

1 A bill to be entitled
2 An act relating to sinkhole insurance; providing a short
3 title; amending s. 627.707, F.S.; authorizing insurers to
4 make direct payment for certain repairs; excluding
5 insurers from liability for repairs under certain
6 circumstances; revising the requirements for reimbursement
7 of the insurer with respect to certain claims; amending s.
8 627.7072, F.S.; revising testing standards for sinkholes;
9 requiring a report upon conclusion of testing; requiring
10 retention of certain information for a specified period;
11 authorizing the Department of Environmental Protection to
12 adopt rules for the implementation of sinkhole testing and
13 reporting; amending s. 627.7073, F.S.; revising a
14 presumption relating to the findings, opinions, and
15 recommendations in sinkhole reports; creating s. 627.7074,
16 F.S.; providing for an alternative procedure for the
17 resolution of disputed sinkhole insurance claims, which is
18 optional, nonbinding, and informal; providing definitions;
19 requiring the Department of Financial Services to certify
20 and maintain a list of neutral evaluators, prepare a
21 consumer information pamphlet explaining the alternative
22 procedure, and adopt rules for the implementation of an
23 alternative procedure; requiring insurers to provide the
24 consumer information pamphlets to policyholders upon
25 receipt of a sinkhole report or denial of a claim;
26 providing for payment of costs and attorney's fees;
27 preserving access to courts and authorizing judicial

28 review of neutral evaluation recommendations; providing an
 29 effective date.

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

33 Section 1. This act may be cited as the "Sinkhole
 34 Insurance Relief Act."

35 Section 2. Paragraph (b) of subsection (5) and subsection
 36 (7) of section 627.707, Florida Statutes, are amended to read:

37 627.707 Standards for investigation of sinkhole claims by
 38 insurers; nonrenewals.--Upon receipt of a claim for a sinkhole
 39 loss, an insurer must meet the following standards in
 40 investigating a claim:

41 (5)

42 (b) The insurer may limit its payment to the actual cash
 43 value of the sinkhole loss, not including underpinning or
 44 grouting or any other repair technique performed below the
 45 existing foundation of the building, until the policyholder
 46 enters into a contract for the performance of building
 47 stabilization or foundation repairs. After the policyholder
 48 enters into the contract, the insurer shall pay the amounts
 49 necessary to begin and perform such repairs as the work is
 50 performed and the expenses are incurred. The insurer may not
 51 require the policyholder to advance payment for such repairs. If
 52 repair has begun and the engineer selected or approved by the
 53 insurer determines that the repair cannot be completed within
 54 the policy limits, the insurer must either complete the
 55 engineer's recommended repair or tender the policy limits to the

56 | policyholder without a reduction for the repair expenses
 57 | incurred. The insurer may make payment directly to the persons
 58 | selected by the policyholder to perform the land and building
 59 | stabilization and foundation repairs. The insurer has no
 60 | liability for the work performed unless it agrees to such
 61 | liability in writing.

62 | (7) If the insurer obtains, pursuant to s. 627.7073,
 63 | written certification that there is no sinkhole loss or that the
 64 | cause of the damage was not sinkhole activity, ~~and if the~~
 65 | ~~policyholder has submitted the sinkhole claim without good faith~~
 66 | ~~grounds for submitting such claim,~~ the policyholder shall
 67 | reimburse the insurer for 50 percent of the actual costs of the
 68 | analyses and services provided under ss. 627.7072 and 627.7073;
 69 | however, a policyholder is not required to reimburse an insurer
 70 | more than \$2,500 with respect to any claim. A policyholder is
 71 | required to pay reimbursement under this subsection only if the
 72 | insurer, prior to ordering the analysis under s. 627.7072,
 73 | informs the policyholder in writing of the policyholder's
 74 | potential liability for reimbursement and gives the policyholder
 75 | the opportunity to withdraw the claim.

76 | Section 3. Subsection (2) of section 627.7072, Florida
 77 | Statutes, is amended, and subsections (3), (4), (5), and (6) are
 78 | added to that section, to read:

79 | 627.7072 Testing standards for sinkholes.--

80 | (2) Testing shall be conducted in compliance with
 81 | standards of the American Society for Testing and Materials
 82 | International (ASTM), the United States Army Corps of Engineers,
 83 | or the Florida Department of Transportation, or other

84 appropriate standards, as determined by rule of the Department
 85 of Environmental Protection, to the extent applicable by a
 86 ~~professional geologist shall be conducted in compliance with the~~
 87 ~~Florida Geological Survey Special Publication No. 57 (2005).~~

88 (3)(a) All of the following may be performed in the
 89 initial phase of testing, referred to as phase I testing, by or
 90 under the supervision of the engineer or professional geologist,
 91 as appropriate:

92 1. Identification and location of all reasonably
 93 observable damage.

