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Proposed Committee Substitute by the Committee on Banking and Insurance

1 A bill to be entitled
2 An act relating to property insurance; amending s.
3 627.0629, F.S.; deleting a requirement that the Office
4 of Insurance Regulation develop a proposed method for
5 establishing hurricane mitigation discounts which
6 directly correlate to the uniform home grading scale;
7 creating s. 627.41341, F.S.; defining terms; requiring
8 insurers to provide a notice of a change in policy
9 terms to a policyholder under certain circumstances;
10 specifying acts that constitute proof of notice and
11 acceptance of a change in policy terms; providing for
12 the continuation of prior policy terms if a notice of
13 a change in policy terms is not provided; amending s.
14 627.707, F.S.; requiring an insurer to determine
15 whether damage to a structure is consistent with
16 sinkhole loss; providing for the payment of sinkhole
17 claims after a policyholder enters into a contract for
18 building stabilization or foundation repairs;
19 requiring a policyholder to contract for sinkhole
20 repairs within a certain period of time and for such
21 repairs to be completed within a certain period;
22 providing exceptions; amending s. 627.7073, F.S.;
23 providing legislative intent for the presumption of
24 correctness of certain findings, opinions, and
25 recommendations of a professional engineer or
26 professional geologist; revising the content of the
27 report that must be filed with the clerk of court by



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28 an insurer that pays a claim for sinkhole loss;
29 requiring a seller of property that has sinkhole loss
30 to provide a copy of the report to the buyer; amending
31 s. 627.7074, F.S.; providing for a neutral evaluation
32 of a sinkhole claim under certain circumstances;
33 providing that such evaluation does not supersede an
34 appraisal clause; providing for the disqualification
35 of neutral evaluators; authorizing the Department of
36 Financial Services to appoint a neutral evaluator if
37 requested by a party; defining a term; revising
38 procedures governing the stay of court proceedings
39 pending the filing of the neutral evaluation;
40 authorizing a neutral evaluator to obtain the
41 assistance of another neutral evaluator or other
42 professionals or experts; requiring that the neutral
43 evaluator's report state whether the sinkhole has
44 caused any loss to the building; providing that the
45 insurer's actions are not a confession of judgment or
46 admission of liability; requiring that payment be made
47 in accordance with the insurance policy if the insurer
48 agrees to comply with the neutral evaluator's report;
49 amending s. 627.711, F.S.; eliminating the requirement
50 that a uniform mitigation verification form be
51 certified by the Department of Financial Services;
52 eliminating provisions authorizing hurricane
53 mitigation inspectors certified by the My Safe Florida
54 Home Program to sign a valid uniform mitigation
55 verification form; authorizing an insurer to accept a
56 form from a person possessing qualifications and



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57 experience acceptable to the insurer; requiring a
58 person to personally perform an inspection in order to
59 sign a mitigation verification form; defining the term
60 "misconduct" for purposes of performing an inspection
61 and completing the mitigation verification form;
62 providing for sanctions to be imposed against a person
63 who commits misconduct in performing inspections or
64 completing the mitigation verification form; requiring
65 that evidence of fraud in the completion of the
66 mitigation verification form be reported to the
67 Division of Insurance Fraud; requiring the division,
68 if it finds that probable cause of misconduct exists,
69 to send a copy of its report to the agency responsible
70 for the licensure of the inspector who signed the
71 report; providing that insurers need not accept a
72 mitigation verification form that is signed by a
73 person against whom probable cause of misconduct was
74 found; providing an effective date.

75

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

77

78 Section 1. Subsection (1) of section 627.0629, Florida
79 Statutes, is amended to read:

80 627.0629 Residential property insurance; rate filings.—

81 (1) ~~(a)~~ It is the intent of the Legislature that insurers
82 must provide savings to consumers who install or implement
83 windstorm damage mitigation techniques, alterations, or
84 solutions to their properties to prevent windstorm losses. A
85 rate filing for residential property insurance must include



