

By Senator Polsky

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1 A bill to be entitled
2 An act relating to the resolution of disputed property
3 insurance claims; amending s. 627.7015, F.S.;
4 requiring, rather than authorizing, parties to a
5 property insurance claims dispute to participate in
6 mediation; providing that mediation is a condition
7 precedent to commencing litigation; providing that the
8 parties may mutually agree to conduct the mediation by
9 teleconference or by telephone; requiring all insureds
10 to personally attend the mediation; revising and
11 specifying duties as to bearing certain costs of
12 mediation; requiring, rather than authorizing, the
13 Department of Financial Services to adopt certain
14 rules; authorizing the department to adopt certain
15 emergency rules; requiring the policyholder to provide
16 the insurer with certain documents within a certain
17 timeframe after mediation is invoked; revising
18 conditions under which a policyholder has a certain
19 timeframe to rescind a settlement; revising the
20 definition of the term "claim"; providing
21 construction; amending s. 627.7074, F.S.; conforming a
22 provision to changes made by the act; providing an
23 appropriation; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Section 627.7015, Florida Statutes, is amended
28 to read:

29 627.7015 Mandatory mediation ~~Alternative procedure~~ for

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30 resolution of disputed property insurance claims.—

31 (1) This section sets forth a nonadversarial ~~alternative~~
32 dispute resolution procedure for a mediated claim resolution
33 conference prompted by the need for effective, fair, and timely
34 handling of property insurance claims. There is a particular
35 need for an informal, nonthreatening forum for helping parties
36 ~~who elect this procedure~~ to resolve their claims disputes
37 because most homeowner and commercial residential insurance
38 policies obligate policyholders to participate in a potentially
39 expensive and time-consuming adversarial appraisal process
40 before litigation. The procedure set forth in this section is
41 designed to bring the parties together for a mediated claims
42 settlement conference without any of the trappings or drawbacks
43 of an adversarial process. Before resorting to these procedures,
44 policyholders and insurers are encouraged to resolve claims as
45 quickly and fairly as possible. This section applies is
46 ~~available with respect~~ to claims under personal lines and
47 commercial residential policies before commencing the appraisal
48 process and is a condition precedent to, ~~or before~~ commencing
49 litigation. ~~Mediation may be requested only by the policyholder,~~
50 ~~as a first party claimant, a third party, as an assignee of the~~
51 ~~policy benefits, or the insurer.~~ However, an insurer is not
52 required to participate in any mediation requested by a third-
53 party assignee of the policy benefits. ~~If requested by the~~
54 ~~policyholder,~~ Participation by legal counsel is permitted.
55 Mediation under this section is also required of ~~available to~~
56 litigants referred to the department by a county court or
57 circuit court. This section does not apply to commercial
58 coverages, to private passenger motor vehicle insurance

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59 coverages, or to disputes relating to liability coverages in
60 policies of property insurance.

61 (2) At the time of issuance and renewal of a policy or at
62 the time a first-party claim within the scope of this section is
63 filed by the policyholder, the insurer shall notify the
64 policyholder of ~~its right to participate in the~~ mandatory
65 mediation program under this section. The department shall
66 prepare a consumer information pamphlet for distribution to
67 persons participating in mediation.

68 (3) If the parties mutually agree, mediation may be
69 conducted by teleconference or by telephone in lieu of appearing
70 in person. All named insureds must personally attend the
71 mediation, regardless of how it is conducted. The costs of
72 mediation must be reasonable, and the insurer must bear all of
73 the cost of conducting mediation conferences, except as
74 otherwise provided in this section. If a named insured or their
75 representative ~~policyholder~~ fails to appear at the conference,
76 which prevents the mediation from proceeding, the conference
77 must be rescheduled upon the policyholder's payment of the costs
78 of a rescheduled conference. If the insurer fails to appear at
79 the conference, the insurer must pay the policyholder's actual
80 cash expenses incurred in attending the conference if the
81 insurer's failure to attend was not due to a good cause
82 acceptable to the department. An insurer will be deemed to have
83 failed to appear if the insurer's representative lacks authority
84 to settle the full value of the claim. The insurer shall incur
85 an additional fee for a rescheduled conference necessitated by
86 the insurer's failure to appear at a scheduled conference. The
87 fees assessed by the administrator must include a charge

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88 necessary to defray the expenses of the department related to
89 its duties under this section and must be deposited in the
90 Insurance Regulatory Trust Fund. If a party elects to request an
91 expert or a representative to attend the mediation, that party
92 must bear any costs for the attendance of the expert or
93 representative.