94 2. A geophysical survey such as a ground-penetrating radar
 95 (GPR) test, an electrical resistivity test, or other appropriate
 96 geophysical method.

97 3. Hand auger boring and push penetrometer testing in two
 98 or more locations around the foundation of the structure to
 99 determine the composition and relative strength of the nearby
 100 surface soils. The hand auger boring must penetrate to 10 feet,
 101 and the push penetrometer must penetrate to at least 4 feet.
 102 Laboratory tests, including, but not limited to, moisture
 103 content, organic content for probable organic-rich soils, and
 104 Attenberg limits data for clays, must be conducted on any
 105 potentially deleterious soils obtained in the hand auger borings
 106 to document a proximal cause for damage.

107 4. The excavation of one or more test pits to determine to
 108 the extent possible the thickness, bearing depth, and type of
 109 foundation system used in the construction.

110 5. Preparation of a site map showing damage locations,
 111 documentation of representative damage through the use of

112 photographs taken at the time of initial and subsequent site
 113 reconnaissance and field testing under this section, and a
 114 written description of the nature of each damage feature.

115 6. A floor slab elevation map.

116 (b) Phase I testing may include other tests the engineer
 117 and professional geologist deem to be practical and appropriate
 118 to identify or eliminate the existence of subsurface anomalies
 119 and geological features of interest, but may not include the
 120 type of tests included under phase II.

121 (4)(a) If testing performed under subsection (3) is
 122 inconclusive as to the determination of sinkhole loss or reveals
 123 damage other than that related to a sinkhole, in the opinion of
 124 either the engineer or professional geologist, or both, or if
 125 additional testing under this section is demanded by the
 126 policyholder in writing within 60 days, the following additional
 127 tests, referred to as phase II testing, shall be performed by or
 128 under the supervision of the engineer or professional geologist:

129 1. A floor elevation survey or study to determine any
 130 variances in the floor elevation.

131 2. At least two invasive penetration test borings,
 132 consisting of standard penetration tests, to determine the
 133 composition and properties of the subsurface geologic materials
 134 surrounding the structure. Cone penetrometer tests may be used
 135 to discover the relative consistency of subsurface conditions.

136 3. Laboratory analyses of representative samples of
 137 potentially problematic materials found within the upper 20 feet
 138 of soil to determine if these materials may have contributed to
 139 the damage.

140 (b) Phase II testing may include other tests the engineer
 141 and professional geologist deem to be appropriate.

142 (5) Upon conclusion of testing required by this section,
 143 the person conducting the tests must provide a written report to
 144 the insurer and policyholder. All relative testing data, logs,
 145 error reports, and similar information, regardless of whether
 146 the engineer or professional geologist finds the information to
 147 be relevant, shall be retained by the engineer or professional
 148 geologists for a period of 2 years from the date of the
 149 resolution of the claim.

150 (6) The Department of Environmental Protection may adopt
 151 rules to implement this section.

152 Section 4. Paragraph (c) of subsection (1) of section
 153 627.7073, Florida Statutes, is amended to read:

154 627.7073 Sinkhole reports.--

155 (1) Upon completion of testing as provided in s. 627.7072,
 156 the engineer and professional geologist shall issue a report and
 157 certification to the insurer and the policyholder as provided in
 158 this section.

159 (c) The respective findings, opinions, and recommendations
 160 of the engineer and professional geologist as to the
 161 verification or elimination of a sinkhole loss and the findings,
 162 opinions, and recommendations of the engineer as to land and
 163 building stabilization and foundation repair are conclusive,
 164 unless contrary findings and conclusions are proven by clear and
 165 convincing evidence ~~shall be presumed correct.~~

166 Section 5. Section 627.7074, Florida Statutes, is created
 167 to read:

168 627.7074 Alternative procedure for resolution of disputed
 169 sinkhole insurance claims.--

170 (1) As used in this section:

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

173 (b) "Neutral evaluator" means a qualified engineer or a
 174 professional geologist who has completed a course of study in
 175 alternative dispute resolution designed or approved by the
 176 department for use in the neutral evaluation process, who is
 177 determined to be fair and impartial, and who is attempting to
 178 resolve the dispute or claim under this section.

