



State of Tennessee

PUBLIC CHAPTER NO. 537

SENATE BILL NO. 880

By Tracy

Substituted for: House Bill No. 1005

By Kane, Eldridge, Matlock

AN ACT to amend Tennessee Code Annotated, Section 56-7-130, relative to sinkholes.

WHEREAS, there is a compelling state interest in maintaining a viable and orderly private-sector market for property insurance in this state; and

WHEREAS, in 2006, the General Assembly passed Public Chapter 805, creating Tenn. Code Ann. § 56-7-130, which shares provisions with Florida's older sinkhole law, of which some of those shared provisions were challenged in Florida and were twisted to allow unintended opportunism; and

WHEREAS, a claims crisis resulted in Florida which severely threatened the stability of Florida's insurance market and led to insurer insolvencies and assessments to every insured in Florida; and

WHEREAS, this crisis drove the Florida Legislature, with the support of the Insurance Commissioner and the Governor, to clarify and revise the Florida law; and

WHEREAS, to avoid any potential for a similar crisis in this state, the General Assembly is clarifying and revising the Tennessee law; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-7-130, is amended by deleting the section in its entirety and substituting instead the following:

56-7-130.

(a) As used in this section, unless the context otherwise requires:

(1) "ANSI" means the American National Standards Institute;

(2) "Building stabilization or foundation repairs" means techniques performed at, to, or attached to the existing foundation of a building with the intention to repair, re-level, or stabilize the building or foundation of a covered building;

(3) "Covered building" means a residential building, including its foundation, floor slab, and footings supporting the building;

(4) "Engineer" means a person meeting the qualifications under title 62, chapter 2, part 4 who has at least a bachelor's degree in engineering, and relevant experience and expertise in the identification of sinkhole activity, as well as other potential subterranean causes of structural damage;

(5) "Homeowner property insurance" means property insurance covering a residential dwelling;

(6) "Land stabilization" means any repair technique intended to replace, rebuild, stabilize, or restore the land including any repair technique designed to compensate for or prevent land instability;

(7) "Primary structural member" means a structural element designed to support and stabilize the vertical or lateral loads of the overall structure;

(8) "Primary structural system" means an assemblage of primary structural members;

(9) "Professional geologist" means a person meeting the qualifications of title 62, chapter 36, part 1, who has at least a bachelor's degree in geology or a related earth science with expertise in the geology of this state, as well as having relevant geological experience and expertise identifying sinkhole activity, as well as other potential geologic causes of structural damage;

(10) "Sinkhole" means a subterranean void created by the dissolution of limestone or dolostone strata resulting from groundwater erosion causing a surface subsidence of soil, sediment, or rock;

(11) "Sinkhole activity" means settlement or systematic weakening of the earth supporting a covered building, only if the settlement or systematic weakening results from contemporaneous movement or raveling of soils, sediments, or rock materials into subterranean voids created by the effect of groundwater erosion on a limestone or similar rock formation;

(12) "Sinkhole loss":

(A) Means structural damage to a covered building caused by the sudden collapse of the earth supporting the covered building as the result of sinkhole activity; and

(B) Does not include:

(i) Land stabilization or costs associated with land stabilization; or

(ii) In the absence of structural damages to the covered building, cracking, shrinking, expansion, deterioration, or similar damages; and

(13) "Structural damage" means foundation displacement or deflection caused by a sinkhole after completion of initial construction of the covered building, resulting in:

(A) Interior floor displacement or deflection:

(i) In excess of variances acceptable under building standards for residential construction approved by ANSI; and

(ii) To the extent that the interior building structure or members are unfit for service or represent a safety hazard;

(B) Damage to primary structural members or primary structural systems that:

(i) Results in such members or systems failing to meet the strength and performance requirements set forth in building standards for residential construction approved by ANSI; and

(ii) Renders such structural members or structural systems unfit for service or a safety hazard; or

(C) Occupancy of the covered building has been prohibited by a governmental agency because of unsafe conditions.

The reference in this subdivision to building standards approved by ANSI shall not require the original construction of a covered building to be in compliance with such standards, but is solely for the purpose of defining the extent of damage required in order to be considered structural damage.

(b) Every insurer offering homeowner property insurance in this state shall make coverage available for insurable sinkhole losses, including contents of personal property contained in the dwelling. The insurer may require an inspection of the property before issuance of sinkhole loss coverage. Nothing in this section mandates that sinkhole loss coverage be included in any homeowner property insurance policy, but only that insurers offering homeowner property insurance make such coverage available for optional purchase on request by policyholders.

(c) Every insurer offering homeowner property insurance in this state shall make a proper filing with the department to comply with this section. The insurer may make sinkhole loss coverage available in the homeowner policy itself, by endorsement, or through other coverage that the insurer may arrange, and the insurer may make an additional charge for the coverage.

