

By Senator Brandes

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1                                   A bill to be entitled  
2       An act relating to sinkhole insurance; amending s.  
3       627.706, F.S.; revising the definition of the term  
4       "structural damage"; amending s. 627.707, F.S.;  
5       providing that an insurer must pay for stabilizing a  
6       structure if a sinkhole loss is verified, using a  
7       stabilization method that includes a specified type of  
8       warranty; requiring a policyholder who is paid by an  
9       insurer to stabilize a structure to repair the  
10      sinkhole; requiring an insurer to renew a property  
11      insurance policy when certain sinkhole losses have  
12      been paid; removing a provision authorizing an insurer  
13      to nonrenew a policy when the insurer has paid the  
14      policy limits for a sinkhole loss; amending s.  
15      627.7073, F.S.; providing that a specified report to  
16      determine the presence or absence of sinkhole loss or  
17      other cause of damage is to be considered the jointly  
18      owned property of the insurer and the policyholder;  
19      requiring such reports to be provided to policyholders  
20      and insurers in a specified manner; providing  
21      requirements with respect to the form of such reports;  
22      specifying a period within which an insurer that pays  
23      a claim for sinkhole loss must file a copy of such  
24      report with the clerk of court; providing monetary  
25      penalty payable by the insurer to the clerk of court  
26      for failing to timely file such report; providing an  
27      effective date.

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

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Section 1. Paragraph (k) of subsection (2) of section 627.706, Florida Statutes, is amended to read:

627.706 Sinkhole insurance; catastrophic ground cover collapse; definitions.—

(2) As used in ss. 627.706-627.7074, and as used in connection with any policy providing coverage for a catastrophic ground cover collapse or for sinkhole losses, the term:

(k) "Structural damage" means a covered building, regardless of the date of its construction, has experienced the following:

1. Interior floor displacement or deflection in excess of acceptable variances as defined in ACI 117-90 or the Florida Building Code, which results in settlement-related damage to the interior such that the interior building structure or members become unfit for service or represents a safety hazard as defined within the 2007 Florida Building Code;

2. Foundation displacement or deflection in excess of acceptable variances as defined in ACI 318-95 or the Florida Building Code, which results in settlement-related damage to the primary structural members or primary structural systems that prevents those members or systems from supporting the loads and forces they were designed to support to the extent that stresses in those primary structural members or primary structural systems exceeds one and one-third the nominal strength allowed under the Florida Building Code for new buildings of similar structure, purpose, or location;

3. Damage that results in listing, leaning, or buckling of the exterior load-bearing walls or other vertical primary

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59 structural members to such an extent that a plumb line passing  
60 through the center of gravity does not fall inside the middle  
61 one-third of the base as defined within the Florida Building  
62 Code;

63 4. Damage that results in the building, or any portion of  
64 the building containing primary structural members or primary  
65 structural systems, being significantly likely to imminently  
66 collapse because of the movement or instability of the ground  
67 within the influence zone of the supporting ground within the  
68 shear plane necessary for the purpose of supporting such  
69 building as defined within the Florida Building Code; or

70 5. Damage occurring on or after October 15, 2005, that  
71 qualifies as "substantial structural damage" as defined in the  
72 Florida Building Code.

73 Section 2. Subsections (5) and (7) of section 627.707,  
74 Florida Statutes, are amended to read:

75 627.707 Investigation of sinkhole claims; insurer payment;  
76 nonrenewals.—Upon receipt of a claim for a sinkhole loss to a  
77 covered building, an insurer must meet the following standards  
78 in investigating a claim:

79 (5) If a sinkhole loss is verified, the insurer shall pay  
80 to stabilize the structure ~~land and building and repair the~~  
81 ~~foundation~~ in accordance with the recommendations of a ~~the~~  
82 professional engineer retained pursuant to subsection (2), using  
83 a stabilization method that is warranted for the lifetime of the  
84 structure, with notice to the policyholder, subject to the  
85 coverage and terms of the policy. A policyholder who is paid by  
86 the insurer to stabilize the structure must also repair the  
87 sinkhole. The insurer shall pay for other repairs to the

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88 structure and contents in accordance with the terms of the  
89 policy. If a covered building suffers a sinkhole loss or a  
90 catastrophic ground cover collapse, the insured must repair such  
91 damage or loss in accordance with the insurer's professional  
92 engineer's recommended repairs. However, if the insurer's  
93 professional engineer determines that the repair cannot be  
94 completed within policy limits, the insurer must pay to complete  
95 the repairs recommended by the insurer's professional engineer  
96 or tender the policy limits to the policyholder.

