

By Senator Gainer

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1 A bill to be entitled
2 An act relating to property insurance; amending s.
3 626.913, F.S.; providing construction of the Surplus
4 Lines Law relating to certain dispute resolution
5 proceedings; creating s. 626.9285, F.S.; prohibiting
6 surplus lines agents from delivering or issuing for
7 delivery property insurance contracts containing
8 specified provisions; amending s. 627.70131, F.S.;
9 revising the definition of the term "insurer" to
10 include eligible surplus lines insurers and certain
11 insurers providing commercial property insurance;
12 revising the basis for private causes of action;
13 revising the definition of the term "claim" to include
14 any claims under a commercial property insurance
15 policy; revising applicability; amending s. 627.702,
16 F.S.; defining the terms "insurer" and "total loss";
17 requiring property insurers' liability to include
18 certain coverages; providing circumstances under which
19 such coverages are payable; creating s. 627.7035,
20 F.S.; defining the term "insurer"; providing
21 requirements for proceeding venues and jurisdiction of
22 courts for specified property insurance policies and
23 contracts; prohibiting such insurance policies and
24 contracts from containing specified conditions,
25 stipulations, and agreements; providing construction;
26 providing applicability; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Subsection (5) is added to section 626.913,
31 Florida Statutes, to read:

32 626.913 Surplus Lines Law; short title; purposes.—

33 (5) The Surplus Lines Law does not authorize litigation,
34 arbitration, or mediation or any other dispute resolution
35 proceeding for a residential or commercial property insurance
36 claim involving real property located in this state to be
37 conducted outside this state or to apply the laws of another
38 state.

39 Section 2. Section 626.9285, Florida Statutes, is created
40 to read:

41 626.9285 Contracts with alternative dispute resolutions or
42 application of laws of another state prohibited.—

43 (1) A surplus lines agent may not deliver or issue for
44 delivery in this state any property insurance contract
45 containing a provision on an arbitration, mediation, or other
46 alternative dispute resolution that occurs outside this state or
47 a provision that applies the laws of another state.

48 (2) This section applies to property insurance contracts
49 issued or renewed on or after January 1, 2021, and does not
50 apply to any claim existing or any action, dispute resolution
51 proceeding, judicial proceeding, or administrative proceeding
52 pending as of July 1, 2020.

53 Section 3. Section 627.70131, Florida Statutes, is amended
54 to read:

55 627.70131 Insurer's duty to acknowledge communications
56 regarding claims; investigation.—

57 (1)~~(4)~~ As used in ~~For purposes of~~ this section, the term
58 "insurer" means an insurer authorized to transact insurance in

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59 this state or an eligible surplus lines insurer, as defined in
60 s. 626.914, that provides any residential or commercial property
61 insurance in this state insurer.

62 (2) (a) (1) (a) Upon an insurer's receiving a communication
63 with respect to a claim, the insurer shall, within 14 calendar
64 days, review and acknowledge receipt of such communication
65 unless payment is made within that period of time or unless the
66 failure to acknowledge is caused by factors beyond the control
67 of the insurer which reasonably prevent such acknowledgment. If
68 the acknowledgment is not in writing, a notification indicating
69 acknowledgment shall be made in the insurer's claim file and
70 dated. A communication made to or by an agent of an insurer with
71 respect to a claim shall constitute communication to or by the
72 insurer.

73 (b) As used in this subsection, the term "agent" means any
74 person to whom an insurer has granted authority or
75 responsibility to receive or make such communications with
76 respect to claims on behalf of the insurer.

77 (c) This subsection does ~~shall~~ not apply to claimants
78 represented by counsel beyond those communications necessary to
79 provide forms and instructions.

80 (3) (2) Such acknowledgment shall be responsive to the
81 communication. If the communication constitutes a notification
82 of a claim, unless the acknowledgment reasonably advises the
83 claimant that the claim appears not to be covered by the
84 insurer, the acknowledgment shall provide necessary claim forms,
85 and instructions, including an appropriate telephone number.

86 (4) (3) Unless otherwise provided by the policy of insurance
87 or by law, within 10 working days after an insurer receives

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88 proof of loss statements, the insurer shall begin such
89 investigation as is reasonably necessary unless the failure to
90 begin such investigation is caused by factors beyond the control
91 of the insurer which reasonably prevent the commencement of such
92 investigation.

93 (5) (a) Within 90 days after an insurer receives notice of
94 an initial, reopened, or supplemental property insurance claim
95 from a policyholder, the insurer shall pay or deny such claim or
96 a portion of the claim unless the failure to pay is caused by
97 factors beyond the control of the insurer which reasonably
98 prevent such payment. Any payment of an initial or supplemental
99 claim or portion of such claim made 90 days after the insurer
100 receives notice of the claim, or made more than 15 days after
101 there are no longer factors beyond the control of the insurer
102 which reasonably prevented such payment, whichever is later,
103 bears interest at the rate set forth in s. 55.03. Interest
104 begins to accrue from the date the insurer receives notice of
105 the claim. The provisions of this subsection may not be waived,
106 voided, or nullified by the terms of the insurance policy. If
107 there is a right to prejudgment interest, the insured shall
108 select whether to receive prejudgment interest or interest under
109 this subsection. Interest is payable when the claim or portion
110 of the claim is paid. Failure to comply with this subsection
111 constitutes a violation of this code and provides a. ~~However,~~
112 ~~failure to comply with this subsection does not form the sole~~
113 ~~basis for a private cause of action.~~

114 (b) ~~Notwithstanding subsection (4),~~ For purposes of this
115 subsection, the term "claim" means any of the following:

116 1. A claim under an insurance policy providing residential

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117 coverage as defined in s. 627.4025(1);

118 2. A claim ~~for structural or contents coverage~~ under a
119 commercial property insurance policy ~~if the insured structure is~~
120 ~~10,000 square feet or less~~; or

121 3. A claim for contents coverage under a commercial tenant
122 policy if the insured premises is 10,000 square feet or less.

