

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; deleting  
8       provisions relating to the eligibility of claims for  
9       mediation; providing that the parties may mutually  
10      agree to conduct the mediation by teleconference or by  
11      telephone; requiring all insureds, or a representative  
12      thereof, to personally attend the mediation; revising  
13      and specifying duties as to bearing certain costs of  
14      mediation; requiring, rather than authorizing, the  
15      Department of Financial Services to adopt certain  
16      rules; authorizing the department to adopt certain  
17      emergency rules; requiring the policyholder to provide  
18      the insurer with certain documents within a certain  
19      timeframe after mediation is invoked; revising  
20      conditions under which a policyholder has a certain  
21      timeframe to rescind a settlement; revising the  
22      definition of the term "claim"; providing and revising  
23      construction; amending s. 627.7074, F.S.; conforming a  
24      provision to changes made by the act; providing an  
25      appropriation; providing effective dates.

26  
27   Be It Enacted by the Legislature of the State of Florida:

28  
29       Section 1. Section 627.7015, Florida Statutes, is amended

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30 to read:

31 627.7015 Mandatory mediation ~~Alternative procedure~~ for  
32 resolution of disputed property insurance claims.—

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

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59 circuit court. This section does not apply to commercial  
60 coverages, to private passenger motor vehicle insurance  
61 coverages, or to disputes relating to liability coverages in  
62 policies of property insurance.

63 (2) At the time of issuance and renewal of a policy or at  
64 the time a first-party claim within the scope of this section is  
65 filed by the policyholder, the insurer shall notify the  
66 policyholder of ~~its right to participate in the mandatory~~  
67 mediation program under this section. ~~A claim becomes eligible~~  
68 ~~for mediation after the insurer complies with s. 627.70131(7) or~~  
69 ~~elects to reinspect pursuant to s. 627.70152(4)(a)3. If the~~  
70 ~~insurer has not complied with s. 627.70131(7) or elected to~~  
71 ~~reinspect pursuant to s. 627.70152(4)(a)3. within 90 days after~~  
72 ~~notice of the loss, the insurer may not require mediation under~~  
73 ~~this section. This subsection does not impair the right of an~~  
74 ~~insurance company to request mediation after a determination of~~  
75 ~~coverage pursuant to this section or require appraisal or~~  
76 ~~another method of alternative dispute resolution pursuant to s.~~  
77 ~~627.70152(4)(b).~~ The department shall prepare a consumer  
78 information pamphlet for distribution to persons participating  
79 in mediation.

80 (3) If the parties mutually agree, mediation may be  
81 conducted by teleconference or by telephone in lieu of appearing  
82 in person. All named insureds, or a representative thereof, must  
83 personally attend the mediation, regardless of how it is  
84 conducted. The costs of mediation must be reasonable, and the  
85 insurer must bear all of the cost of conducting mediation  
86 conferences, except as otherwise provided in this section. If a  
87 named insured or his or her representative ~~policyholder~~ fails to

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88 appear at the conference, thus preventing the mediation from  
89 proceeding, the conference must be rescheduled upon the  
90 policyholder's payment of the costs of a rescheduled conference.  
91 If the insurer fails to appear at the conference, the insurer  
92 must pay the policyholder's actual cash expenses incurred in  
93 attending the conference if the insurer's failure to attend was  
94 not due to a good cause acceptable to the department. An insurer  
95 is ~~will be~~ deemed to have failed to appear if the insurer's  
96 representative lacks authority to settle the full value of the  
97 claim. The insurer shall incur an additional fee for a  
98 rescheduled conference necessitated by the insurer's failure to  
99 appear at a scheduled conference. The fees assessed by the  
100 department must include a charge necessary to defray the  
101 expenses of the department related to its duties under this  
102 section and must be deposited in the Insurance Regulatory Trust  
103 Fund. The department may suspend the insurer's authority to  
104 appoint licensees if the insurer does not timely pay the  
105 required fees. If a party elects to request an expert or a  
106 representative to attend the mediation, that party must bear any  
107 costs for the attendance of the expert or representative.

108 (4) The department shall adopt by rule a property insurance  
109 mediation program to be administered by the department or its  
110 designee. The department shall ~~may~~ also adopt special rules that  
111 ~~which~~ are applicable in cases of an emergency within this the  
112 state, including emergency rules as necessary to establish  
113 physical addresses for the mediation program in areas affected  
114 by natural disasters. The rules shall be modeled after practices  
115 and procedures set forth in mediation rules of procedure adopted  
116 by the Supreme Court. The rules shall provide for:

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117 (a) Reasonable requirements ~~requirement~~ for processing and  
118 scheduling of requests for mediation.

