

By the Committee on Banking and Insurance; and Senator Richter

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1 A bill to be entitled
2 An act relating to property insurance; amending s.
3 624.424, F.S.; decreasing the maximum number of
4 consecutive years that an insurer may use the same
5 accountant or partner of an accounting firm for
6 preparing its audited financial report; increasing the
7 number of years for which an insurer is prohibited
8 from using the same accountant or partner after such
9 accountant or partner has been used to file a
10 financial report for the maximum number of consecutive
11 years as prescribed by state law; creating s. 624.611,
12 F.S.; authorizing an insurer to submit to the Office
13 of Insurance Regulation a plan to use financial
14 contracts other than reinsurance contracts to provide
15 catastrophe loss funding; providing requirements for
16 such a plan; authorizing an insurer to take certain
17 action if the office approves such plan; amending s.
18 627.0629, F.S.; deleting a requirement that the Office
19 of Insurance Regulation develop a proposed method for
20 establishing hurricane mitigation discounts which
21 directly correlate to the uniform home grading scale;
22 creating s. 627.41341, F.S.; defining terms; requiring
23 insurers to provide a notice of a change in policy
24 terms to a policyholder under certain circumstances;
25 specifying acts that constitute proof of notice and
26 acceptance of a change in policy terms; providing for
27 the continuation of prior policy terms if a notice of
28 a change in policy terms is not provided; amending s.
29 627.707, F.S.; requiring an insurer to determine

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30 whether damage to a structure is consistent with
31 sinkhole loss; providing for the payment of sinkhole
32 claims after a policyholder enters into a contract for
33 building stabilization or foundation repairs;
34 requiring a policyholder to contract for sinkhole
35 repairs within a certain period of time and for such
36 repairs to be completed within a certain period;
37 providing exceptions; amending s. 627.7073, F.S.;
38 providing legislative intent for the presumption of
39 correctness of certain findings, opinions, and
40 recommendations of a professional engineer or
41 professional geologist; revising the content of the
42 report that must be filed with the clerk of court by
43 an insurer that pays a claim for sinkhole loss;
44 requiring a seller of property that has sinkhole loss
45 to provide a copy of the report to the buyer; amending
46 s. 627.7074, F.S.; providing for a neutral evaluation
47 of a sinkhole claim under certain circumstances;
48 providing that such evaluation does not supersede an
49 appraisal clause; providing for the disqualification
50 of neutral evaluators; authorizing the Department of
51 Financial Services to appoint a neutral evaluator if
52 requested by a party; defining a term; revising
53 procedures governing the stay of court proceedings
54 pending the filing of the neutral evaluation;
55 authorizing a neutral evaluator to obtain the
56 assistance of another neutral evaluator or other
57 professionals or experts; requiring that the neutral
58 evaluator's report state whether the sinkhole has

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59 caused any loss to the building; requiring that
60 payment be made in accordance with the insurance
61 policy if the insurer agrees to comply with the
62 neutral evaluator's report; amending s. 627.711, F.S.;
63 eliminating the requirement that a uniform mitigation
64 verification form be certified by the Department of
65 Financial Services; eliminating provisions authorizing
66 hurricane mitigation inspectors certified by the My
67 Safe Florida Home Program to sign a valid uniform
68 mitigation verification form; authorizing an insurer
69 to accept a form from a person possessing
70 qualifications and experience acceptable to the
71 insurer; requiring a person to personally perform an
72 inspection in order to sign a mitigation verification
73 form; defining the term "misconduct" for purposes of
74 performing an inspection and completing the mitigation
75 verification form; providing for sanctions to be
76 imposed against a person who commits misconduct in
77 performing inspections or completing the mitigation
78 verification form; requiring that evidence of fraud in
79 the completion of the mitigation verification form be
80 reported to the Division of Insurance Fraud; requiring
81 the division, if it finds that probable cause of
82 misconduct exists, to send a copy of its report to the
83 agency responsible for the licensure of the inspector
84 who signed the report; providing that insurers need
85 not accept a mitigation verification form that is
86 signed by a person against whom probable cause of
87 misconduct was found; providing an effective date.