179 (c) "Department" means the Department of Financial
 180 Services.

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

183 (3) Following its receipt of the report provided under s.
 184 627.7073 or its denial of a claim for a sinkhole loss, the
 185 insurer shall notify the policyholder of his or her right to
 186 participate in the neutral evaluation program under this
 187 section. The department shall prepare a consumer information
 188 pamphlet for distribution by the insurer to policyholders. The
 189 pamphlet shall clearly describe the neutral evaluation process
 190 and include directions and forms necessary for the policyholder
 191 to request a neutral evaluation.

192 (4) Neutral evaluation is optional and nonbinding. Either
 193 the policyholder or the insurer may decline to participate. A
 194 request for neutral evaluation shall be filed with the
 195 department by the policyholder or the insurer on a form approved

196 by the department. The request for neutral evaluation must state
 197 the reason for the request and must include an explanation of
 198 all the issues in dispute at the time of the request. Filing a
 199 request for neutral evaluation tolls the applicable time
 200 requirements for filing suit for a period of 60 days following
 201 the conclusion of the neutral evaluation process or the time
 202 prescribed in s. 95.11, whichever is later.

203 (5) Neutral evaluation shall be conducted as an informal
 204 process in which formal rules of evidence and procedure need not
 205 be observed. A party to neutral evaluation is not required to
 206 attend neutral evaluation if a representative of the party
 207 attends and has the authority to make a binding decision on
 208 behalf of the party. All parties shall participate in the
 209 evaluation in good faith.

210 (6) The insurer shall pay the costs associated with the
 211 neutral evaluation.

212 (7) Upon receipt of a request for neutral evaluation, the
 213 department shall refer the request to a neutral evaluator. The
 214 neutral evaluator shall notify the policyholder and the insurer
 215 of the date, time, and place of the neutral evaluation
 216 conference. The conference may be held by telephone, if feasible
 217 and desirable. The neutral evaluation conference shall be held
 218 within 45 days after receipt of the request by the department.

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

221 (9) For policyholders not represented by an attorney, a
 222 consumer affairs specialist of the department or an employee
 223 designated as the primary contact for consumers on issues

224 relating to sinkholes under s. 20.121 shall be available for
 225 consultation to the extent that he or she may lawfully do so.

226 (10) Disclosures and information divulged in the neutral
 227 evaluation process are not admissible in any subsequent action
 228 or proceeding relating to the claim or to the cause of action
 229 giving rise to the claim, except as provided in subsection (13).

230 (11) Any court proceeding related to the subject matter of
 231 the neutral evaluation shall be stayed pending completion of the
 232 neutral evaluation.

233 (12) For matters that are not resolved by the parties at
 234 the conclusion of the neutral evaluation, the neutral evaluator
 235 shall prepare a report stating that in his or her opinion the
 236 sinkhole loss has been verified or eliminated and, if verified,
 237 the need for and estimated costs of stabilizing the land and any
 238 covered structures or buildings and other appropriate
 239 remediation or structural repairs. The evaluator's report shall
 240 be sent to all parties in attendance at the neutral evaluation
 241 and to the department.

242 (13) The recommendation of the neutral evaluator is not
 243 binding on any party and the parties retain access to courts.
 244 The neutral evaluator's written recommendation is admissible in
 245 any subsequent action or proceeding relating to the claim or to
 246 the cause of action giving rise to the claim only for purposes
 247 of determining the award of attorney's fees.

248 (14) If the policyholder declines to participate in
 249 neutral evaluation requested by the insurer or declines to
 250 resolve the matter in accordance with the recommendation of the
 251 neutral evaluator pursuant to this section, the insurer shall

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252 not be liable for attorney's fees under s. 627.428 or other
253 provisions of the insurance code or for extra contractual
254 damages related to a claim for a sinkhole loss.

255 (15) A party may seek judicial review of the
256 recommendation of the neutral evaluator to determine whether the
257 recommendation was reasonable. A recommendation is reasonable
258 unless it was procured by corruption, fraud, or other undue
259 means; there was evident partiality by the neutral evaluator or
260 misconduct prejudicing the rights of any party; or the neutral
261 evaluator exceeded the authority and power granted by this
262 subsection. If the court declares the recommendation is not
263 reasonable, the neutral evaluation recommendation shall be
264 vacated.

265 Section 6. This act shall take effect July 1, 2006.