97 (a) The insurer may limit its total claims payment to the  
98 actual cash value of the sinkhole loss, which does not include  
99 underpinning or grouting or any other repair technique performed  
100 below the existing foundation of the building, until the  
101 policyholder enters into a contract for the performance of  
102 building stabilization or foundation repairs in accordance with  
103 the recommendations set forth in the insurer's report issued  
104 pursuant to s. 627.7073.

105 (b) In order to prevent additional damage to the building  
106 or structure, the policyholder must enter into a contract for  
107 the performance of building stabilization and foundation repairs  
108 within 90 days after the insurance company confirms coverage for  
109 the sinkhole loss and notifies the policyholder of such  
110 confirmation. This time period is tolled if either party invokes  
111 the neutral evaluation process, and begins again 10 days after  
112 the conclusion of the neutral evaluation process.

113 (c) After the policyholder enters into the contract for the  
114 performance of building stabilization and foundation repairs,  
115 the insurer shall pay the amounts necessary to begin and perform  
116 such repairs as the work is performed and the expenses are

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117 incurred. The insurer may not require the policyholder to  
118 advance payment for such repairs. If repair covered by a  
119 personal lines residential property insurance policy has begun  
120 and the professional engineer selected or approved by the  
121 insurer determines that the repair cannot be completed within  
122 the policy limits, the insurer must complete the professional  
123 engineer's recommended repair or tender the policy limits to the  
124 policyholder without a reduction for the repair expenses  
125 incurred.

126 (d) The stabilization and all other repairs to the  
127 structure and contents must be completed within 12 months after  
128 entering into the contract for repairs described in paragraph  
129 (b) unless:

130 1. There is a mutual agreement between the insurer and the  
131 policyholder;

132 2. The claim is involved with the neutral evaluation  
133 process;

134 3. The claim is in litigation; or

135 4. The claim is under appraisal or mediation.

136 (e) Upon the insurer's obtaining the written approval of  
137 any lienholder, the insurer may make payment directly to the  
138 persons selected by the policyholder to perform the land and  
139 building stabilization and foundation repairs. The decision by  
140 the insurer to make payment to such persons does not hold the  
141 insurer liable for the work performed.

142 (f) The policyholder may not accept a rebate from any  
143 person performing the repairs specified in this section. If a  
144 policyholder receives a rebate, coverage is void and the  
145 policyholder must refund the amount of the rebate to the

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146 insurer. Any person performing the repairs specified in this  
147 section who offers a rebate commits insurance fraud punishable  
148 as a third degree felony as provided in s. 775.082, s. 775.083,  
149 or s. 775.084. As used in this paragraph, the term "rebate"  
150 means a remuneration, payment, gift, discount, or transfer of  
151 any item of value to the policyholder by or on behalf of a  
152 person performing the repairs specified in this section as an  
153 incentive or inducement to obtain repairs performed by that  
154 person.

155 (7) An insurer shall renew ~~may not nonrenew~~ any policy of  
156 property insurance on the basis of filing of claims for sinkhole  
157 loss if the total of such payments does not equal or exceed the  
158 policy limits of coverage for the policy in effect on the date  
159 of loss, for property damage to the covered building, as set  
160 forth on the declarations page, or if the policyholder repaired  
161 the structure in accordance with the engineering recommendations  
162 made pursuant to subsection (2) upon which any payment or policy  
163 proceeds were based. ~~If the insurer pays such limits, it may~~  
164 ~~nonrenew the policy.~~

165 Section 3. Section 627.7073, Florida Statutes, is amended  
166 to read:

167 627.7073 Sinkhole reports.—

168 (1) Upon completion of testing as provided in s. 627.7072,  
169 the professional engineer or professional geologist shall issue  
170 a report and certification, which shall be considered as  
171 property jointly owned by the insurer and the policyholder, to  
172 the insurer and the policyholder as provided in this section.

173 (a) Sinkhole loss is verified if, based upon tests  
174 performed in accordance with s. 627.7072, a professional

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175 engineer or a professional geologist issues a written report and  
176 certification stating:

177 1. That structural damage to the covered building has been  
178 identified within a reasonable professional probability.

179 2. That the cause of the structural damage is sinkhole  
180 activity within a reasonable professional probability.

