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LEGISLATIVE ACTION

Senate

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House

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Floor: 11/F/2R

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12/13/2022 03:07 PM

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Senator Polsky moved the following:

Senate Amendment (with title amendment)

Between lines 2607 and 2608

insert:

Section 17. Section 627.7015, Florida Statutes, is amended to read:

627.7015 Mandatory mediation ~~Alternative procedure~~ for resolution of disputed property insurance claims.—

(1) This section sets forth a nonadversarial ~~alternative~~



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11 dispute resolution procedure for a mediated claim resolution
12 conference prompted by the need for effective, fair, and timely
13 handling of property insurance claims. There is a particular
14 need for an informal, nonthreatening forum for helping parties
15 ~~who elect this procedure~~ to resolve their claims disputes
16 because most homeowner and commercial residential insurance
17 policies obligate policyholders to participate in a potentially
18 expensive and time-consuming adversarial appraisal process
19 before litigation. The procedure set forth in this section is
20 designed to bring the parties together for a mediated claims
21 settlement conference without any of the trappings or drawbacks
22 of an adversarial process. Before resorting to these procedures,
23 policyholders and insurers are encouraged to resolve claims as
24 quickly and fairly as possible. This section applies ~~is~~
25 ~~available with respect~~ to claims under personal lines and
26 commercial residential policies before commencing the appraisal
27 process, or before commencing litigation. ~~Mediation may be~~
28 ~~requested only by the policyholder, as a first-party claimant, a~~
29 ~~third party, as an assignee of the policy benefits, or the~~
30 ~~insurer. However, an insurer is not required to participate in~~
31 ~~any mediation requested by a third-party assignee of the policy~~
32 ~~benefits. If requested by the policyholder, Participation by~~
33 legal counsel is permitted. Mediation under this section is also
34 required of ~~available to~~ litigants referred to the department by
35 a county court or circuit court. This section does not apply to
36 commercial coverages, to private passenger motor vehicle
37 insurance coverages, or to disputes relating to liability
38 coverages in policies of property insurance.

39 (2) At the time of issuance and renewal of a policy or at



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40 the time a first-party claim within the scope of this section is
41 filed by the policyholder, the insurer shall notify the
42 policyholder of ~~its right to participate in the~~ mandatory
43 mediation program under this section. The department shall
44 prepare a consumer information pamphlet for distribution to
45 persons participating in mediation.

46 (3) If the parties mutually agree, mediation may be
47 conducted by teleconference or by telephone in lieu of appearing
48 in person. The costs of mediation must be reasonable, and the
49 insurer must bear all of the cost of conducting mediation
50 conferences, except as otherwise provided in this section. If a
51 policyholder fails to appear at the conference, the conference
52 must be rescheduled upon the policyholder's payment of the costs
53 of a rescheduled conference. If the insurer fails to appear at
54 the conference, the insurer must pay the policyholder's actual
55 cash expenses incurred in attending the conference if the
56 insurer's failure to attend was not due to a good cause
57 acceptable to the department. An insurer will be deemed to have
58 failed to appear if the insurer's representative lacks authority
59 to settle the full value of the claim. The insurer shall incur
60 an additional fee for a rescheduled conference necessitated by
61 the insurer's failure to appear at a scheduled conference. The
62 fees assessed by the administrator must include a charge
63 necessary to defray the expenses of the department related to
64 its duties under this section and must be deposited in the
65 Insurance Regulatory Trust Fund.

66 (4) The department shall adopt by rule a property insurance
67 mediation program to be administered by the department or its
68 designee. The department shall ~~may~~ also adopt special rules



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69 which are applicable in cases of an emergency within the state,
70 including emergency rules as necessary to establish physical
71 addresses for the mediation program in areas affected by natural
72 disasters. The rules shall be modeled after practices and
73 procedures set forth in mediation rules of procedure adopted by
74 the Supreme Court. The rules shall provide for:

75 (a) Reasonable requirement for processing and scheduling of
76 requests for mediation.