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

90

91 Section 1. Paragraph (d) of subsection (8) of section
92 624.424, Florida Statutes, is amended to read:

93 624.424 Annual statement and other information.—

94 (8)

95 (d) An insurer may not use the same accountant or partner
96 of an accounting firm responsible for preparing the report
97 required by this subsection for more than 5 ~~7~~ consecutive years.
98 Following this period, the insurer may not use such accountant
99 or partner for a period of 5 ~~2~~ years, but may use another
100 accountant or partner of the same firm. An insurer may request
101 the office to waive this prohibition based upon an unusual
102 hardship to the insurer and a determination that the accountant
103 is exercising independent judgment that is not unduly influenced
104 by the insurer considering such factors as the number of
105 partners, expertise of the partners or the number of insurance
106 clients of the accounting firm; the premium volume of the
107 insurer; and the number of jurisdictions in which the insurer
108 transacts business.

109 Section 2. Section 624.611, Florida Statutes, is created to
110 read:

111 624.611 Catastrophe contracts.—An insurer may submit to the
112 Office of Insurance Regulation, in advance of the hurricane
113 season, a plan to use financial contracts other than reinsurance
114 contracts to provide catastrophe loss funding. In such a plan,
115 the insurer must demonstrate that the coverage, together with
116 its reinsurance program, will provide adequate protection for

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117 policyholders in the event of a natural catastrophe. If the
118 contract does not provide for coverage that is highly correlated
119 with the actual losses of the insurer, the insurer must
120 demonstrate its ability to cover the risk created by such lack
121 of correlation. If the office approves the plan, the insurer may
122 purchase the contracts and take credit for reinsurance for
123 amounts expected or due from other parties to the contracts in
124 accordance with any terms, conditions, or limitations
125 established by the office.

126 Section 3. Subsection (1) of section 627.0629, Florida
127 Statutes, is amended to read:

128 627.0629 Residential property insurance; rate filings.—

129 (1)~~(a)~~ It is the intent of the Legislature that insurers
130 must provide savings to consumers who install or implement
131 windstorm damage mitigation techniques, alterations, or
132 solutions to their properties to prevent windstorm losses. A
133 rate filing for residential property insurance must include
134 actuarially reasonable discounts, credits, or other rate
135 differentials, or appropriate reductions in deductibles, for
136 properties on which fixtures or construction techniques
137 demonstrated to reduce the amount of loss in a windstorm have
138 been installed or implemented. The fixtures or construction
139 techniques shall include, but not be limited to, fixtures or
140 construction techniques which enhance roof strength, roof
141 covering performance, roof-to-wall strength, wall-to-floor-to-
142 foundation strength, opening protection, and window, door, and
143 skylight strength. Credits, discounts, or other rate
144 differentials, or appropriate reductions in deductibles, for
145 fixtures and construction techniques which meet the minimum

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146 requirements of the Florida Building Code must be included in
147 the rate filing. All insurance companies must make a rate filing
148 which includes the credits, discounts, or other rate
149 differentials or reductions in deductibles by February 28, 2003.
150 By July 1, 2007, the office shall reevaluate the discounts,
151 credits, other rate differentials, and appropriate reductions in
152 deductibles for fixtures and construction techniques that meet
153 the minimum requirements of the Florida Building Code, based
154 upon actual experience or any other loss relativity studies
155 available to the office. The office shall determine the
156 discounts, credits, other rate differentials, and appropriate
157 reductions in deductibles that reflect the full actuarial value
158 of such revaluation, which may be used by insurers in rate
159 filings.

160 ~~(b) By February 1, 2011, the Office of Insurance~~
161 ~~Regulation, in consultation with the Department of Financial~~
162 ~~Services and the Department of Community Affairs, shall develop~~
163 ~~and make publicly available a proposed method for insurers to~~
164 ~~establish discounts, credits, or other rate differentials for~~
165 ~~hurricane mitigation measures which directly correlate to the~~
166 ~~numerical rating assigned to a structure pursuant to the uniform~~
167 ~~home grading scale adopted by the Financial Services Commission~~
168 ~~pursuant to s. 215.55865, including any proposed changes to the~~
169 ~~uniform home grading scale. By October 1, 2011, the commission~~
170 ~~shall adopt rules requiring insurers to make rate filings for~~
171 ~~residential property insurance which revise insurers' discounts,~~
172 ~~credits, or other rate differentials for hurricane mitigation~~
173 ~~measures so that such rate differentials correlate directly to~~
174 ~~the uniform home grading scale. The rules may include such~~