119 (b) Qualifications and ~~r~~ denial of application, suspension,  
120 revocation of approval, and other penalties for mediators as  
121 provided in s. 627.745 and the Florida Rules for Certified and  
122 Court-Appointed Mediators.

123 (c) Provisions governing who may attend mediation  
124 conferences.

125 (d) Selection of mediators.

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

127 (f) Right to legal counsel.

128 (5) (a) All statements made and documents produced at a  
129 mediation conference shall be deemed to be settlement  
130 negotiations in anticipation of litigation within the scope of  
131 s. 90.408. All parties to the mediation must negotiate in good  
132 faith and must have the authority to immediately settle the  
133 claim. Mediators are deemed to be agents of the department and  
134 shall have the immunity from suit provided in s. 44.107.

135 (b) Within 10 days after mediation is invoked, the  
136 policyholder must provide to the insurer any supporting  
137 documents and information that serve as the basis for the claim.

138 (6) (a) Mediation is nonbinding; however, if a written  
139 settlement is reached and the policyholder is not represented by  
140 an attorney or a public adjuster, the policyholder has 3  
141 business days within which the policyholder may rescind the  
142 settlement unless the policyholder has cashed or deposited any  
143 check or draft disbursed to the policyholder for the disputed  
144 matters as a result of the conference. If a settlement agreement  
145 is reached and is not rescinded, it is binding and acts as a

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146 release of all specific claims that were presented in that  
147 mediation conference.

148 (b) At the conclusion of the mediation, the mediator shall  
149 provide a written report of the results of mediation, including  
150 any settlement amount, to the insurer, the policyholder, and the  
151 policyholder's representative if the policyholder is represented  
152 at the mediation.

153 (7) If the insurer fails to comply with subsection (2) by  
154 failing to notify a policyholder of ~~its right to participate in~~  
155 the mediation program under this section or if ~~the insurer~~  
156 ~~requests the mediation,~~ and the mediation results are rejected  
157 by either party, the policyholder is not required to submit to  
158 or participate in any contractual loss appraisal process of the  
159 property loss damage as a precondition to legal action for  
160 breach of contract against the insurer for its failure to pay  
161 the policyholder's claims covered by the policy.

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

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

169 (a) With respect to which the insurer has a reasonable  
170 basis to suspect fraud;

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

174 (c) With respect to which the insurer has a reasonable

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175 basis to believe that the policyholder has intentionally made a  
176 material misrepresentation of fact which is relevant to the  
177 claim, and the entire request for payment of a loss has been  
178 denied on the basis of the material misrepresentation;

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

182 (e) With respect to a loss that does not comply with s.  
183 627.70132.

184 (10) Participation in mediation under this section before  
185 the policyholder's filing of a notice under s. 627.70152 does  
186 not prohibit or waive an insurer's right to invoke and  
187 participate in mediation under this section in response to the  
188 notice.

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

191 627.7074 Alternative procedure for resolution of disputed  
192 sinkhole insurance claims.—

193 (3) If there is coverage available under the policy and the  
194 claim was submitted within the timeframe provided in s.  
195 627.706(5), following the receipt of the report provided under  
196 s. 627.7073 or the denial of a claim for a sinkhole loss, the  
197 insurer shall notify the policyholder of his or her right to  
198 participate in the neutral evaluation program under this  
199 section. Neutral evaluation supersedes the mediation ~~alternative~~  
200 ~~dispute resolution~~ process under s. 627.7015 but does not  
201 invalidate the appraisal clause of the insurance policy. The  
202 insurer shall provide to the policyholder the consumer  
203 information pamphlet prepared by the department pursuant to

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

205       Section 3. Effective July 1, 2024, for the 2024-2025 fiscal  
206 year, the sum of \$1 million in recurring funds is appropriated  
207 from the Insurance Regulatory Trust Fund to the Department of  
208 Financial Services for the purpose of administering the  
209 amendment made by this act to s. 627.7015, Florida Statutes.

210       Section 4. Except as otherwise expressly provided in this  
211 act and except for this section, which shall take effect July 1,  
212 2024, this act shall take effect January 1, 2025.