77 (b) Qualifications, denial of application, suspension,
78 revocation of approval, and other penalties for mediators as
79 provided in s. 627.745 and the Florida Rules for Certified and
80 Court-Appointed Mediators.

81 (c) Provisions governing who may attend mediation
82 conferences.

83 (d) Selection of mediators.

84 (e) Criteria for the conduct of mediation conferences.

85 (f) Right to legal counsel.

86 (5) All statements made and documents produced at a
87 mediation conference shall be deemed to be settlement
88 negotiations in anticipation of litigation within the scope of
89 s. 90.408. All parties to the mediation must negotiate in good
90 faith and must have the authority to immediately settle the
91 claim. Mediators are deemed to be agents of the department and
92 shall have the immunity from suit provided in s. 44.107.

93 (6) (a) Mediation is nonbinding; however, if a written
94 settlement is reached, the policyholder has 3 business days
95 within which the policyholder may rescind the settlement unless
96 the policyholder has cashed or deposited any check or draft
97 disbursed to the policyholder for the disputed matters as a



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98 result of the conference. If a settlement agreement is reached
99 and is not rescinded, it is binding and acts as a release of all
100 specific claims that were presented in that mediation
101 conference.

102 (b) At the conclusion of the mediation, the mediator shall
103 provide a written report of the results of mediation, including
104 any settlement amount, to the insurer, the policyholder, and the
105 policyholder's representative if the policyholder is represented
106 at the mediation.

107 (7) If the insurer fails to comply with subsection (2) by
108 failing to notify a policyholder of ~~its right to participate in~~
109 the mediation program under this section or if ~~the insurer~~
110 ~~requests the mediation,~~ and the mediation results are rejected
111 by either party, the policyholder is not required to submit to
112 or participate in any contractual loss appraisal process of the
113 property loss damage as a precondition to legal action for
114 breach of contract against the insurer for its failure to pay
115 the policyholder's claims covered by the policy.

116 (8) The department may designate an entity or person to
117 serve as administrator to carry out any of the provisions of
118 this section and may take this action by means of a written
119 contract or agreement.

120 (9) For purposes of this section, the term "claim" refers
121 to any dispute between an insurer and a policyholder relating to
122 a material issue of fact other than a dispute:

123 (a) With respect to which the insurer has a reasonable
124 basis to suspect fraud;

125 (b) When, based on agreed-upon facts as to the cause of
126 loss, there is no coverage under the policy;



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127 (c) With respect to which the insurer has a reasonable
128 basis to believe that the policyholder has intentionally made a
129 material misrepresentation of fact which is relevant to the
130 claim, and the entire request for payment of a loss has been
131 denied on the basis of the material misrepresentation;

132 (d) With respect to which the amount in controversy is less
133 than \$500, unless the parties agree to mediate a dispute
134 involving a lesser amount; or

135 (e) With respect to a loss that does not comply with s.
136 627.70132.

137 Section 18. For the 2022-2023 fiscal year, the sum of \$1
138 million in recurring funds is appropriated from the Insurance
139 Regulatory Trust Fund to the Department of Financial Services
140 for the purpose of administering the amendment made by this act
141 to s. 627.7015, Florida Statutes.

142
143 ===== T I T L E A M E N D M E N T =====

144 And the title is amended as follows:

145 Delete line 119

146 and insert:

147 barred; amending s. 627.7015, F.S.; requiring, rather
148 than authorizing, parties to a property insurance
149 claims dispute to participate in mediation; providing
150 that the parties may mutually agree to conduct the
151 mediation by teleconference or by telephone;
152 requiring, rather than authorizing, the Department of
153 Financial Services to adopt certain rules; authorizing
154 the department to adopt certain emergency rules;
155 providing an appropriation; amending s. 627.70152,



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F.S.; revising