

SB326 INTRODUCED



1 SB326
2 CN9HWQJ-1
3 By Senator Melson
4 RFD: Agriculture, Conservation, and Forestry
5 First Read: 16-Apr-24



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SYNOPSIS:

Under existing law, Alabama homeowners insurance providers are not prohibited from offering coverage for sinkhole loss but are not required to do so. A "sinkhole" is the collapse of ground cover most often caused when certain types of underground bedrock is dissolved by underground water.

This bill would require all homeowners insurance providers authorized to write homeowners policies in the state to cover catastrophic ground cover collapse in all homeowners insurance policies and to offer coverage for sinkhole loss at the policyholder's option for an additional premium, subject to certain restrictions and deductibles imposed by the insurance provider.

This bill would establish a procedure for investigating a claim for sinkhole loss coverage in order to determine the cause and extent of damage to the property.

This bill would provide the rights and obligations of the insurance provider, the homeowner, and the professional service providers engaged in the investigation process related to providing notices, filing reports, and paying claims based on the investigative conclusions.



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A BILL
TO BE ENTITLED
AN ACT

Relating to sinkhole loss insurance coverage; to require that all homeowners insurance policies cover loss caused by catastrophic ground cover collapse and to offer optional coverage for loss due to sinkhole damage; to establish the procedure for investigating a claim for damage; and to provide certain rights and obligations of the parties to a claim based on the outcome of the investigation.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. For purposes of this act, the following terms have the following meanings:

(1) CATASTROPHIC GROUND COVER COLLAPSE. Geological activity that results in all of the following:

- a. The abrupt collapse of the ground cover.
- b. A depression in the ground cover clearly visible to the naked eye.
- c. Structural damage to the covered building, including the foundation.
- d. The insured structure being condemned and ordered to be vacated by the governmental agency authorized by law to issue such an order for that structure. Contents coverage applies if there is a loss resulting from a catastrophic ground cover collapse. Damage consisting merely of the



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57 settling or cracking of a foundation, structure, or building
58 does not constitute a loss resulting from a catastrophic
59 ground cover collapse.

60 (2) COVERED BUILDING. A building covered by homeowners
61 insurance that includes coverage for loss resulting from
62 sinkholes or from catastrophic ground cover collapse.

63 (3) LICENSED PROFESSIONAL GEOLOGIST. The same meaning
64 as defined in Section 34-41-3, Code of Alabama 1975. A
65 licensed professional geologist must also have experience and
66 expertise in the identification of sinkhole activity as well
67 as other potential geologic causes of structural damage.

68 (4) PERSONAL LINES RESIDENTIAL PROPERTY INSURANCE.
69 Includes condominium insurance, dwelling fire policies that
70 provide dwelling or contents coverage, renters or tenants
71 insurance, and mobile home or manufactured home insurance. The
72 term excludes creditor placed property insurance and
73 condominium association or homeowner association property
74 insurance.

75 (5) PRIMARY STRUCTURAL MEMBER. A structural element
76 designed to provide support and stability for the vertical or
77 lateral loads of the overall structure.

78 (6) PRIMARY STRUCTURAL SYSTEM. An assemblage of primary
79 structural members.

80 (7) PROFESSIONAL ENGINEER. The same meaning as defined
81 in Section 34-11-1, Code of Alabama 1975. A professional
82 engineer must also have experience and expertise in the
83 identification of sinkhole activity or other potential causes
84 of structural damage.



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85 (8) SINKHOLE. A landform created by subsidence of soil,
86 sediment, or rock as underlying strata are dissolved by
87 groundwater and formed by collapse into subterranean voids
88 created by dissolution of limestone or dolostone or by
89 subsidence as these strata are dissolved.

90 (9) SINKHOLE ACTIVITY. Settlement or systematic
91 weakening of the earth supporting a covered building only if
92 the settlement or systematic weakening results from
93 contemporaneous movement or raveling of soils, sediments, or
94 rock materials into subterranean voids created by the effect
95 of water on a limestone or a similar rock formation.

