

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for CS/HB 743 Property Insurance  
**SPONSOR(S):** Regulatory Affairs Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 708

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Affairs Committee		Callaway	Hamon

### SUMMARY ANALYSIS

The Department of Financial Services (DFS) administers alternative dispute resolution programs for insurance. The PCS gives DFS increased power relating to the approval, suspension, and revocation of approval of mediators and neutral evaluators in the DFS property mediation and sinkhole neutral evaluation programs.

If an insurer discovers a misrepresentation or omission on the insurance application after issuing the policy, it may deny coverage after a claim is made or cancel the policy. The PCS provides that if a residential property insurance policy or contract has been in effect for more than 90 days, a claim filed by the insured cannot be denied and the insurer may not cancel or terminate the policy or contract based on credit information available in public records.

Current law does not address disqualification of an umpire used in appraisals of property insurance claim disputes and the PCS provides grounds for challenging the impartiality of an umpire for disqualification purposes.

The PCS creates a "Homeowner Claims Bill of Rights" (Bill of Rights) which describes some of the rights held by personal lines residential property insurance policyholders. Starting October 1, 2014, insurers must provide a copy of the Bill of Rights to the policyholder within 14 days of the insurer's receipt of an initial communication on a claim from a policyholder. However, failure of an insurer to deliver the Bill of Rights is not admissible in any civil action against the insurer, but is subject to administrative enforcement by the Office of Insurance Regulation. Additionally, the Bill of Rights does not create a new civil cause of action.

The PCS creates new requirements for agreements between insureds and providers of services needed to mitigate damage caused by fire, water, or catastrophic events and provides conditions upon which these agreements for these types of services will be valid and the services paid for by insurance.

The PCS has no fiscal impact on state or local government. Some residential property insurance policyholders may no longer get a claim denied or their property insurance policy canceled or terminated based on credit information available in public records. Insurers will incur costs associated with providing policyholders with the Bill of Rights. Persons or companies currently providing emergency mitigation services that are not licensed contractors or certified in water damage restoration will incur costs to obtain a contractor license or water damage restoration certification in order to be paid by insurance.

The PCS is effective July 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Department of Financial Services Alternative Dispute Resolution Programs**

The Department of Financial Services (DFS) administers alternative dispute resolution programs for various types of insurance. The DFS has mediation programs for property insurance<sup>1</sup> and automobile insurance<sup>2</sup> claims. The DFS has a neutral evaluation program, similar to mediation, for sinkhole insurance claims.<sup>3</sup> The DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole insurance claims.<sup>4</sup>

To qualify as a mediator for the property or automobile mediation programs, a person must possess graduate level degrees in specified areas, be a member of the Florida Bar, be a licensed certified public accountant, or be a mediator for 4 years.<sup>5</sup> In addition, an applicant must complete a training program approved by DFS.<sup>6</sup>

To qualify as a neutral evaluator for sinkhole insurance claims, a neutral evaluator must be a professional engineer or a professional geologist who has completed a course of study in alternative dispute resolution approved by DFS and who is determined by DFS to be fair and impartial.<sup>7</sup>

According to an analysis provided by DFS,<sup>8</sup> the number of reported mediations and neutral evaluations is:

Mediations:	FY 2012-13 – 3,966
	FY 2011-12 – 3,323
	FY 2010-11 – 3,489

Neutral Evaluations:	FY 2012-13 – 1,867
	FY 2011-12 – 2,681
	FY 2010-11 – 2,245

The PCS requires DFS to adopt rules for the denial of application, suspension, revocation of approval and other penalties for mediators in the DFS mediation program for disputed property insurance claims. Current law requires the DFS rules relating to the program to include qualifications for mediators and gives DFS discretion to determine appropriate education, training, or experience qualifications for those mediators who are not court certified and appointed or do not meet the mediator qualifications set forth in s. 627.745, F.S. The PCS removes DFS' discretionary authority to set mediator qualifications. Thus, only court certified and appointed mediators or mediators who meet the qualifications in s. 627.745, F.S., can be mediators for the DFS property mediation program.

The PCS specifies circumstances that require DFS to deny an application for a neutral evaluator or suspend or revoke the certification of a neutral evaluator. If the evaluator does not meet the statutory qualifications to be a neutral evaluator; has a material misstatement, misrepresentation, or fraud in the attempt to obtain certification as a neutral evaluator; has a demonstrated lack of fitness and trustworthiness to act as a neutral evaluator; has fraudulent or dishonest practices in the conduct of a neutral evaluation or in the conduct of business relating to financial services; or violates statutes, DFS

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<sup>1</sup> See s. 627.7015, F.S.

