

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:

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Section 1. 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~~ dispute resolution procedure for a mediated claim resolution conference prompted by the need for effective, fair, and timely handling of property insurance claims. There is a particular need for an informal, nonthreatening forum for helping parties ~~who elect this procedure~~ to resolve their claims disputes because most homeowner and commercial residential insurance policies obligate policyholders to participate in a potentially expensive and time-consuming adversarial appraisal process before litigation. The procedure set forth in this section is designed to bring the parties together for a mediated claims settlement conference without any of the trappings or drawbacks of an adversarial process. Before resorting to these procedures, policyholders and insurers are encouraged to resolve claims as quickly and fairly as possible. This section applies ~~is available with respect~~ to claims under personal lines and commercial residential policies before commencing the appraisal process and is a condition precedent to, ~~or before~~ commencing litigation. ~~Mediation may be requested only by the policyholder, as a first-party claimant, a third-party, as an assignee of the~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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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
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 conducted. The costs of mediation
72 must be reasonable, and the insurer must bear all of the cost of
73 conducting mediation conferences, except as otherwise provided
74 in this section. If a named insured or their representative
75 ~~policyholder~~ fails to appear at the conference, which prevents

76 | the mediation from proceeding, the conference must be
77 | rescheduled upon the policyholder's payment of the costs of a
78 | rescheduled conference. If the insurer fails to appear at the
79 | conference, the insurer must pay the policyholder's actual cash
80 | expenses incurred in attending the conference if the insurer's
81 | failure to attend was not due to a good cause acceptable to the
82 | department. An insurer will be deemed to have failed to appear
83 | if the insurer's representative lacks authority to settle the
84 | full value of the claim. The insurer shall incur an additional
85 | fee for a rescheduled conference necessitated by the insurer's
86 | failure to appear at a scheduled conference. The fees assessed
87 | by the administrator must include a charge necessary to defray
88 | the expenses of the department related to its duties under this
89 | section and must be deposited in the Insurance Regulatory Trust
90 | Fund. If a party elects to request an expert or a representative
91 | to attend the mediation, that party must bear any cost for the
92 | attendance of the expert or representative.

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

101 by the Supreme Court. The rules shall provide for:

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

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

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

110 (d) Selection of mediators.

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

112 (f) Right to legal counsel.

113 (5) (a) All statements made and documents produced at a
114 mediation conference shall be deemed to be settlement
115 negotiations in anticipation of litigation within the scope of
116 s. 90.408. All parties to the mediation must negotiate in good
117 faith and must have the authority to immediately settle the
118 claim. Mediators are deemed to be agents of the department and
119 shall have the immunity from suit provided in s. 44.107.

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

123 (6) (a) Mediation is nonbinding; however, if a written
124 settlement is reached and the policyholder is not represented by
125 an attorney or a public adjuster, the policyholder has 3

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126 business days within which the policyholder may rescind the
127 settlement unless the policyholder has cashed or deposited any
128 check or draft disbursed to the policyholder for the disputed
129 matters as a result of the conference. If a settlement agreement
130 is reached and is not rescinded, it is binding and acts as a
131 release of all specific claims that were presented in that
132 mediation conference.

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

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

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

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

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

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

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

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

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

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

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

176 627.7074 Alternative procedure for resolution of disputed
 177 sinkhole insurance claims.—

178 (3) If there is coverage available under the policy and
 179 the claim was submitted within the timeframe provided in s.
 180 627.706(5), following the receipt of the report provided under
 181 s. 627.7073 or the denial of a claim for a sinkhole loss, the
 182 insurer shall notify the policyholder of his or her right to
 183 participate in the neutral evaluation program under this
 184 section. Neutral evaluation supersedes the mediation ~~alternative~~
 185 ~~dispute-resolution~~ process under s. 627.7015 but does not
 186 invalidate the appraisal clause of the insurance policy. The
 187 insurer shall provide to the policyholder the consumer
 188 information pamphlet prepared by the department pursuant to
 189 subsection (1) electronically or by United States mail.

190 Section 3. For the 2023-2024 fiscal year, the sum of \$1
 191 million in recurring funds is appropriated from the Insurance
 192 Regulatory Trust Fund to the Department of Financial Services
 193 for the purpose of administering the amendment made by this act
 194 to s. 627.7015, Florida Statutes.

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