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175 ~~changes to the uniform home grading scale as the commission~~
176 ~~determines are necessary, and may specify the minimum required~~
177 ~~discounts, credits, or other rate differentials. Such rate~~
178 ~~differentials must be consistent with generally accepted~~
179 ~~actuarial principles and wind-loss mitigation studies. The rules~~
180 ~~shall allow a period of at least 2 years after the effective~~
181 ~~date of the revised mitigation discounts, credits, or other rate~~
182 ~~differentials for a property owner to obtain an inspection or~~
183 ~~otherwise qualify for the revised credit, during which time the~~
184 ~~insurer shall continue to apply the mitigation credit that was~~
185 ~~applied immediately prior to the effective date of the revised~~
186 ~~credit. Discounts, credits, and other rate differentials~~
187 ~~established for rate filings under this paragraph shall~~
188 ~~supersede, after adoption, the discounts, credits, and other~~
189 ~~rate differentials included in rate filings under paragraph (a).~~

190 Section 4. Section 627.41341, Florida Statutes, is created
191 to read:

192 627.41341 Notice of change in policy terms.-

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

194 (a) "Change in policy terms" means the modification,
195 addition, or deletion of any term, coverage, duty, or condition
196 from the prior policy. The term does not include the correction
197 of typographical or scrivener's errors or mandated legislative
198 changes.

199 (b) "Policy" means a written contract of personal lines
200 insurance or a written agreement for or effecting insurance, or
201 the certificate thereof, by whatever name called, and includes
202 all clauses, riders, endorsements, and papers that are a part
203 thereof. The term does not include a binder as described in s.

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204 627.420 unless the duration of the binder period exceeds 60
205 days.

206 (c) "Renewal" means the issuance and delivery by an insurer
207 of a policy superseding at the end of the policy period a policy
208 previously issued and delivered by the same insurer, or the
209 issuance and delivery of a certificate or notice extending the
210 term of a policy beyond its policy period or term. Any policy
211 having a policy period or term of less than 6 months or any
212 policy that does not have a fixed expiration date shall, for
213 purposes of this section, be considered as if written for
214 successive policy periods or terms of 6 months.

215 (2) A renewal policy may contain a change in policy terms.
216 If a renewal policy contains a change in policy terms, the
217 insurer shall give the named insured a written notice of the
218 change in policy terms, which must be enclosed along with the
219 written notice of renewal premium required by ss. 627.4133 and
220 627.728.

221 (3) An insurer is not required to obtain proof that a
222 person has received a notice of a change in policy terms.
223 However, a certificate of mailing or any delivery confirmation
224 of the notice of the change in policy terms to the named insured
225 at the address shown in the policy from the United States Postal
226 Service is proof of notice.

227 (4) Receipt of payment of the premium for the renewal
228 policy by the insurer is deemed to be acceptance of the new
229 policy terms by the named insured.

230 (5) If an insurer fails to provide the notice of a change
231 in policy terms required under this section, the original policy
232 terms shall remain in effect until the next renewal and the

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233 proper service of the notice of the change in policy terms or
234 until the effective date of replacement coverage obtained by the
235 named insured, whichever occurs first.

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

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

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

243 (c) Encourage policyholders to discuss their coverages with
244 their insurance agents.

245 Section 5. Section 627.707, Florida Statutes, is amended to
246 read:

247 627.707 Standards for investigation of sinkhole claims by
248 insurers; nonrenewals.—Upon receipt of a claim for a sinkhole
249 loss, an insurer must meet the following standards in
250 investigating a claim:

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

255 (2) Following the insurer's initial inspection, the insurer
256 shall engage a professional engineer or a professional geologist
257 to conduct testing as provided in s. 627.7072 to determine the
258 cause of the loss within a reasonable professional probability
259 and issue a report as provided in s. 627.7073, if:

260 (a) The insurer is unable to identify a valid cause of the
261 damage or discovers damage to the structure which is consistent

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262 with sinkhole loss; or

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

266 (3) Following the initial inspection of the insured
267 premises, the insurer shall provide written notice to the
268 policyholder disclosing the following information:

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

271 (b) A statement of the circumstances under which the
272 insurer is required to engage a professional engineer or a
273 professional geologist to verify or eliminate sinkhole loss and
274 to engage a professional engineer to make recommendations
275 regarding land and building stabilization and foundation repair.