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86 actuarially reasonable discounts, credits, or other rate
87 differentials, or appropriate reductions in deductibles, for
88 properties on which fixtures or construction techniques
89 demonstrated to reduce the amount of loss in a windstorm have
90 been installed or implemented. The fixtures or construction
91 techniques shall include, but not be limited to, fixtures or
92 construction techniques which enhance roof strength, roof
93 covering performance, roof-to-wall strength, wall-to-floor-to-
94 foundation strength, opening protection, and window, door, and
95 skylight strength. Credits, discounts, or other rate
96 differentials, or appropriate reductions in deductibles, for
97 fixtures and construction techniques which meet the minimum
98 requirements of the Florida Building Code must be included in
99 the rate filing. All insurance companies must make a rate filing
100 which includes the credits, discounts, or other rate
101 differentials or reductions in deductibles by February 28, 2003.
102 By July 1, 2007, the office shall reevaluate the discounts,
103 credits, other rate differentials, and appropriate reductions in
104 deductibles for fixtures and construction techniques that meet
105 the minimum requirements of the Florida Building Code, based
106 upon actual experience or any other loss relativity studies
107 available to the office. The office shall determine the
108 discounts, credits, other rate differentials, and appropriate
109 reductions in deductibles that reflect the full actuarial value
110 of such revaluation, which may be used by insurers in rate
111 filings.

112 ~~(b) By February 1, 2011, the Office of Insurance~~
113 ~~Regulation, in consultation with the Department of Financial~~
114 ~~Services and the Department of Community Affairs, shall develop~~



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115 ~~and make publicly available a proposed method for insurers to~~
116 ~~establish discounts, credits, or other rate differentials for~~
117 ~~hurricane mitigation measures which directly correlate to the~~
118 ~~numerical rating assigned to a structure pursuant to the uniform~~
119 ~~home grading scale adopted by the Financial Services Commission~~
120 ~~pursuant to s. 215.55865, including any proposed changes to the~~
121 ~~uniform home grading scale. By October 1, 2011, the commission~~
122 ~~shall adopt rules requiring insurers to make rate filings for~~
123 ~~residential property insurance which revise insurers' discounts,~~
124 ~~credits, or other rate differentials for hurricane mitigation~~
125 ~~measures so that such rate differentials correlate directly to~~
126 ~~the uniform home grading scale. The rules may include such~~
127 ~~changes to the uniform home grading scale as the commission~~
128 ~~determines are necessary, and may specify the minimum required~~
129 ~~discounts, credits, or other rate differentials. Such rate~~
130 ~~differentials must be consistent with generally accepted~~
131 ~~actuarial principles and wind-loss mitigation studies. The rules~~
132 ~~shall allow a period of at least 2 years after the effective~~
133 ~~date of the revised mitigation discounts, credits, or other rate~~
134 ~~differentials for a property owner to obtain an inspection or~~
135 ~~otherwise qualify for the revised credit, during which time the~~
136 ~~insurer shall continue to apply the mitigation credit that was~~
137 ~~applied immediately prior to the effective date of the revised~~
138 ~~credit. Discounts, credits, and other rate differentials~~
139 ~~established for rate filings under this paragraph shall~~
140 ~~supersede, after adoption, the discounts, credits, and other~~
141 ~~rate differentials included in rate filings under paragraph (a).~~

142 Section 2. Section 627.41341, Florida Statutes, is created
143 to read:



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144 627.41341 Notice of change in policy terms.-

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

146 (a) "Change in policy terms" means the modification,
147 addition, or deletion of any term, coverage, duty, or condition
148 from the prior policy. The term does not include the correction
149 of typographical or scrivener's errors or mandated legislative
150 changes.

151 (b) "Policy" means a written contract of personal lines
152 insurance or a written agreement for or effecting insurance, or
153 the certificate thereof, by whatever name called, and includes
154 all clauses, riders, endorsements, and papers that are a part
155 thereof. The term does not include a binder as described in s.
156 627.420 unless the duration of the binder period exceeds 60
157 days.

158 (c) "Renewal" means the issuance and delivery by an insurer
159 of a policy superseding at the end of the policy period a policy
160 previously issued and delivered by the same insurer, or the
161 issuance and delivery of a certificate or notice extending the
162 term of a policy beyond its policy period or term. Any policy
163 having a policy period or term of less than 6 months or any
164 policy that does not have a fixed expiration date shall, for
165 purposes of this section, be considered as if written for
166 successive policy periods or terms of 6 months.

