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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/22/2011	.	
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	.	

The Committee on Banking and Insurance (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 2790 - 2929
and insert:

627.707 ~~Standards for~~ Investigation of sinkhole claims ~~by~~
~~insurers; insurer payment; nonrenewals.~~—Upon receipt of a claim
for a sinkhole loss to a covered building or other structure, an
insurer must meet the following standards in investigating a
claim:

(1) The insurer must inspect ~~make an inspection of~~ the
policyholder's insured's premises to determine if there is
structural ~~has been physical~~ damage that ~~to the structure which~~



599640

13 may be the result of sinkhole activity.

14 (2) If the insurer confirms that structural damage exists
15 but is unable to exclude sinkhole activity as a contributing
16 cause of the structural damage ~~Following the insurer's initial~~
17 ~~inspection,~~ the insurer shall engage a professional engineer or
18 a professional geologist to conduct testing as provided in s.
19 627.7072 to determine the cause of the loss within a reasonable
20 professional probability and issue a report as provided in s.
21 627.7073, only if sinkhole loss is covered under the policy.
22 Except as provided in subsection (6), the fees and costs of the
23 professional engineer or professional geologist shall be paid by
24 the insurer.÷

25 ~~(a) The insurer is unable to identify a valid cause of the~~
26 ~~damage or discovers damage to the structure which is consistent~~
27 ~~with sinkhole loss; or~~

28 ~~(b) The policyholder demands testing in accordance with~~
29 ~~this section or s. 627.7072.~~

30 (3) Following the initial inspection of the policyholder's
31 ~~insured~~ premises, the insurer shall provide two copies of the
32 signed and sealed engineer's or geologist's report, if any, and
33 written notice to the policyholder disclosing the following
34 information:

35 (a) What the insurer has determined to be the cause of
36 damage, if the insurer has made such a determination.

37 (b) A statement of the circumstances under which the
38 insurer is required to engage a professional engineer or a
39 professional geologist to verify or eliminate sinkhole loss and
40 to engage a professional engineer to make recommendations
41 regarding land and building stabilization and foundation repair.



599640

42 (c) A statement regarding the right of the policyholder to
43 request testing by a professional engineer or a professional
44 geologist and the circumstances under which the policyholder may
45 demand ~~certain~~ testing.

46 (4) If the insurer determines that there is no sinkhole
47 loss, the insurer may deny the claim. If coverage for sinkhole
48 loss is available and ~~If the insurer denies the claim,~~ without
49 performing testing under s. 627.7072, the policyholder may
50 demand testing by the insurer ~~under s. 627.7072~~. The
51 policyholder's demand for testing must be communicated to the
52 insurer in writing within 90 days after the policyholder's
53 receipt of the insurer's denial of the claim. The policyholder
54 may, at the policyholder's expense, retain a qualified
55 professional engineer or professional geologist to conduct such
56 testing in order to dispute the findings of the professional
57 engineer or professional geologist retained by the insurer as to
58 the presence or absence of a sinkhole loss, or to render such
59 findings if the insurer denied the claim without performing
60 testing.

61 (5) ~~(a) Subject to paragraph (b),~~ If a sinkhole loss is
62 verified, the insurer shall pay to stabilize the land and
63 building and repair the foundation in accordance with the
64 recommendations of the professional engineer retained pursuant
65 to subsection (2), as provided under s. 627.7073, and in
66 ~~consultation~~ with notice to the policyholder, subject to the
67 coverage and terms of the policy. The insurer shall pay for
68 other repairs to the structure and contents in accordance with
69 the terms of the policy. The policyholder may, at the
70 policyholder's expense, retain a qualified professional engineer



599640

71 to dispute the findings of the professional engineer retained by
72 the insurer as to the appropriate and structurally necessary
73 method of land and building stabilization and foundation repair.

74 (a) ~~(b)~~ The insurer may limit its total claims payment to
75 the actual cash value of the sinkhole loss, which does not
76 include including underpinning or grouting or any other repair
77 technique performed below the existing foundation of the
78 building, until the policyholder enters into a contract for the
79 performance of building stabilization or foundation repairs in
80 accordance with the recommendations set forth in s. 627.7073.

81 (b) In order to prevent additional damage to the building
82 or structure, the policyholder shall enter into a contract for
83 the performance of building stabilization or foundation repairs
84 within 90 days after the insurance company confirms coverage for
85 sinkhole loss and notifies the policyholder of such confirmation
86 and the time limitations of this paragraph. The time period is
87 tolled if either party invokes the neutral evaluation process or
88 if the policyholder takes reasonable steps toward retaining a
89 qualified professional engineer to dispute the findings of the
90 professional engineer retained by the insurer. Under such
91 circumstances, the policyholder has 90 days to enter into the
92 contract for repairs after the date the insurer agrees in
93 writing to authorize the repairs recommended by the professional
94 engineer retained by the policyholder or after the date any
95 resulting dispute is resolved by litigation or appraisal.