276 (c) A statement regarding the right of the policyholder to
277 request testing by a professional engineer or a professional
278 geologist and the circumstances under which the policyholder may
279 demand certain testing.

280 (4) If the insurer determines that there is no sinkhole
281 loss, the insurer may deny the claim. If the insurer denies the
282 claim, without performing testing under s. 627.7072, the
283 policyholder may demand testing by the insurer under s.
284 627.7072. The policyholder's demand for testing must be
285 communicated to the insurer in writing after the policyholder's
286 receipt of the insurer's denial of the claim.

287 (5) (a) Subject to paragraph (b), if a sinkhole loss is
288 verified, the insurer shall pay to stabilize the land and
289 building and repair the foundation in accordance with the
290 recommendations of the professional engineer as provided under

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291 s. 627.7073, with notice to ~~and in consultation with~~ the
292 policyholder, subject to the coverage and terms of the policy.
293 The insurer shall pay for other repairs to the structure and
294 contents in accordance with the terms of the policy.

295 (b) ~~Once a~~ The insurer may limit its payment to the actual
296 ~~cash value of the sinkhole loss, not including underpinning or~~
297 ~~grouting or any other repair technique performed below the~~
298 ~~existing foundation of the building, until the policyholder~~
299 enters into a contract for the performance of building
300 stabilization or foundation repairs, the claim shall be paid up
301 to the full cost of the stabilization or foundation repairs and
302 up to full replacement cost for structural repairs as set forth
303 in this paragraph, less the insured's deductible. Once the
304 policyholder enters into a contract for the performance of
305 building stabilization or foundation repairs, the insurer may:-

306 1. Limit its initial payment to 10 percent of the estimated
307 costs to implement the building stabilization and foundation
308 repairs; or

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

311
312 However, after the policyholder enters into the contract for the
313 performance of building stabilization or foundation repairs, the
314 insurer shall pay the amounts necessary to ~~begin and~~ perform
315 such repairs as the work is performed and the expenses are
316 incurred. Final payments for the structural or stabilization and
317 foundation repair work shall be remitted once such work is
318 complete and in accordance with the terms of the policy. The
319 insurer may not require the policyholder to advance payment for

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320 such repairs. If repair covered by a personal lines residential
321 property insurance policy has begun and the professional
322 engineer selected or approved by the insurer determines that the
323 repair cannot be completed within the policy limits, the insurer
324 must either complete the professional engineer's recommended
325 repair or tender the policy limits to the policyholder without a
326 reduction for the repair expenses incurred.

327 (c) The policyholder shall enter into such contract for
328 repairs within 90 days after the insurance company approves
329 coverage for a sinkhole loss to prevent additional damage to the
330 building or structure. The 90-day time period may be extended
331 for an additional reasonable time period if the policyholder is
332 unable to find a qualified person or entity to contract for such
333 repairs within the 90-day time period based upon factors beyond
334 the policyholder's control.

335 (d) The stabilization and all other repairs to the
336 structure and contents must be completed within 12 months after
337 entering into the contract for repairs as described in paragraph
338 (c) unless:

339 1. There is a mutual agreement between the insurer and the
340 insured;

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

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

346 4. The claim is in litigation.

347 (e)~~(e)~~ Upon the insurer's obtaining the written approval of
348 the policyholder and any lienholder, the insurer may make

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349 payment directly to the persons selected by the policyholder to
350 perform the land and building stabilization and foundation
351 repairs. The decision by the insurer to make payment to such
352 persons does not hold the insurer liable for the work performed.