167 (2) A renewal policy may contain a change in policy terms.
168 If a renewal policy contains a change in policy terms, the
169 insurer shall give the named insured a written notice of the
170 change in policy terms, which must be enclosed along with the
171 written notice of renewal premium required by ss. 627.4133 and
172 627.728.



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173 (3) An insurer is not required to obtain proof that a
174 person has received a notice of a change in policy terms.
175 However, a certificate of mailing or any delivery confirmation
176 of the notice of the change in policy terms to the named insured
177 at the address shown in the policy from the United States Postal
178 Service is proof of notice.

179 (4) Receipt of payment of the premium for the renewal
180 policy by the insurer is deemed to be acceptance of the new
181 policy terms by the named insured.

182 (5) If an insurer fails to provide the notice of a change
183 in policy terms required under this section, the original policy
184 terms shall remain in effect until the next renewal and the
185 proper service of the notice of the change in policy terms or
186 until the effective date of replacement coverage obtained by the
187 named insured, whichever occurs first.

188 (6) The intent of this section is to:

189 (a) Allow an insurer to make a change in policy terms for
190 property that the insurer wishes to continue to insure.

191 (b) Alleviate the concern and confusion to the policyholder
192 caused by the required policy nonrenewal for the limited issue
193 when an insurer intends to renew the insurance policy but the
194 new policy contains a change in policy terms.

195 (c) Encourage policyholders to discuss their coverages with
196 their insurance agents.

197 Section 3. Section 627.707, Florida Statutes, is amended to
198 read:

199 627.707 Standards for investigation of sinkhole claims by
200 insurers; nonrenewals.—Upon receipt of a claim for a sinkhole
201 loss, an insurer must meet the following standards in



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202 investigating a claim:

203 (1) The insurer must make an inspection of the insured's
204 premises to determine if there has been physical damage to the
205 structure which is consistent with ~~may be the result of~~ sinkhole
206 loss activity.

207 (2) Following the insurer's initial inspection, the insurer
208 shall engage a professional engineer or a professional geologist
209 to conduct testing as provided in s. 627.7072 to determine the
210 cause of the loss within a reasonable professional probability
211 and issue a report as provided in s. 627.7073, if:

212 (a) The insurer is unable to identify a valid cause of the
213 damage or discovers damage to the structure which is consistent
214 with sinkhole loss; or

215 (b) The policyholder demands testing in accordance with
216 this section or s. 627.7072 and coverage under the policy is
217 available if sinkhole loss is verified.

218 (3) Following the initial inspection of the insured
219 premises, the insurer shall provide written notice to the
220 policyholder disclosing the following information:

221 (a) What the insurer has determined to be the cause of
222 damage, if the insurer has made such a determination.

223 (b) A statement of the circumstances under which the
224 insurer is required to engage a professional engineer or a
225 professional geologist to verify or eliminate sinkhole loss and
226 to engage a professional engineer to make recommendations
227 regarding land and building stabilization and foundation repair.

228 (c) A statement regarding the right of the policyholder to
229 request testing by a professional engineer or a professional
230 geologist and the circumstances under which the policyholder may



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231 demand certain testing.

232 (4) If the insurer determines that there is no sinkhole
233 loss, the insurer may deny the claim. If the insurer denies the
234 claim, without performing testing under s. 627.7072, the
235 policyholder may demand testing by the insurer under s.
236 627.7072. The policyholder's demand for testing must be
237 communicated to the insurer in writing after the policyholder's
238 receipt of the insurer's denial of the claim.

239 (5) (a) Subject to paragraph (b), if a sinkhole loss is
240 verified, the insurer shall pay to stabilize the land and
241 building and repair the foundation in accordance with the
242 recommendations of the professional engineer as provided under
243 s. 627.7073, with notice to ~~and in consultation with~~ the
244 policyholder, subject to the coverage and terms of the policy.
245 The insurer shall pay for other repairs to the structure and
246 contents in accordance with the terms of the policy.