181 3. That the analyses conducted were of sufficient scope to  
182 identify sinkhole activity as the cause of damage within a  
183 reasonable professional probability.

184 4. A description of the tests performed.

185 5. A recommendation by the professional engineer of methods  
186 for stabilizing the land and building and for making repairs to  
187 the foundation.

188 (b) If there is no structural damage or if sinkhole  
189 activity is eliminated as the cause of such damage to the  
190 covered building, the professional engineer or professional  
191 geologist shall issue a written report and certification to the  
192 policyholder and the insurer stating:

193 1. That there is no structural damage or the cause of such  
194 damage is not sinkhole activity within a reasonable professional  
195 probability.

196 2. That the analyses and tests conducted were of sufficient  
197 scope to eliminate sinkhole activity as the cause of the  
198 structural damage within a reasonable professional probability.

199 3. A statement of the cause of the structural damage within  
200 a reasonable professional probability.

201 4. A description of the tests performed.

202 (c) The respective findings, opinions, and recommendations  
203 of the insurer's professional engineer or professional geologist

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204 as to the cause of distress to the property and the findings,  
205 opinions, and recommendations of the insurer's professional  
206 engineer as to land and building stabilization and foundation  
207 repair set forth by s. 627.7072 shall be presumed correct.

208 (d) The professional engineer or professional geologist  
209 shall provide by certified mail, return receipt requested, two  
210 original signed and sealed reports to the policyholder and one  
211 photocopy of the report to the insurer.

212 (2) An insurer that has paid a claim for a sinkhole loss  
213 shall file a copy of the report and certification, prepared  
214 pursuant to subsection (1), including the legal description of  
215 the real property and the name of the property owner, the  
216 neutral evaluator's report, if any, which indicates that  
217 sinkhole activity caused the damage claimed, a copy of the  
218 certification indicating that stabilization has been completed,  
219 if applicable, and the amount of the payment, with the county  
220 clerk of court, who shall record the report and certification.  
221 The insurer shall bear the cost of filing and recording one or  
222 more reports and certifications. If an insurer fails to file a  
223 copy of the report within 30 days after payment of a sinkhole  
224 claim, a \$25 penalty shall be assessed for each day beyond the  
225 30th day that the insurer is determined to be in noncompliance  
226 with this section until the insurer is in compliance, which  
227 shall be payable to the clerk of the court. ~~There shall be no~~  
228 ~~cause of action or liability against an insurer for compliance~~  
229 ~~with this section.~~

230 (a) The recording of the report and certification does not:

231 1. Constitute a lien, encumbrance, or restriction on the  
232 title to the real property or constitute a defect in the title

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233 to the real property;

234       2. Create any cause of action or liability against any  
235 grantor of the real property for breach of any warranty of good  
236 title or warranty against encumbrances; or

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

239       (b) As a precondition to accepting payment for a sinkhole  
240 loss, the policyholder must file a copy of any sinkhole report  
241 regarding the insured property which was prepared on behalf or  
242 at the request of the policyholder. The policyholder shall bear  
243 the cost of filing and recording the sinkhole report. The  
244 recording of the report does not:

245       1. Constitute a lien, encumbrance, or restriction on the  
246 title to the real property or constitute a defect in the title  
247 to the real property;

248       2. Create any cause of action or liability against any  
249 grantor of the real property for breach of any warranty of good  
250 title or warranty against encumbrances; or

251       3. Create any cause of action or liability against a title  
252 insurer that insures the title to the real property.

253       (c) The seller of real property upon which a sinkhole claim  
254 has been made by the seller and paid by the insurer must  
255 disclose to the buyer of such property, before the closing, that  
256 a claim has been paid and whether or not the full amount of the  
257 proceeds was used to repair the sinkhole damage.

258       (3) Upon completion of any building stabilization or  
259 foundation repairs for a verified sinkhole loss, the  
260 professional engineer responsible for monitoring the repairs  
261 shall issue a report to the property owner which specifies what

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262 repairs have been performed and certifies within a reasonable  
263 degree of professional probability that such repairs have been  
264 properly performed. The professional engineer issuing the report  
265 shall file a copy of the report and certification, which  
266 includes a legal description of the real property and the name  
267 of the property owner, with the county clerk of the court, who  
268 shall record the report and certification. This subsection does  
269 not create liability for an insurer based on any representation  
270 or certification by a professional engineer related to the  
271 stabilization or foundation repairs for the verified sinkhole  
272 loss.

273 Section 4. This act shall take effect July 1, 2013.