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

356 (7) If the insurer obtains, pursuant to s. 627.7073,
357 written certification that there is no sinkhole loss ~~or that the~~
358 ~~cause of the damage was not sinkhole activity~~, and if the
359 policyholder has submitted the sinkhole claim without good faith
360 grounds for submitting such claim, the policyholder shall
361 reimburse the insurer for 50 percent of the actual costs of the
362 analyses and services provided under ss. 627.7072 and 627.7073;
363 however, a policyholder is not required to reimburse an insurer
364 more than \$2,500 with respect to any claim. A policyholder is
365 required to pay reimbursement under this subsection only if the
366 insurer, prior to ordering the analysis under s. 627.7072,
367 informs the policyholder in writing of the policyholder's
368 potential liability for reimbursement and gives the policyholder
369 the opportunity to withdraw the claim.

370 (8) No insurer shall nonrenew any policy of property
371 insurance on the basis of filing of claims for partial loss
372 caused by sinkhole damage or clay shrinkage as long as the total
373 of such payments does not exceed the ~~current~~ policy limits of
374 coverage for property damage for the policy in effect on the
375 date of the loss, and provided the insured has repaired the
376 structure in accordance with the engineering recommendations
377 upon which any payment or policy proceeds were based.

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378 (9) The insurer may engage a professional structural
379 engineer to make recommendations as to the repair of the
380 structure.

381 Section 6. Section 627.7073, Florida Statutes, is amended
382 to read:

383 627.7073 Sinkhole reports.—

384 (1) Upon completion of testing as provided in s. 627.7072,
385 the professional engineer or professional geologist shall issue
386 a report and certification to the insurer, with an additional
387 copy and certification for the insurer to forward to ~~and~~ the
388 policyholder as provided in this section.

389 (a) Sinkhole loss is verified if, based upon tests
390 performed in accordance with s. 627.7072, a professional
391 engineer or a professional geologist issues a written report and
392 certification stating:

393 1. That the cause of the actual physical and structural
394 damage is sinkhole activity within a reasonable professional
395 probability.

396 2. That the analyses conducted were of sufficient scope to
397 identify sinkhole activity as the cause of damage within a
398 reasonable professional probability.

399 3. A description of the tests performed.

400 4. A recommendation by the professional engineer of methods
401 for stabilizing the land and building and for making repairs to
402 the foundation.

403 (b) If sinkhole activity is eliminated as the cause of
404 damage to the structure, the professional engineer or
405 professional geologist shall issue a written report and
406 certification to the policyholder and the insurer stating:

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

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

412 3. A statement of the cause of the damage within a
413 reasonable professional probability.

414 4. A description of the tests performed.

415 (c) The respective findings, opinions, and recommendations
416 of the professional engineer or professional geologist as to the
417 cause of distress to the property and the findings, opinions,
418 and recommendations of the professional engineer as to land and
419 building stabilization and foundation repair as required by s.
420 627.707(2), shall be presumed correct. The presumption of
421 correctness is based upon the public policy concerns relating to
422 the availability and affordability of sinkhole coverage to
423 provide consistency in claims handling and reduce the number of
424 disputed sinkhole claims and is therefore a presumption shifting
425 the burden of proof under s. 90.304.

426 (2) (a) Any insurer that has paid a claim for a sinkhole
427 loss shall record ~~file~~ a copy of the report and certification,
428 prepared pursuant to subsection (1), including the legal
429 description of the real property and the name of the property
430 owner and the amount paid by the insurer, with the county clerk
431 of court, who shall record the report and certification. The
432 insurer shall also record a copy of any report prepared on
433 behalf of the insured or the insured's representative which
434 indicates that sinkhole loss caused the damage claimed. The
435 insurer shall bear the cost of filing and recording one or more

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436 reports ~~the report~~ and certification. There shall be no cause of
437 action or liability against an insurer for compliance with this
438 section. The recording of the report and certification does not:

439 1. Constitute a lien, encumbrance, or restriction on the
440 title to the real property or constitute a defect in the title
441 to the real property;

442 2. Create any cause of action or liability against any
443 grantor of the real property for breach of any warranty of good
444 title or warranty against encumbrances; or

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

447 (b) The seller of real property upon which a sinkhole claim
448 has been made by the seller and paid by the insurer shall
449 disclose to the buyer of such property that a claim has been
450 paid, the amount of the payment, and whether or not the full
451 amount of the proceeds were used to repair the sinkhole damage.
452 The seller shall also provide to the buyer a copy of the report
453 prepared pursuant to subsection (1) and any report prepared on
454 behalf of the insured.