247 (b) Once a ~~The insurer may limit its payment to the actual~~
248 ~~cash value of the sinkhole loss, not including underpinning or~~
249 ~~grouting or any other repair technique performed below the~~
250 ~~existing foundation of the building, until the policyholder~~
251 enters into a contract for the performance of building
252 stabilization or foundation repairs, the claim shall be paid up
253 to the full cost of the stabilization or foundation repairs and
254 up to full replacement cost for structural repairs as set forth
255 in this paragraph, less the insured's deductible. Once the
256 policyholder enters into a contract for the performance of
257 building stabilization or foundation repairs, the insurer may:-

258 1. Limit its initial payment to 10 percent of the estimated
259 costs to implement the building stabilization and foundation



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260 repairs; or

261 2. Limit its initial payment to the actual cash value of
262 the sinkhole loss for structural repairs.

263
264 However, after the policyholder enters into the contract for the
265 performance of building stabilization or foundation repairs, the
266 insurer shall pay the amounts necessary to ~~begin and~~ perform
267 such repairs as the work is performed and the expenses are
268 incurred. Final payments for the structural or stabilization and
269 foundation repair work shall be remitted once such work is
270 complete and in accordance with the terms of the policy. The
271 insurer may not require the policyholder to advance payment for
272 such repairs. If repair covered by a personal lines residential
273 property insurance policy has begun and the professional
274 engineer selected or approved by the insurer determines that the
275 repair cannot be completed within the policy limits, the insurer
276 must either complete the professional engineer's recommended
277 repair or tender the policy limits to the policyholder without a
278 reduction for the repair expenses incurred.

279 (c) The policyholder shall enter into such contract for
280 repairs within 90 days after the insurance company approves
281 coverage for a sinkhole loss to prevent additional damage to the
282 building or structure. The 90-day time period may be extended
283 for an additional reasonable time period if the policyholder is
284 unable to find a qualified person or entity to contract for such
285 repairs within the 90-day time period based upon factors beyond
286 the policyholder's control.

287 (d) The stabilization and all other repairs to the
288 structure and contents must be completed within 12 months after



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289 entering into the contract for repairs as described in paragraph
290 (c) unless:

291 1. There is a mutual agreement between the insurer and the
292 insured;

293 2. The stabilization and all other repairs cannot be
294 completed due to factors beyond the control of the insured which
295 reasonably prevent completion;

296 3. The claim is involved with the neutral evaluation
297 process under s. 627.7074; or

298 4. The claim is in litigation.

299 (e) ~~(e)~~ Upon the insurer's obtaining the written approval of
300 the policyholder and any lienholder, the insurer may make
301 payment directly to the persons selected by the policyholder to
302 perform the land and building stabilization and foundation
303 repairs. The decision by the insurer to make payment to such
304 persons does not hold the insurer liable for the work performed.

305 (6) Except as provided in subsection (7), the fees and
306 costs of the professional engineer or the professional geologist
307 shall be paid by the insurer.

308 (7) If the insurer obtains, pursuant to s. 627.7073,
309 written certification that there is no sinkhole loss ~~or that the~~
310 ~~cause of the damage was not sinkhole activity~~, and if the
311 policyholder has submitted the sinkhole claim without good faith
312 grounds for submitting such claim, the policyholder shall
313 reimburse the insurer for 50 percent of the actual costs of the
314 analyses and services provided under ss. 627.7072 and 627.7073;
315 however, a policyholder is not required to reimburse an insurer
316 more than \$2,500 with respect to any claim. A policyholder is
317 required to pay reimbursement under this subsection only if the



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318 insurer, prior to ordering the analysis under s. 627.7072,
319 informs the policyholder in writing of the policyholder's
320 potential liability for reimbursement and gives the policyholder
321 the opportunity to withdraw the claim.

322 (8) No insurer shall nonrenew any policy of property
323 insurance on the basis of filing of claims for partial loss
324 caused by sinkhole damage or clay shrinkage as long as the total
325 of such payments does not exceed the ~~current~~ policy limits of
326 coverage for property damage for the policy in effect on the
327 date of the loss, and provided the insured has repaired the
328 structure in accordance with the engineering recommendations
329 upon which any payment or policy proceeds were based.

330 (9) The insurer may engage a professional structural
331 engineer to make recommendations as to the repair of the
332 structure.