123 (c) This subsection does ~~shall~~ not apply to claims under an
124 insurance policy covering ~~nonresidential commercial structures~~
125 ~~or~~ contents in more than one state.

126 Section 4. Subsection (1) of section 627.702, Florida
127 Statutes, is amended to read:

128 627.702 Valued policy law.—

129 (1) (a) (e) It is the intent of the Legislature that the
130 amendment to this section shall not be applied retroactively and
131 shall apply only to claims filed after the effective date of
132 such amendment.

133 (b) As used in this section, the term:

134 1. "Insurer" means an insurer authorized to transact
135 insurance in this state or an eligible surplus lines insurer, as
136 defined in s. 626.914.

137 2. "Total loss" means a loss in which the damaged property
138 is damaged to the extent that the applicable ordinances, rules,
139 or laws in effect would prohibit or prevent the repair of the
140 property, or for which the cost and expense to repair the
141 damages would exceed the applicable coverage limit of the
142 property insurance policy.

143 (c) (1) (a) In the event of the total loss of any building,
144 structure, mobile home as defined in s. 320.01(2), or
145 manufactured building as defined in s. 553.36(13), located in

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146 this state and insured by any insurer as to a covered peril, in
147 the absence of any change increasing the risk without the
148 insurer's consent and in the absence of fraudulent or criminal
149 fault on the part of the insured or one acting in her or his
150 behalf, the insurer's liability under the policy for such total
151 loss, if caused by a covered peril, must ~~shall~~ be in the amount
152 of money for which such property was so insured as specified in
153 the policy and for which a premium has been charged and paid.

154 (d) The insurer's liability under the policy must include
155 liability for ordinance, rule, and law coverage. The obligation
156 to tender ordinance, rule, or law coverage payments shall be
157 triggered by a showing of the ordinance, rule, or law
158 requirements, and expenses for ordinance, rule, or law
159 requirements need not be incurred to be payable under this
160 paragraph.

161 (e) ~~(b)~~ The intent of this subsection is not to deprive an
162 insurer of any proper defense under the policy, to create new or
163 additional coverage under the policy, or to require an insurer
164 to pay for a loss caused by a peril other than the covered
165 peril. In furtherance of such legislative intent, when a loss
166 was caused in part by a covered peril and in part by a
167 noncovered peril, paragraph (c) ~~(a)~~ does not apply. In such
168 circumstances, the insurer's liability under this section shall
169 be limited to the amount of the loss caused by the covered
170 peril. However, if the covered perils alone would have caused
171 the total loss, paragraph (c) applies ~~(a) shall apply~~. The
172 insurer is never liable for more than the amount necessary to
173 repair, rebuild, or replace the structure following the total
174 loss, after considering all other benefits actually paid for the

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175 total loss.

176 Section 5. Section 627.7035, Florida Statutes, is created
177 to read:

178 627.7035 Proceeding venues and jurisdiction of courts for
179 real property coverage.-

180 (1) As used in this section, the term "insurer" means an
181 insurer authorized to transact insurance in this state or an
182 eligible surplus lines insurer, as defined in s. 626.914.

183 (2) Any litigation, arbitration, or mediation or any other
184 dispute resolution proceeding involving a residential or
185 commercial property insurance policy or contract issued by, or a
186 claim against, an insurer covering real property in this state
187 must be conducted in this state and governed by the laws of this
188 state.

189 (3) A residential or commercial property insurance policy
190 or contract covering real property that is located in this state
191 may not contain any condition, stipulation, or agreement
192 depriving the courts of this state of the jurisdiction of action
193 against the insurer.

194 (4) Any provision of a residential or commercial property
195 insurance policy or contract, including a policy or contract
196 authorized under the Surplus Lines Law, ss. 626.913-626.937,
197 that violates any provision of this section is void. However,
198 such voiding does not affect the validity of other provisions of
199 the policy or contract.

200 (5) This section applies:

201 (a) Only to residential or commercial property insurance
202 policies or contracts covering real property located in this
203 state.

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204 (b) To residential or commercial property insurance
205 policies and contracts issued or renewed on or after January 1,
206 2021, and does not apply to any claim existing or any action,
207 dispute resolution proceeding, judicial proceeding, or
208 administrative proceeding pending as of July 1, 2020.

209 Section 6. The amendments to ss. 626.913, 627.70131, and
210 627.702, Florida Statutes, made by this act apply to property
211 insurance policies or contracts issued or renewed on or after
212 January 1, 2021, and do not apply to any claim existing or any
213 action, dispute resolution proceeding, judicial proceeding, or
214 administrative proceeding pending as of July 1, 2020.

215 Section 7. This act shall take effect July 1, 2020.