455 Section 7. Section 627.7074, Florida Statutes, is amended
456 to read:

457 627.7074 Alternative procedure for resolution of disputed
458 sinkhole insurance claims.—

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

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

462 (b) "Neutral evaluator" means a professional engineer or a
463 professional geologist who has completed a course of study in
464 alternative dispute resolution designed or approved by the

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465 department for use in the neutral evaluation process, who is
466 determined to be fair and impartial.

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

469 (b) The department shall prepare a consumer information
470 pamphlet for distribution by insurers to policyholders which
471 clearly describes the neutral evaluation process and includes
472 information and forms necessary for the policyholder to request
473 a neutral evaluation.

474 (3) Neutral evaluation is available to either party if a
475 sinkhole report has been issued pursuant to s. 627.7073.
476 Following the receipt of the report provided under s. 627.7073
477 or the denial of a claim for a sinkhole loss, the insurer shall
478 notify the policyholder of his or her right to participate in
479 the neutral evaluation program under this section. Neutral
480 evaluation supersedes the alternative dispute resolution process
481 under s. 627.7015, but does not supersede the appraisal clause,
482 if provided by the insurance policy. The insurer shall provide
483 to the policyholder the consumer information pamphlet prepared
484 by the department pursuant to paragraph (2) (b).

485 (4) Neutral evaluation is nonbinding, but mandatory if
486 requested by either party. A request for neutral evaluation may
487 be filed with the department by the policyholder or the insurer
488 on a form approved by the department. The request for neutral
489 evaluation must state the reason for the request and must
490 include an explanation of all the issues in dispute at the time
491 of the request. Filing a request for neutral evaluation tolls
492 the applicable time requirements for filing suit for a period of
493 60 days following the conclusion of the neutral evaluation

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494 process or the time prescribed in s. 95.11, whichever is later.

495 (5) Neutral evaluation shall be conducted as an informal
496 process in which formal rules of evidence and procedure need not
497 be observed. A party to neutral evaluation is not required to
498 attend neutral evaluation if a representative of the party
499 attends and has the authority to make a binding decision on
500 behalf of the party. All parties shall participate in the
501 evaluation in good faith.

502 (6) The insurer shall pay the costs associated with the
503 neutral evaluation.

504 (7) Upon receipt of a request for neutral evaluation, the
505 department shall allow the parties to submit requests to
506 disqualify neutral evaluators on the list for cause. For
507 purposes of this subsection, a ground for cause is required to
508 be found by the department only when:

509 (a) A familial relationship exists between the neutral
510 evaluator and either party or their representatives within the
511 third degree;

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

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

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

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524 The department shall appoint a neutral evaluator from the
525 department's ~~provide the parties a~~ list of certified neutral
526 evaluators and if requested by either party, shall appoint a
527 neutral evaluator who can determine both causation and method of
528 repair. The department shall allow each party to disqualify one
529 neutral evaluator without cause. The parties shall mutually
530 select a neutral evaluator from the list and promptly inform the
531 department. If the parties cannot agree to a neutral evaluator
532 within 10 business days, the department shall appoint a neutral
533 evaluator from the department list. Upon selection or
534 appointment, the department shall promptly refer the request to
535 the neutral evaluator. Within 5 business days after the
536 referral, the neutral evaluator shall notify the policyholder
537 and the insurer of the date, time, and place of the neutral
538 evaluation conference. The conference may be held by telephone,
539 if feasible and desirable. The neutral evaluation conference
540 shall be held within 45 days after the receipt of the request by
541 the department. For purposes of this paragraph, the term
542 "substantially related matter" means participation by the
543 neutral evaluator on the same claim, property, or any adjacent
544 property.

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

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

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552 (10) Evidence of an offer to settle a claim during the
553 neutral evaluation process, as well as any relevant conduct or
554 statements made in negotiations concerning the offer to settle a
555 claim, is inadmissible to prove liability or absence of
556 liability for the claim or its value, except as provided in
557 subsection (13).

558 (11) Regardless of when invoked, any court proceeding
559 related to the subject matter of the neutral evaluation shall be
560 stayed pending completion of the neutral evaluation and for 5
561 days after the filing of the neutral evaluator's report with the
562 court.