333 Section 4. Section 627.7073, Florida Statutes, is amended
334 to read:

335 627.7073 Sinkhole reports.—

336 (1) Upon completion of testing as provided in s. 627.7072,
337 the professional engineer or professional geologist shall issue
338 a report and certification to the insurer, with an additional
339 copy and certification for the insurer to forward to ~~and~~ the
340 policyholder as provided in this section.

341 (a) Sinkhole loss is verified if, based upon tests
342 performed in accordance with s. 627.7072, a professional
343 engineer or a professional geologist issues a written report and
344 certification stating:

345 1. That the cause of the actual physical and structural
346 damage is sinkhole activity within a reasonable professional



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347 probability.

348 2. That the analyses conducted were of sufficient scope to
349 identify sinkhole activity as the cause of damage within a
350 reasonable professional probability.

351 3. A description of the tests performed.

352 4. A recommendation by the professional engineer of methods
353 for stabilizing the land and building and for making repairs to
354 the foundation.

355 (b) If sinkhole activity is eliminated as the cause of
356 damage to the structure, the professional engineer or
357 professional geologist shall issue a written report and
358 certification to the policyholder and the insurer stating:

359 1. That the cause of the damage is not sinkhole activity
360 within a reasonable professional probability.

361 2. That the analyses and tests conducted were of sufficient
362 scope to eliminate sinkhole activity as the cause of damage
363 within a reasonable professional probability.

364 3. A statement of the cause of the damage within a
365 reasonable professional probability.

366 4. A description of the tests performed.

367 (c) The respective findings, opinions, and recommendations
368 of the professional engineer or professional geologist as to the
369 cause of distress to the property and the findings, opinions,
370 and recommendations of the professional engineer as to land and
371 building stabilization and foundation repair as required by s.
372 627.707(2), shall be presumed correct. The presumption of
373 correctness is based upon the public policy concerns relating to
374 the availability and affordability of sinkhole coverage to
375 provide consistency in claims handling and reduce the number of



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376 disputed sinkhole claims and is therefore a presumption shifting
377 the burden of proof under s. 90.304.

378 (2) (a) Any insurer that has paid a claim for a sinkhole
379 loss shall file a copy of the report and certification, prepared
380 pursuant to subsection (1), including the legal description of
381 the real property and the name of the property owner and the
382 amount paid by the insurer, with the county clerk of court, who
383 shall record the report and certification. The insurer shall
384 also file a copy of any report prepared on behalf of the insured
385 or the insured's representative which indicates that sinkhole
386 loss caused the damage claimed. The insurer shall bear the cost
387 of filing and recording one or more reports ~~the report~~ and
388 certification. There shall be no cause of action or liability
389 against an insurer for compliance with this section. The
390 recording of the report and certification does not:

391 1. Constitute a lien, encumbrance, or restriction on the
392 title to the real property or constitute a defect in the title
393 to the real property;

394 2. Create any cause of action or liability against any
395 grantor of the real property for breach of any warranty of good
396 title or warranty against encumbrances; or

397 3. Create any cause of action or liability against any
398 title insurer that insures the title to the real property.

399 (b) The seller of real property upon which a sinkhole claim
400 has been made by the seller and paid by the insurer shall
401 disclose to the buyer of such property that a claim has been
402 paid, the amount of the payment, and whether or not the full
403 amount of the proceeds were used to repair the sinkhole damage.
404 The seller shall also provide to the buyer a copy of the report



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405 prepared pursuant to subsection (1) and any report prepared on
406 behalf of the insured.

407 Section 5. Section 627.7074, Florida Statutes, is amended
408 to read:

409 627.7074 Alternative procedure for resolution of disputed
410 sinkhole insurance claims.—

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

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

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

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

421 (b) The department shall prepare a consumer information
422 pamphlet for distribution by insurers to policyholders which
423 clearly describes the neutral evaluation process and includes
424 information and forms necessary for the policyholder to request
425 a neutral evaluation.

426 (3) Neutral evaluation is available to either party if a
427 sinkhole report has been issued pursuant to s. 627.7073.

428 Following the receipt of the report provided under s. 627.7073
429 or the denial of a claim for a sinkhole loss, the insurer shall
430 notify the policyholder of his or her right to participate in
431 the neutral evaluation program under this section. Neutral
432 evaluation supersedes the alternative dispute resolution process
433 under s. 627.7015, but does not supersede the appraisal clause,



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434 if provided by the insurance policy. The insurer shall provide
435 to the policyholder the consumer information pamphlet prepared
436 by the department pursuant to paragraph (2)(b).