(d) Upon receipt of a claim for a sinkhole loss under a policy providing sinkhole loss coverage, an insurer must meet the following standards in investigating the claim:

(1) The insurer shall make an inspection of the insured's premises to determine if there has been structural damage to the covered building resulting from possible sinkhole activity;

(2) If, upon the investigation pursuant to subdivision (d)(1), the insurer determines that there is no sinkhole loss, the insurer may deny the claim;

(3) If, the insurer concludes that structural damage to a covered building is inconsistent with sinkhole activity, then prior to denying the claim, the insurer shall obtain a written certification from an engineer, a professional geologist, or other qualified individual stating that:

(A) An analysis was conducted of sufficient scope to provide an opinion within a reasonable professional probability on the cause of the observed structural damage; and

(B) Sinkhole activity did not cause the observed structural damage; and

(4) If the insurer obtains, pursuant to subdivision (d)(3), written certification that the cause of the structural damage was not sinkhole activity, and if the policyholder has submitted the sinkhole claim without good faith grounds for submitting the claim, the policyholder shall reimburse the insurer for fifty percent (50%) of the cost of the analysis under subdivision (d)(3); provided, however, that a policyholder is not required to reimburse an insurer more than two thousand five hundred dollars (\$2,500) with respect to any claim. A policyholder is required to pay reimbursement under this subdivision (d)(4), only if the insurer, prior to ordering the analysis pursuant to subdivision (d)(3), informs the policyholder of the policyholder's potential liability for reimbursement and gives the policyholder the opportunity to withdraw the claim.

(e)(1) If a covered sinkhole loss is verified by the insurer, the conduct of the insurer and policyholder is governed by this subsection (e), subject to the terms and conditions of the policy or endorsement.

(2) The insurer may limit its total claims payment for damages to the covered building to the actual cash value of the sinkhole loss to the covered building, excluding costs associated with building stabilization or foundation repair, until the policyholder enters into a contract for the performance of building stabilization or foundation repairs in accordance with the recommendations of the engineer retained or approved by the insurer.

(3) To be eligible to receive payment for building stabilization or foundation repairs, or any other loss to the covered building in excess of the actual cash value of the sinkhole loss to the covered building, the insured must repair such damage or loss in accordance with a plan of repair approved by the insurer.

(4) In order to prevent additional damage to the building or structure, the policyholder must enter into a contract for the performance of building stabilization and foundation repairs within ninety (90) days after the insurance

company confirms coverage for the sinkhole loss and notifies the policyholder of such confirmation.

(5) After the policyholder enters into the contract for the performance of building stabilization and foundation repairs as set forth in this subsection (e) and subject to the terms and conditions of the policy, the insurer shall pay the amounts necessary to begin and perform such repairs as the work is performed and expenses are incurred. The insurer may not require the policyholder to advance payment for covered repairs.

(6) Without the prior written consent of the insurer, the policyholder may not accept anything of value from any person proposing to perform the repairs specified in this section as an inducement to contract with such person for the repairs.

(7) The stabilization and all other repairs to the structure and contents must be completed within twelve (12) months after entering into the contract for repairs described in subdivision (e)(3) unless:

(A) There is a mutual agreement between the insurer and the policyholder;

(B) The claim is in litigation;

(C) The claim is under appraisal or mediation; or

(D) Repairs are undertaken but cannot be completed within twelve (12) months because of reasons beyond the control of the policyholder.

(8) If the covered building cannot be repaired or if the cost of repair exceeds policy limits, the terms and conditions of the policy or endorsement relative to losses in excess of policy limits shall apply.

(f) This subsection shall not be construed as limiting an insurer's right to cancel, decline to renew, or decline to issue homeowner property insurance; provided, however, an insurer may cancel, decline to renew, or decline to issue any homeowner property insurance on a structure that has been the subject of a sinkhole loss claim if the structure:

(1) Has not been repaired in accordance with the plan of repair approved by the insurer and within the time constraints set forth in subdivision (e)(7); or

(2) Is subject to the risk of future sinkhole damage because of unstable land.

(g) Nothing in this section:

(1) Requires an insurer to pay more than one (1) policy limit for one (1) policy loss due to a covered sinkhole loss;

(2) Prohibits an insurer from inspecting property or engaging in other underwriting practices in connection with making available coverage for sinkhole losses;

(3) Prohibits an insurer from offering coverage that is broader or more extensive than the offer of coverage required by this section;

(4) Prohibits an insurer from including in a policy or endorsement terms and conditions that are not contrary to this section; or

(5) Limits or creates any rights or obligations except as explicitly stated in this section.

(h) The commissioner may promulgate rules and regulations for the purpose of implementing this section.

SECTION 2. For purposes of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2014, the public welfare requiring it.

SENATE BILL NO. 880

PASSED: March 3, 2014



RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 17th day of March 2014



BILL HASLAM, GOVERNOR