94 (4) The department shall adopt by rule a property insurance
95 mediation program to be administered by the department or its
96 designee. The department shall ~~may~~ also adopt special rules that
97 ~~which~~ are applicable in cases of an emergency within the state,
98 including emergency rules as necessary to establish physical
99 addresses for the mediation program in areas affected by natural
100 disasters. The rules shall be modeled after practices and
101 procedures set forth in mediation rules of procedure adopted by
102 the Supreme Court. The rules shall provide for:

103 (a) Reasonable requirement for processing and scheduling of
104 requests for mediation.

105 (b) Qualifications, denial of application, suspension,
106 revocation of approval, and other penalties for mediators as
107 provided in s. 627.745 and the Florida Rules for Certified and
108 Court-Appointed Mediators.

109 (c) Provisions governing who may attend mediation
110 conferences.

111 (d) Selection of mediators.

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

113 (f) Right to legal counsel.

114 (5) (a) All statements made and documents produced at a
115 mediation conference shall be deemed to be settlement
116 negotiations in anticipation of litigation within the scope of

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117 s. 90.408. All parties to the mediation must negotiate in good
118 faith and must have the authority to immediately settle the
119 claim. Mediators are deemed to be agents of the department and
120 shall have the immunity from suit provided in s. 44.107.

121 (b) Once mediation is invoked, the policyholder must within
122 10 days provide to the insurer any and all supporting documents
123 and information that serve as the basis for the claim.

124 (6) (a) Mediation is nonbinding; however, if a written
125 settlement is reached and the policyholder is not represented by
126 an attorney or a public adjuster, the policyholder has 3
127 business days within which the policyholder may rescind the
128 settlement unless the policyholder has cashed or deposited any
129 check or draft disbursed to the policyholder for the disputed
130 matters as a result of the conference. If a settlement agreement
131 is reached and is not rescinded, it is binding and acts as a
132 release of all specific claims that were presented in that
133 mediation conference.

134 (b) At the conclusion of the mediation, the mediator shall
135 provide a written report of the results of mediation, including
136 any settlement amount, to the insurer, the policyholder, and the
137 policyholder's representative if the policyholder is represented
138 at the mediation.

139 (7) If the insurer fails to comply with subsection (2) by
140 failing to notify a policyholder of ~~its right to participate in~~
141 the mediation program under this section or if ~~the insurer~~
142 ~~requests the mediation~~, and the mediation results are rejected
143 by either party, the policyholder is not required to submit to
144 or participate in any contractual loss appraisal process of the
145 property loss damage as a precondition to legal action for

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146 breach of contract against the insurer for its failure to pay
147 the policyholder's claims covered by the policy.

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

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

155 (a) With respect to which the insurer has a reasonable
156 basis to suspect fraud;

157 (b) When the insurer has determined, ~~based on agreed-upon~~
158 ~~facts as to the cause of loss~~, there is no coverage under the
159 policy;

160 (c) With respect to which the insurer has a reasonable
161 basis to believe that the policyholder has intentionally made a
162 material misrepresentation of fact which is relevant to the
163 claim, and the entire request for payment of a loss has been
164 denied on the basis of the material misrepresentation;

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

168 (e) With respect to a loss that does not comply with s.
169 627.70132.

170 (10) Participation in mediation under this section before
171 the policyholder's filing of a notice under s. 627.70152 does
172 not prohibit or waive an insurer's right to invoke and
173 participate in mediation under this section in response to the
174 notice.

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175 Section 2. Subsection (3) of section 627.7074, Florida
176 Statutes, is amended to read:

177 627.7074 Alternative procedure for resolution of disputed
178 sinkhole insurance claims.—

179 (3) If there is coverage available under the policy and the
180 claim was submitted within the timeframe provided in s.

181 627.706(5), following the receipt of the report provided under

182 s. 627.7073 or the denial of a claim for a sinkhole loss, the

183 insurer shall notify the policyholder of his or her right to

184 participate in the neutral evaluation program under this

185 section. Neutral evaluation supersedes the mediation ~~alternative~~

186 ~~dispute resolution~~ process under s. 627.7015 but does not

187 invalidate the appraisal clause of the insurance policy. The

188 insurer shall provide to the policyholder the consumer

189 information pamphlet prepared by the department pursuant to

190 subsection (1) electronically or by United States mail.

191 Section 3. For the 2023-2024 fiscal year, the sum of \$1

192 million in recurring funds is appropriated from the Insurance

193 Regulatory Trust Fund to the Department of Financial Services

194 for the purpose of administering the amendment made by this act

195 to s. 627.7015, Florida Statutes.

196 Section 4. This act shall take effect January 1, 2024.