437 (4) Neutral evaluation is nonbinding, but mandatory if
438 requested by either party. A request for neutral evaluation may
439 be filed with the department by the policyholder or the insurer
440 on a form approved by the department. The request for neutral
441 evaluation must state the reason for the request and must
442 include an explanation of all the issues in dispute at the time
443 of the request. Filing a request for neutral evaluation tolls
444 the applicable time requirements for filing suit for a period of
445 60 days following the conclusion of the neutral evaluation
446 process or the time prescribed in s. 95.11, whichever is later.

447 (5) Neutral evaluation shall be conducted as an informal
448 process in which formal rules of evidence and procedure need not
449 be observed. A party to neutral evaluation is not required to
450 attend neutral evaluation if a representative of the party
451 attends and has the authority to make a binding decision on
452 behalf of the party. All parties shall participate in the
453 evaluation in good faith.

454 (6) The insurer shall pay the costs associated with the
455 neutral evaluation.

456 (7) Upon receipt of a request for neutral evaluation, the
457 department shall allow the parties to submit requests to
458 disqualify neutral evaluators on the list for cause. For
459 purposes of this subsection, a ground for cause is required to
460 be found by the department only when:

461 (a) A familial relationship exists between the neutral
462 evaluator and either party or their representatives within the



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463 third degree;

464 (b) The proposed neutral evaluator has, in a professional
465 capacity, previously represented either party or their
466 representatives in the same or a substantially related matter;

467 (c) The proposed neutral evaluator has, in a professional
468 capacity, represented another person in the same or a
469 substantially related matter, and that person's interests are
470 materially adverse to the interests of the parties; or

471 (d) The proposed neutral evaluator works in the same firm
472 or corporation as a person who has, in a professional capacity,
473 previously represented either party or their respective
474 representatives in the same or a substantially related matter.

475
476 The department shall appoint a neutral evaluator from the
477 department's ~~provide the parties a~~ list of certified neutral
478 evaluators and if requested by either party, shall appoint a
479 neutral evaluator who can determine both causation and method of
480 repair. The department shall allow each party to disqualify one
481 neutral evaluator without cause. The parties shall mutually
482 select a neutral evaluator from the list and promptly inform the
483 department. If the parties cannot agree to a neutral evaluator
484 within 10 business days, the department shall appoint a neutral
485 evaluator from the department list. Upon selection or
486 appointment, the department shall promptly refer the request to
487 the neutral evaluator. Within 5 business days after the
488 referral, the neutral evaluator shall notify the policyholder
489 and the insurer of the date, time, and place of the neutral
490 evaluation conference. The conference may be held by telephone,
491 if feasible and desirable. The neutral evaluation conference



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492 shall be held within 45 days after the receipt of the request by
493 the department. For purposes of this paragraph, the term
494 "substantially related matter" means participation by the
495 neutral evaluator on the same claim, property, or any adjacent
496 property.

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

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

504 (10) Evidence of an offer to settle a claim during the
505 neutral evaluation process, as well as any relevant conduct or
506 statements made in negotiations concerning the offer to settle a
507 claim, is inadmissible to prove liability or absence of
508 liability for the claim or its value, except as provided in
509 subsection (13).

510 (11) Regardless of when invoked, any court proceeding
511 related to the subject matter of the neutral evaluation shall be
512 stayed pending completion of the neutral evaluation and for 5
513 days after the filing of the neutral evaluator's report with the
514 court.

515 (12) If the neutral evaluator, based upon his or her
516 professional training and credentials, is qualified only to
517 determine the causation issue or the method-of-repair issue, the
518 department shall allow the neutral evaluator to enlist the
519 assistance of another professional from the qualified neutral
520 evaluators list, not previously stricken by parties with respect



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521 to the subject evaluation, who, based upon his or her
522 professional training and credentials, is able to provide an
523 opinion as to the other disputed issue. Any professional who, if
524 appointed as the neutral evaluator, would be disqualified for
525 any reason enumerated in subsection (7) must be disqualified. In
526 addition, the neutral evaluator may use the services of other
527 experts or professionals on the qualified neutral evaluators
528 list, or may retain a contractor, as necessary to ensure that
529 all items in dispute are addressed in order to complete the
530 neutral evaluation. The neutral evaluator may request that the
531 entity that performed testing pursuant to s. 627.7072 perform
532 such additional reasonable testing deemed necessary in the
533 professional opinion of the neutral evaluator to complete the
534 neutral evaluation.