<sup>2</sup> See s. 626.745, F.S.

<sup>3</sup> See s. 627.7074, F.S.

<sup>4</sup> See ss. 627.7015, 627.7074, and 627.745, F.S.

<sup>5</sup> See ss. 627.7015, 627.745(3), F.S.

<sup>6</sup> See ss. 627.7015, 627.745(3), F.S.

<sup>7</sup> See s. 627.706, F.S.

<sup>8</sup> See Department of Financial Services, *House Bill 759 Analysis* dated February 21, 2014 (on file with the Insurance & Banking Subcommittee).

rules, or DFS orders, then DFS must deny the application or suspend or revoke certification of the evaluator. The DFS has similar authority over the licenses of insurance agents and other regulated persons or entities.<sup>9</sup>

### **Post-Claim Underwriting**

Post-claim underwriting is a practice where the underwriting of a policy application is actually done for the first time when a claim is filed. Post-claim underwriting can result in a denial of the claim or cancelation of the policy and is a way insurers implement s. 627.409, F.S., which provides recovery under an insurance policy may be prevented if a misrepresentation, omission, concealment of fact, or incorrect statement on an application for insurance:

1. is fraudulent or is material either to the acceptance of the risk or to the hazard assumed by the insurer or
2. if the true facts had been known to the insurer, the insurer would not have issued the policy, would not have issued it at the same premium rate, would not have issued a policy in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss.

If an insurer discovers a misrepresentation or omission after issuing the policy, it may deny coverage after a claim is made. In *Nationwide Mutual Fire Insurance Company v. Kramer*,<sup>10</sup> an insurer refused to pay a claim for a stolen automobile because the insureds did not disclose a previous bankruptcy filing. In *Kieser v. Old Line Insurance Company of America*,<sup>11</sup> an insurance company refused to pay a life insurance policy because the insured failed to disclose certain health conditions and failed to disclose that he was shopping for other life insurance policies. In *Universal Property and Casualty Insurance Company v. Johnson*,<sup>12</sup> an insurance company refused to pay a property insurance claim because the insureds failed to disclose prior criminal history. A misrepresentation from or an omission in an insurance application does not have to be intentional in order for the insurance company to deny recovery.<sup>13</sup>

Section 627.4133(2), F.S., requires notice to the insured before an insurer can cancel, nonrenew, or terminate any personal lines or commercial residential property insurance policy. The timing of the notice ranges from 10 days for nonpayment of premium to 120 days for certain policyholders.<sup>14</sup> After the policy has been in effect for 90 days, such a policy cannot be canceled unless that has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements with 90 days after the date of effectuation of coverage, or a substantial change in the risk covered by the policy.<sup>15</sup>

The PCS will curtail cancellation of residential property insurance due to misrepresentations about the policyholder's credit contained on the insurance application that are found during post-claim underwriting. The PCS provides that if a residential property insurance policy or contract has been in effect for more than 90 days, a claim filed by the insured cannot be denied and the insurer may not cancel or terminate the policy or contract based on credit information available in public records. The PCS does not change the law relating to other types of insurance or other types of misrepresentations (such as a misrepresentation regarding health or criminal history).

### **Disqualification of Appraisal Umpire In Residential Property Claims**

An appraisal clause is commonly found in insurance policies. The purpose of the appraisal clause is to establish a procedure to allow disputed amounts to be resolved by disinterested parties. The appraisal

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<sup>9</sup> See s. 626.611, F.S., which sets forth DFS' power relating to refusal, suspension, or revocation of agent's, title agency's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.

<sup>10</sup> 725 So.2d 1141 (Fla. 2d DCA 1998).

<sup>11</sup> 712 So.2d 1261 (Fla. 1st DCA 1998).

<sup>12</sup> 114 So.3d 1031 (Fla. 1st DCA 2013).

<sup>13</sup> *Universal Property and Casualty Insurance Company*, 114 So.3d at 1035.

<sup>14</sup> See s. 627.4133(2), F.S.

<sup>15</sup> *Id.*

clause is used only in determining disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts.

The appraisal process generally works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and reach an agreed amount of the damages.
- If the appraisers cannot agree on the amount of damages, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, each appraiser presents a loss assessment to the umpire.
- The umpire subsequently provides a written decision to both parties.

