

HOUSE BILL 1005

By Kane

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 and substituting instead the following language:

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

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

(2) "Primary structural member" means a structural element designed to provide support and stability for the vertical or lateral loads of the overall structure;

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

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

(5) "Sinkhole" means a landform created by subsidence of soil, sediment or rock as underlying strata are dissolved by groundwater, and forms by collapse into subterranean voids created by dissolution of limestone or dolostone or by subsidence as these strata are dissolved;

(6) "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 water on a limestone or similar rock formation;

(7) "Sinkhole loss" means structural damage to a covered building caused by sinkhole activity; and

(8) "Structural damage" means a covered building has experienced at least one (1) of the following:

(A) Interior floor displacement or deflection in excess of acceptable variances as defined in ACI 117-90, which results in settlement related damage to the interior such that the interior building

structure or members become unfit for service or represents a safety hazard; or

(B) Foundation displacement or deflection in excess of acceptable variances as defined in ACI 318-95, which results in settlement related damage to the primary structural members or primary structural systems that prevents those members or systems from supporting the loads and forces they were designed to support.

(b) Every insurer offering homeowner property insurance in this state may make available coverage for insurable sinkhole losses on any dwelling, including contents of personal property contained in the dwelling. The insurer may require an inspection of the property before issuance of sinkhole loss coverage.

(c) Every insurer authorized to transact property insurance in this state and offering sinkhole loss coverage shall make a proper filing with the department of commerce and insurance for the purpose of extending the appropriate policy for sinkhole losses. The insurer may make sinkhole loss coverage available in the homeowners 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 shall meet the following minimum standards in investigating a claim:

(1) The insurer shall make an inspection of the insured's premises to determine if there has been structural damage to the structure that might be the result of sinkhole activity;

(2) If, upon the investigation pursuant to subdivision (d)(1), the insurer confirms structural damage to a covered building that is consistent with sinkhole

loss, then prior to denying a claim, the insurer shall obtain a written certification from an engineer, a professional geologist, or other qualified individual stating that the cause of the claim is not sinkhole activity, and that the analysis conducted was of sufficient scope to eliminate sinkhole activity as the cause of damage within a reasonable professional probability;

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

(4) If the insurer obtains, pursuant to subdivision (d)(2), written certification that the cause of the claim 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)(2); 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)(3), only if the insurer, prior to ordering the analysis pursuant to subdivision (d)(2), informs the policyholder of the policyholder's potential liability for reimbursement and gives the policyholder the opportunity to withdraw the claim.

(e) If a sinkhole loss is verified then the following provisions shall apply:

(1) The insurer may limit its total claims payment to the actual cash value of the sinkhole loss to the covered property, which does not include underpinning or grouting or any other repair technique performed below the existing foundation of the building, 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;

(2) To be eligible to receive payment for underpinning, grouting, any other repair technique performed below the existing foundation of the building, or any other loss in excess of the actual cash value of the sinkhole loss to the covered property, the insured must repair such damage or loss in accordance with the repair recommendations of the engineer or engineers retained or approved by the insurer. The insurer may engage a professional structural engineer to make recommendations as to the repair of the structure. The respective findings, opinions, and recommendations of the insurer's engineer or professional geologist as to the cause of distress to the property and the findings, opinions, and recommendations of the insurer's engineer as to land and building stabilization and foundation repair shall be presumed correct;

(3) If the insurer's engineer determines that the repair cannot be completed within policy limits, the insurer must pay to complete the repairs recommended by the insurer's engineer or tender the policy limits to the policyholder;

(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 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 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 the expenses are incurred. The insurer may not require the policyholder to advance payment for such repairs. The insurer may make payment directly to the persons selected by the policyholder to perform the land and building stabilization and foundation repairs. The decision by the insurer to make payment to such persons does not hold the insurer liable for the work performed;

(6) The policyholder may not accept a rebate from any person performing the repairs specified in this section. If a policyholder does receive a rebate, coverage is void and the policyholder must refund the amount of the rebate to the insurer. Any person making the repairs specified in this section who offers a rebate commits insurance fraud punishable as a Class E felony;

(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; or

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

(8) Upon completion of any building stabilization or foundation repairs for a verified sinkhole loss, the engineer responsible for monitoring the repairs shall issue a report to the property owner which specifies what repairs have been performed and certifies within a reasonable degree of professional probability that such repairs have been properly performed. The engineer issuing the report shall file a copy of the report and certification, which includes a legal description of the real property and the name of the property owner, with the county clerk of

the court, who shall record the report and certification. This subdivision (e)(8) does not create liability for an insurer based on any representation or certification by an engineer related to the stabilization or foundation repairs for the verified sinkhole loss.

(f) Any claim, including, but not limited to, initial, supplemental and reopened claims under an insurance policy that provides sinkhole coverage is barred unless notice of the claim was given to the insurer in accordance with the terms of the policy within one (1) year after the policyholder knew or reasonably should have known about the sinkhole loss.

(g) No insurer shall fail to renew any policy of property insurance on the basis of filing of claims for partial loss caused by sinkhole damage or clay shrinkage, as long as the total of payments does not equal or exceed the current policy limits of coverage for the policy in effect on the date of loss for property damage to the covered building, or if the insured has repaired the structure in accordance with the repair engineering recommendations of the engineer retained or approved by the insurer and upon which any payment or policy proceeds were based. If the insurer pays such limits, it may elect not to renew the policy.

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

SECTION 2. This act shall take effect July 1, 2013, the public welfare requiring it.