535 (13)-(12) For all matters that are not resolved by the
536 parties at the conclusion of the neutral evaluation, the neutral
537 evaluator shall prepare a report stating that in his or her
538 opinion the sinkhole loss has been verified or eliminated within
539 a reasonable degree of professional probability and, if
540 verified, whether the sinkhole loss has caused any structural or
541 cosmetic damage to the building and, if so, the need for and
542 estimated costs of stabilizing the land and any covered
543 structures or buildings and other appropriate remediation or
544 structural repairs that are necessary due to the sinkhole loss.
545 The evaluator's report shall be sent to all parties in
546 attendance at the neutral evaluation and to the department.

547 (14)-(13) The recommendation of the neutral evaluator is not
548 binding on any party, and the parties retain access to court.
549 The neutral evaluator's written recommendation is admissible in



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550 any ~~subsequent~~ action or proceeding relating to the claim or to
551 the cause of action giving rise to the claim.

552 (15)~~(14)~~ If the neutral evaluator first verifies the
553 existence of a sinkhole and, second, recommends the need for and
554 estimates costs of stabilizing the land and any covered
555 structures or buildings and other appropriate remediation or
556 structural repairs, which costs exceed the amount that the
557 insurer has offered to pay the policyholder, the insurer is
558 liable to the policyholder for up to \$2,500 in attorney's fees
559 for the attorney's participation in the neutral evaluation
560 process. For purposes of this subsection, the term "offer to
561 pay" means a written offer signed by the insurer or its legal
562 representative and delivered to the policyholder within 10 days
563 after the insurer receives notice that a request for neutral
564 evaluation has been made under this section.

565 (16)~~(15)~~ If the insurer timely agrees in writing to comply
566 and timely complies with the recommendation of the neutral
567 evaluator, but the policyholder declines to resolve the matter
568 in accordance with the recommendation of the neutral evaluator
569 pursuant to this section:

570 (a) The insurer is not liable for extracontractual damages
571 related to a claim for a sinkhole loss but only as related to
572 the issues determined by the neutral evaluation process. This
573 section does not affect or impair claims for extracontractual
574 damages unrelated to the issues determined by the neutral
575 evaluation process contained in this section; and

576 (b) The actions of the insurer are not a confession of
577 judgment or an admission of liability and the insurer shall not
578 be is not liable for attorney's fees under s. 627.428 or other



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579 provisions of the insurance code unless the policyholder obtains
580 a judgment that is more favorable than the recommendation of the
581 neutral evaluator.

582 (17) If the insurer agrees to comply with the neutral
583 evaluator's report, payment for stabilizing the land and
584 building and repairing the foundation and structure shall be
585 made in accordance with the terms and conditions of the
586 applicable insurance policy.

587 Section 6. Section 627.711, Florida Statutes, is amended to
588 read:

589 627.711 Notice of premium discounts for hurricane loss
590 mitigation; uniform mitigation verification inspection form.—

591 (1) Using a form prescribed by the Office of Insurance
592 Regulation, the insurer shall clearly notify the applicant or
593 policyholder of any personal lines residential property
594 insurance policy, at the time of the issuance of the policy and
595 at each renewal, of the availability and the range of each
596 premium discount, credit, other rate differential, or reduction
597 in deductibles, and combinations of discounts, credits, rate
598 differentials, or reductions in deductibles, for properties on
599 which fixtures or construction techniques demonstrated to reduce
600 the amount of loss in a windstorm can be or have been installed
601 or implemented. The prescribed form shall describe generally
602 what actions the policyholders may be able to take to reduce
603 their windstorm premium. The prescribed form and a list of such
604 ranges approved by the office for each insurer licensed in the
605 state and providing such discounts, credits, other rate
606 differentials, or reductions in deductibles for properties
607 described in this subsection shall be available for electronic



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608 viewing and download from the Department of Financial Services'
609 or the Office of Insurance Regulation's Internet website. The
610 Financial Services Commission may adopt rules to implement this
611 subsection.