96 (c) After the policyholder enters into the contract for the
97 performance of building stabilization or foundation repairs, the
98 insurer shall pay the amounts necessary to begin and perform
99 such repairs as the work is performed and the expenses are



599640

100 incurred. The insurer may not require the policyholder to
101 advance payment for such repairs. If repair covered by a
102 personal lines residential property insurance policy has begun
103 and the professional engineer selected or approved by the
104 insurer determines that the repair cannot be completed within
105 the policy limits, the insurer must ~~either~~ complete the
106 professional engineer's recommended repair or tender the policy
107 limits to the policyholder without a reduction for the repair
108 expenses incurred.

109 (d) The stabilization and all other repairs to the
110 structure and contents must be completed within 12 months after
111 entering into the contract for repairs described in paragraph
112 (b) unless:

113 1. There is a mutual agreement between the insurer and the
114 policyholder;

115 2. The claim is involved with the neutral evaluation
116 process;

117 3. The claim is in litigation; or

118 4. The claim is under appraisal.

119 (e) ~~(e)~~ Upon the insurer's obtaining the written approval of
120 all named policyholders and ~~the policyholder~~ and any other
121 lienholder, the insurer may make payment directly to the persons
122 selected by the policyholder to perform the land and building
123 stabilization and foundation repairs. The decision by the
124 insurer to make payment to such persons does not hold the
125 insurer liable for the work performed. The policyholder may not
126 accept a rebate from any person performing the repairs specified
127 in this section. If a policyholder does receive a rebate,
128 coverage is void ab initio and the policyholder must refund any



599640

129 payments made under such coverage. Any person making the repairs
130 specified in this section who offers a rebate, or any
131 policyholder who accepts a rebate for such repairs, commits
132 insurance fraud, punishable as a third-degree felony as provided
133 in s. 775.082, s. 775.083, or s. 775.084.

134 ~~(6) Except as provided in subsection (7), the fees and~~
135 ~~costs of the professional engineer or the professional geologist~~
136 ~~shall be paid by the insurer.~~

137 ~~(6)~~(7) If the insurer obtains, pursuant to s. 627.7073,
138 written certification that there is no sinkhole loss and the
139 policyholder does not subsequently obtain a contrary written
140 certification from a neutral evaluator or other qualified
141 professional engineer or professional geologist ~~or that the~~
142 ~~cause of the damage was not sinkhole activity, and if the~~
143 ~~policyholder has submitted the sinkhole claim without good faith~~
144 ~~grounds for submitting such claim, the policyholder shall~~
145 reimburse the insurer for 50 percent of the actual costs of the
146 analyses and services provided under ss. 627.7072 and 627.7073;
147 however, a policyholder is not required to reimburse an insurer
148 more than the deductible or \$2,500, whichever is greater, with
149 respect to any claim. A policyholder is required to pay
150 reimbursement under this subsection only if the insurer, before
151 ~~prior to~~ ordering the analysis under s. 627.7072, informs the
152 policyholder in writing of the policyholder's potential
153 liability for reimbursement and gives the policyholder the
154 opportunity to withdraw the claim.

155 ~~(7)~~(8) An ~~no~~ insurer may not shall nonrenew any policy of
156 property insurance on the basis of filing of claims for partial
157 loss caused by sinkhole damage or clay shrinkage if as long as



599640

158 the total of such payments does not equal or exceed the ~~current~~
159 policy limits of coverage for the policy in effect on the date
160 of loss, for property damage to the covered building, as set
161 forth on the declarations page, or if ~~and provided~~ the
162 policyholder insured ~~has~~ repaired the structure in accordance
163 with the engineering recommendations made pursuant to subsection
164 (2) upon which any payment or policy proceeds were based. If the
165 insurer pays such limits, it may nonrenew the policy.

166 ~~(8)(9)~~ The insurer and policyholder may engage a
167 professional structural engineer to make recommendations as to
168 the repair of the structure.
169

170 Delete line 2967

171 and insert:

172 (c) If the policyholder disagrees with the findings,
173 opinions, or recommendations of the professional engineer or
174 professional geologist retained by the insurer, the policyholder
175 may, at the policyholder's expense, retain a qualified
176 professional engineer or professional geologist to conduct
177 testing under s. 627.7072 and render independent findings,
178 opinions, and recommendations as to the cause of the distress to
179 the property and the appropriate method of land and building
180 stabilization and foundation repair.

181 (d) Unless the policyholder engages another qualified
182 professional engineer or professional geologist as described in
183 paragraph (c), the respective findings, opinions, and
184 recommendations
185

186 ===== T I T L E A M E N D M E N T =====



599640

187 And the title is amended as follows:
188 Delete lines 166 - 176
189 and insert:
190 investigation of sinkholes by insurers; providing a
191 time limitation for demanding sinkhole testing by a
192 policyholder and entering into a contract for repairs;
193 authorizing a policyholder to retain a professional
194 engineer or geologist at the policyholder's expense to
195 conduct testing or dispute findings; requiring all
196 repairs to be completed within a certain time;
197 providing exceptions; providing a criminal penalty for
198 offering a rebate or for accepting a rebate from
199 persons performing repairs; amending s. 627.7073,
200 F.S.; revising provisions relating to inspection
201 reports; authorizing a policyholder to retain a
202 professional engineer or geologist at the
203 policyholder's expense to render independent findings;
204 providing that the