563 (12) If the neutral evaluator, based upon his or her
564 professional training and credentials, is qualified only to
565 determine the causation issue or the method-of-repair issue, the
566 department shall allow the neutral evaluator to enlist the
567 assistance of another professional from the qualified neutral
568 evaluators list, not previously stricken by parties with respect
569 to the subject evaluation, who, based upon his or her
570 professional training and credentials, is able to provide an
571 opinion as to the other disputed issue. Any professional who, if
572 appointed as the neutral evaluator, would be disqualified for
573 any reason enumerated in subsection (7) must be disqualified. In
574 addition, the neutral evaluator may use the services of other
575 experts or professionals on the qualified neutral evaluators
576 list, or may retain a contractor, as necessary to ensure that
577 all items in dispute are addressed in order to complete the
578 neutral evaluation. The neutral evaluator may request that the
579 entity that performed testing pursuant to s. 627.7072 perform
580 such additional reasonable testing deemed necessary in the

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581 professional opinion of the neutral evaluator to complete the
582 neutral evaluation.

583 (13)~~(12)~~ For all matters that are not resolved by the
584 parties at the conclusion of the neutral evaluation, the neutral
585 evaluator shall prepare a report stating that in his or her
586 opinion the sinkhole loss has been verified or eliminated within
587 a reasonable degree of professional probability and, if
588 verified, whether the sinkhole loss has caused any structural or
589 cosmetic damage to the building and, if so, the need for and
590 estimated costs of stabilizing the land and any covered
591 structures or buildings and other appropriate remediation or
592 structural repairs that are necessary due to the sinkhole loss.
593 The evaluator's report shall be sent to all parties in
594 attendance at the neutral evaluation and to the department.

595 (14)~~(13)~~ The recommendation of the neutral evaluator is not
596 binding on any party, and the parties retain access to court.
597 The neutral evaluator's written recommendation is admissible in
598 any ~~subsequent~~ action or proceeding relating to the claim or to
599 the cause of action giving rise to the claim.

600 (15)~~(14)~~ If the neutral evaluator first verifies the
601 existence of a sinkhole and, second, recommends the need for and
602 estimates costs of stabilizing the land and any covered
603 structures or buildings and other appropriate remediation or
604 structural repairs, which costs exceed the amount that the
605 insurer has offered to pay the policyholder, the insurer is
606 liable to the policyholder for up to \$2,500 in attorney's fees
607 for the attorney's participation in the neutral evaluation
608 process. For purposes of this subsection, the term "offer to
609 pay" means a written offer signed by the insurer or its legal

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610 representative and delivered to the policyholder within 10 days
611 after the insurer receives notice that a request for neutral
612 evaluation has been made under this section.

613 ~~(16)-(15)~~ If the insurer timely agrees in writing to comply
614 and timely complies with the recommendation of the neutral
615 evaluator, but the policyholder declines to resolve the matter
616 in accordance with the recommendation of the neutral evaluator
617 pursuant to this section:

618 (a) The insurer is not liable for extracontractual damages
619 related to a claim for a sinkhole loss but only as related to
620 the issues determined by the neutral evaluation process. This
621 section does not affect or impair claims for extracontractual
622 damages unrelated to the issues determined by the neutral
623 evaluation process contained in this section; and

624 (b) The insurer is not liable for attorney's fees under s.
625 627.428 or other provisions of the insurance code unless the
626 policyholder obtains a judgment that is more favorable than the
627 recommendation of the neutral evaluator.

628 (17) If the insurer agrees to comply with the neutral
629 evaluator's report, payment for stabilizing the land and
630 building and repairing the foundation and structure shall be
631 made in accordance with the terms and conditions of the
632 applicable insurance policy.