612 (2) ~~By July 1, 2007,~~ The Financial Services Commission
613 shall develop by rule a uniform mitigation verification
614 inspection form that shall be used by all insurers when
615 submitted by policyholders for the purpose of factoring
616 discounts for wind insurance. In developing the form, the
617 commission shall seek input from insurance, construction, and
618 building code representatives. Further, the commission shall
619 provide guidance as to the length of time the inspection results
620 are valid. An insurer shall accept as valid a uniform mitigation
621 verification form ~~certified by the Department of Financial~~
622 ~~Services or~~ signed by:

623 ~~(a) A hurricane mitigation inspector certified by the My~~
624 ~~Safe Florida Home program;~~

625 (a) ~~(b)~~ A building code inspector certified under s.
626 468.607;

627 (b) ~~(c)~~ A general, building, or residential contractor
628 licensed under s. 489.111;

629 (c) ~~(d)~~ A professional engineer licensed under s. 471.015
630 who has passed the appropriate equivalency test of the building
631 code training program as required by s. 553.841; or

632 (d) ~~(e)~~ A professional architect licensed under s. 481.213. ~~+~~
633 ~~or~~

634 ~~(f) Any other individual or entity recognized by the~~
635 ~~insurer as possessing the necessary qualifications to properly~~
636 ~~complete a uniform mitigation verification form.~~



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637
638 An insurer may, but is not required to, accept a form from any
639 other person possessing qualifications and experience acceptable
640 to the insurer.

641 (3) A person who is authorized to sign a mitigation
642 verification form must inspect the structures referenced by the
643 form personally, not through employees or other persons, and
644 must certify or attest to personal inspection of the structures
645 referenced by the form.

646 (4) An individual or entity that signs a uniform mitigation
647 form may not commit misconduct in performing hurricane
648 mitigation inspections or in completing a uniform mitigation
649 form which causes financial harm to an insured or the insurer or
650 jeopardizes an insured's health and safety. Misconduct occurs
651 when an authorized mitigation inspector signs a uniform
652 mitigation verification form that:

653 (a) Falsely indicates that he or she personally inspected
654 the structures referenced by the form;

655 (b) Falsely indicates the existence of a feature that
656 entitles an insured to a mitigation discount that the inspector
657 knows does not exist or did not personally inspect;

658 (c) Contains erroneous information due to the gross
659 negligence of the inspector; or

660 (d) Contains demonstrably false information regarding the
661 existence of mitigation features that could give an insured a
662 false evaluation of the ability of the structure to withstand
663 major damage from a hurricane endangering the safety of the
664 insured's life and property.

665 (5) The licensing board of an authorized mitigation



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666 inspector that violates subsection (4) may commence disciplinary
667 proceedings and impose administrative fines and other sanctions
668 authorized under the inspector's licensing act.

669 (6) An insurer, person, or other entity that obtains
670 evidence of fraud or evidence that an inspector has made false
671 statements in the completion of a mitigation inspection form
672 shall file a report with the Division of Insurance Fraud, along
673 with all of the evidence in its possession which supports the
674 allegation of fraud or falsity. An insurer, person, or other
675 entity making the report is immune from liability, pursuant to
676 s. 626.989(4), for any statements made in the report, during the
677 investigation, or in connection with the report. The Division of
678 Insurance Fraud shall issue an investigative report if it finds
679 that probable cause exists to believe that the inspector made
680 intentionally false or fraudulent statements in the inspection
681 report. The Division of Insurance Fraud shall send a copy of the
682 investigative report to the office and a copy to the agency
683 responsible for the professional licensure of the inspector,
684 regardless of whether a prosecutor takes action based upon the
685 report.

686 (7)~~(3)~~ An individual or entity who knowingly provides or
687 utters a false or fraudulent mitigation verification form with
688 the intent to obtain or receive a discount on an insurance
689 premium to which the individual or entity is not entitled
690 commits a misdemeanor of the first degree, punishable as
691 provided in s. 775.082 or s. 775.083.

692 Section 7. This act shall take effect July 1, 2010.