2006 12:16:23 PM

Amendment No. (for drafter's use only)

133 877.02 Solicitation of legal services or retainers
134 therefor; penalty.--

135 (2) It shall be unlawful for any person in the employ of
136 or in any capacity attached to any hospital, sanitarium, police
137 department, wrecker service or garage, prison or court, ~~or~~ for a
138 person authorized to furnish bail bonds, investigators,
139 photographers, insurance or public adjusters, or for a general
140 or other contractor as defined in s. 489.105 or other business
141 providing sinkhole remediation services, to communicate directly
142 or indirectly with any attorney or person acting on said
143 attorney's behalf for the purpose of aiding, assisting or
144 abetting such attorney in the solicitation of legal business or
145 the procurement through solicitation of a retainer, written or
146 oral, or any agreement authorizing the attorney to perform or
147 render legal services.

148 Section 7. (1) By February 1, 2007, the Office of
149 Insurance Regulation shall calculate a presumed factor to
150 reflect the impact of the changes made in this act to rates
151 filed by residential property insurers providing sinkhole loss
152 coverage. The office shall issue a notice informing all insurers
153 writing residential property insurance coverage of the presumed
154 factor.

155 (2) In determining the presumed factor, the office shall
156 use generally accepted actuarial techniques and standards in
157 determining the expected impact on losses, expenses, and
158 investment income of the insurer.

159 (3) The office may contract with an appropriate vendor to
160 determine the presumed factor.

897805

5/1/2006 12:16:23 PM

Amendment No. (for drafter's use only)

161 (4) Each residential property insurer shall, at its next
162 rate filing after May 1, 2007, reflect a rate change that takes
163 into account the presumed factor determined under subsection
164 (1).

165
166 ===== T I T L E A M E N D M E N T =====

167 Remove line 16 and insert:
168 than the property appraiser; specifying prohibitions
169 relating to the recording of certain reports and
170 certifications for sinkhole loss claims; creating s.
171 627.7074, F.S.;