Because current law does not address disqualification of an umpire due to impartiality, a party wanting to disqualify an umpire must go to Circuit Court and have a judge rule on the umpire's impartiality. In making the ruling, the judge uses his or her judgment about the umpire's impartiality. There are no parameters in current law for a judge's ruling on an umpire's impartiality. The PCS provides parameters for the judge's impartiality ruling by adding grounds to current law which the insurer or policyholder in a residential property dispute can use to challenge the impartiality of the umpire in order to disqualify the umpire. The disqualification grounds provided in the PCS are the substantially the same as those used to disqualify a neutral evaluator in sinkhole claims under s. 627.7074(7)(a), F.S.

### **Homeowner Rights in Property Insurance Claims**

Property insurance policyholders have a number of rights pursuant to statute or rule. Section 627.70131, F.S., and rule 69O-166.24, Florida Administrative Code, require an insurer to review and acknowledge receipt of communication with respect to a claim within 14 days of receipt. Section 626.9541(1)(i), F.S., requires an insurer to affirm or deny full or partial coverage of claims or provide a written statement that the claim is being investigated upon the written request of the insured within 30 days after proof-of-loss statements have been completed. An insurer must pay or deny the claim within 90 days.<sup>16</sup>

The DFS provides services to insurers and consumers such as the mediation of property insurance claims<sup>17</sup> and neutral evaluation<sup>18</sup> of sinkhole claims. In addition, the DFS has a Division of Consumer Services that can assist consumers in the claims process.<sup>19</sup>

The PCS creates a "Homeowner Claims Bill of Rights." Starting October 1, 2014, an insurer issuing a personal lines residential property insurance policy must provide a copy of the Homeowner Claims Bill of Rights ("Bill of Rights") to a policyholder within 14 days of the insurer's receipt of an initial communication on a claim from a policyholder. However, failure of an insurer to deliver the Bill of Rights is not admissible in any civil action against the insurer, but is subject to administrative enforcement by the Office of Insurance Regulation.

The PCS provides that the purpose of the Bill of Rights is to explain the rights of a personal lines residential property insurance policyholder who files a claim of loss. The PCS further provides that the Bill of Rights does not create a civil cause of action by a policyholder or class of policyholders against an insurer or insurers.

The PCS provides the exact language of the Bill of Rights. In summary, the Bill of Rights informs policyholders that they have the right to:

- Receive acknowledgment of the reported claim within 14 days after the claim is communicated to the insurance company.

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<sup>16</sup> See s. 627.70131, F.S.

<sup>17</sup> See s. 627.7015, F.S.

<sup>18</sup> See s. 627.7074, F.S.

<sup>19</sup> See <http://www.myfloridacfo.com/division/consumers/#.UvTI9vldUeE> (last viewed on March 7, 2014).

- Receive confirmation that a claim is covered in full, partially covered, or denied, or receive a written statement that a claim is being investigated within 30 days of submission of a completed proof-of-loss statement.
- Receive full settlement payment for the claim or payment of the undisputed portion of the claim or the insurance company's denial of the claim within 90 days and subject to any dual interest noted in the policy.
- Receive free mediation of the claim by DFS under most circumstances and subject to certain restrictions.
- Receive a neutral evaluation of a disputed sinkhole claim covered by the policy.

The Bill of Rights informs consumers of services provided by DFS, such as the Division of Consumer Services helpline.

The Bill of Rights advises policyholders to contact the insurance company before entering into any contract for repairs, to make and document emergency repairs that are necessary to prevent further damage, to read any contract that requires a payment of out-of-pocket expenses or a fee that is based on a percentage of the insurance proceeds, and to confirm that the contractor is licensed to do business in Florida.

The Bill of Rights informs policyholders that it does not create a civil cause of action by an individual policyholder, or a class of policyholders, against an insurer or insurers.

### **Emergency Mitigation Services**

Homeowners can experience significant damage to their homes in situations that require immediate action to prevent further damage. There are companies that provide services such as "drying" a structure after a loss caused by water. These companies are not regulated by the state. According to the DFS, consumers have no guarantee or protection in place to ensure their homes will be repaired by an accredited professional.<sup>20</sup>

The PCS provides conditions upon which an agreement for emergency mitigation services will be valid. The PCS defines "emergency mitigation services" as the delivery of goods or services<sup>21</sup> that are needed to mitigate damage caused by fire, water, or catastrophic events when delay may exacerbate the damage to the covered property. An agreement for emergency mitigation services to which insurance proceeds may be applied is valid only if:

- The agreement complies with any managed repair or preferred vendor provision in the insurance policy;
- The agreement specifies in writing the estimated scope and price of the work before it is performed;
- Any change from the original estimated scope and price of the work is preapproved by the policyholder; and
- The work is performed by an individual or company possessing a valid certification consistent with the most recent Standard and Reference Guide for Professional Water Damage Restoration, as developed by the Institute of Inspection, Cleaning and Restoration Certification and approved by the American National Standards Institute, or by a company that possesses a valid Division I license under chapter 489, which is providing services within the scope of that license.<sup>22</sup>

## **B. SECTION DIRECTORY:**

<sup>20</sup> See Department of Financial Services, *House Bill 759 Analysis* dated February 21, 2014 at p. 4 (on file with the Insurance & Banking Subcommittee). (HB 759 contains the same provision relating to emergency mitigation services as the PCS for HB 734).