633 Section 8. Section 627.711, Florida Statutes, is amended to
634 read:

635 627.711 Notice of premium discounts for hurricane loss
636 mitigation; uniform mitigation verification inspection form.—

637 (1) Using a form prescribed by the Office of Insurance
638 Regulation, the insurer shall clearly notify the applicant or

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639 policyholder of any personal lines residential property
640 insurance policy, at the time of the issuance of the policy and
641 at each renewal, of the availability and the range of each
642 premium discount, credit, other rate differential, or reduction
643 in deductibles, and combinations of discounts, credits, rate
644 differentials, or reductions in deductibles, for properties on
645 which fixtures or construction techniques demonstrated to reduce
646 the amount of loss in a windstorm can be or have been installed
647 or implemented. The prescribed form shall describe generally
648 what actions the policyholders may be able to take to reduce
649 their windstorm premium. The prescribed form and a list of such
650 ranges approved by the office for each insurer licensed in the
651 state and providing such discounts, credits, other rate
652 differentials, or reductions in deductibles for properties
653 described in this subsection shall be available for electronic
654 viewing and download from the Department of Financial Services'
655 or the Office of Insurance Regulation's Internet website. The
656 Financial Services Commission may adopt rules to implement this
657 subsection.

658 (2) ~~By July 1, 2007,~~ The Financial Services Commission
659 shall develop by rule a uniform mitigation verification
660 inspection form that shall be used by all insurers when
661 submitted by policyholders for the purpose of factoring
662 discounts for wind insurance. In developing the form, the
663 commission shall seek input from insurance, construction, and
664 building code representatives. Further, the commission shall
665 provide guidance as to the length of time the inspection results
666 are valid. An insurer shall accept as valid a uniform mitigation
667 verification form ~~certified by the Department of Financial~~

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668 ~~Services or~~ signed by:

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

671 (a) ~~(b)~~ A building code inspector certified under s.
672 468.607;

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

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

678 (d) ~~(e)~~ A professional architect licensed under s. 481.213. ~~or~~
679 ~~or~~

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

683
684 An insurer may, but is not required to, accept a form from any
685 other person possessing qualifications and experience acceptable
686 to the insurer.

687 (3) A person who is authorized to sign a mitigation
688 verification form must inspect the structures referenced by the
689 form personally, not through employees or other persons, and
690 must certify or attest to personal inspection of the structures
691 referenced by the form.

692 (4) An individual or entity that signs a uniform mitigation
693 form may not commit misconduct in performing hurricane
694 mitigation inspections or in completing a uniform mitigation
695 form which causes financial harm to an insured or the insurer or
696 jeopardizes an insured's health and safety. Misconduct occurs

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697 when an authorized mitigation inspector signs a uniform
698 mitigation verification form that:

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

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

704 (c) Contains erroneous information due to the gross
705 negligence of the inspector; or

706 (d) Contains demonstrably false information regarding the
707 existence of mitigation features that could give an insured a
708 false evaluation of the ability of the structure to withstand
709 major damage from a hurricane endangering the safety of the
710 insured's life and property.

711 (5) The licensing board of an authorized mitigation
712 inspector that violates subsection (4) may commence disciplinary
713 proceedings and impose administrative fines and other sanctions
714 authorized under the inspector's licensing act.

715 (6) An insurer, person, or other entity that obtains
716 evidence of fraud or evidence that an inspector has made false
717 statements in the completion of a mitigation inspection form
718 shall file a report with the Division of Insurance Fraud, along
719 with all of the evidence in its possession which supports the
720 allegation of fraud or falsity. An insurer, person, or other
721 entity making the report is immune from liability, pursuant to
722 s. 626.989(4), for any statements made in the report, during the
723 investigation, or in connection with the report. The Division of
724 Insurance Fraud shall issue an investigative report if it finds
725 that probable cause exists to believe that the inspector made

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726 intentionally false or fraudulent statements in the inspection
727 form. Upon conclusion of the investigation and a finding of
728 probable cause that a violation has occurred, the Division of
729 Insurance Fraud shall send a copy of the investigative report to
730 the office and a copy to the agency responsible for the
731 professional licensure of the inspector, whether or not a
732 prosecutor takes action based upon the report.

733 (7)-(3) An individual or entity who knowingly provides or
734 utters a false or fraudulent mitigation verification form with
735 the intent to obtain or receive a discount on an insurance
736 premium to which the individual or entity is not entitled
737 commits a misdemeanor of the first degree, punishable as
738 provided in s. 775.082 or s. 775.083.

739 Section 9. This act shall take effect July 1, 2010.