<sup>21</sup> Services include the removal of contents, removal of water or other contaminants, cleaning, sanitizing, incidental demolition, or other treatment, including preventive activities.

<sup>22</sup> A Division I license includes general contractors, building contractors, and residential contractors. See s. 489.105(3), F.S.

Section 1: Amends s. 627.3518, F.S., relating to Citizens Property Insurance Corporation policyholder eligibility clearinghouse program to conform a cross reference.

Section 2: Amends s. 627.409, F.S., relating to representations in applications; warranties.

Section 3: Amends s. 624.4133, F.S., relating to notice of cancellation, nonrenewal, or renewal premium.

Section 4: Amends s. 627.7015, F.S., relating to alternative procedure for resolution of disputed property insurance claims.

Section 5: Creates s. 627.70151, F.S., relating to appraisal; conflicts of interest.

Section 6: Amends s. 627.706, F.S., relating to sinkhole insurance; catastrophic ground cover collapse; definitions.

Section 7: Amends s. 627.7074, F.S., relating to alternative procedure for resolution of disputed sinkhole insurance claims.

Section 8: Creates s. 627.7142, F.S., relating to Homeowner Claims Bill of Rights, effective October 1, 2014.

Section 9: Creates s. 627.715, F.S., relating to emergency mitigation services; agreements.

Section 10: Provides an effective date of July 1, 2014.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

After a residential property insurance policy or contract has been in effect for more than 90 days, policyholders may no longer get a claim denied or their property insurance policy canceled or terminated for credit history information in the insurance application.

Insurers will incur costs related to providing a Bill of Rights to policyholders when a personal lines residential property insurance claim is filed.

Persons or companies currently providing emergency mitigation services that are not licensed contractors or certified in water damage restoration will incur costs associated with obtaining a

contractor license or water damage restoration certification in order to be paid by insurance for emergency mitigation work performed on residential property. Certification requires a three day course and an examination and is taught by various vendors throughout the country.<sup>23</sup> Once certified, continuing education is required.<sup>24</sup>

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The PCS does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The PCS requires DFS to adopt rules relating to the certification of neutral evaluators.

The PCS also requires existing rules relating to the DFS property mediation program to include information relating to denial of an application for mediation, suspension of approval of a mediator, or revocation of approval of a mediator.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 11, 2014, the Insurance & Banking Subcommittee considered a proposed committee substitute and four amendments to the proposed committee substitute, and reported the bill favorably. The proposed committee substitute and amendments to the proposed committee substitute removed all of the provisions of the originally filed version of the bill and added provisions:

- Giving DFS increased power relating to the approval, suspension, and revocation of approval of mediators in the DFS property mediation program and for neutral evaluators in the DFS sinkhole neutral evaluation program.
- Providing that if a residential property insurance policy or contract has been in effect for more than 90 days, a claim filed by the insured cannot be denied and the insurer may not cancel or terminate the policy or contract based on credit information available in public records.
- Adding grounds to current law which the insurer or policyholder in a residential property dispute can use to challenge the impartiality of the umpire in order to disqualify the umpire.
- Creating a "Homeowner Claims Bill of Rights," which describes some of the rights held by personal lines residential property insurance policyholders and requires the insurer to provide a copy to the policyholder when the policy is delivered.
- Creating new requirements for agreements between insureds and providers of services needed to mitigate the damage caused by fire, water, or catastrophic events. It provides conditions upon which an

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<sup>23</sup> <http://www.iicrc.org/>

<sup>24</sup> <http://www.iicrc.org/>

agreement for emergency mitigation services will be valid, including requiring that emergency mitigation services be provided by a licensed contractor or by someone or a company certified in water damage restoration in order to be paid by the insurance.

- Allowing a property insurance policy to prohibit the policyholder from post-loss assignment of rights, causes of action, or benefits under the policy, with the following exceptions: public adjuster fees, attorney fees, and payment to a person or entity named as a copayee that repairs or mitigates damage to a property.
- Making a post-loss assignment void if the policy prohibits the assignment.