96 (10) SINKHOLE LOSS. Structural damage to a covered
97 building, including the foundation, caused by sinkhole
98 activity, as well as damage to or loss of contents of a
99 covered building and additional living expenses.

100 (11) STRUCTURAL DAMAGE. A covered building, regardless
101 of the date of its construction, which has experienced the
102 following:

103 a. Interior floor displacement or deflection in excess
104 of acceptable variances as defined by applicable local
105 ordinance, which results in settlement-related damage to the
106 interior such that the interior building structure or members
107 become unfit for service or represents a safety hazard as
108 defined by applicable local ordinance.

109 b. Foundation displacement or deflection in excess of
110 acceptable variances as defined by applicable local ordinance,
111 which results in settlement-related damage to the primary
112 structural members or primary structural systems that prevents



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113 those members or systems from supporting the loads and forces
114 they were designed to support to the extent that stresses in
115 those primary structural members or primary structural systems
116 exceed one and one-third of the nominal strength allowed under
117 the applicable local ordinance pertaining to new residential
118 buildings of similar structure, purpose, or location.

119 c. Damage that results in listing, leaning, or buckling
120 of the exterior load-bearing walls or other vertical primary
121 structural members to such an extent that a plumb line passing
122 through the center of gravity does not fall inside the middle
123 one-third of the base as defined by applicable local
124 ordinance.

125 d. Damage that results in the building, or any portion
126 of the building containing primary structural members or
127 primary structural systems, being significantly likely to
128 imminently collapse because of the movement or instability of
129 the ground within the influence zone of the supporting ground
130 within the sheer plane necessary for the purpose of supporting
131 the building as defined by applicable local ordinance.

132 e. Damage occurring on or after October 1, 2024, that
133 qualifies as substantial structural damage as defined by
134 applicable local ordinance.

135 Section 2. (a) (1) Every insurer authorized under a
136 certificate of authority for property insurance and writing
137 homeowners and other personal lines residential property
138 insurance policies in the State of Alabama must provide
139 coverage for a catastrophic ground cover collapse in every
140 homeowners insurance policy.



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141 (2) The insurer may limit catastrophic ground cover
142 collapse to the principal building, as defined in the
143 applicable policy.

144 (b) (1) The insurer shall make available, for an
145 appropriate additional premium, coverage for sinkhole losses
146 on any structure, including the contents of personal property
147 contained therein, to the extent provided in the form to which
148 the coverage attaches.

149 (2) The insurer may restrict sinkhole loss coverage to
150 the principal building as defined in the applicable policy and
151 require an inspection of the property before issuance of
152 sinkhole loss coverage.

153 (3) A policy for residential property insurance may
154 include a deductible amount applicable to sinkhole losses
155 equal to one percent, two percent, five percent, or 10 percent
156 of the policy dwelling limits, with appropriate premium
157 discounts offered with each deductible amount.

158 (4) An insurer offering a policy that excludes coverage
159 for sinkhole losses must inform policyholders in bold type of
160 not less than 14 points as follows: "YOUR POLICY PROVIDES
161 COVERAGE FOR A CATASTROPHIC GROUND COVER COLLAPSE THAT RESULTS
162 IN THE PROPERTY BEING CONDEMNED AND UNINHABITABLE. OTHERWISE,
163 YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES. YOU
164 MAY PURCHASE ADDITIONAL COVERAGE FOR SINKHOLE LOSSES FOR AN
165 ADDITIONAL PREMIUM."

166 (5) An insurer offering sinkhole coverage to
167 policyholders before or after the adoption of this act may
168 nonrenew the policies of policyholders maintaining sinkhole



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169 coverage at the option of the insurer, and provide an offer of
170 coverage that includes catastrophic ground cover collapse and
171 excludes sinkhole coverage. Insurers acting in accordance with
172 this subdivision must satisfy all of the following
173 requirements:

174 a. Notify policyholders that a nonrenewal is for
175 purposes of removing sinkhole coverage, and that the
176 policyholder is being offered a policy that provides coverage
177 for catastrophic ground cover collapse.

178 b. Provide policyholders with an actuarially reasonable
179 premium credit or discount for the removal of sinkhole
180 coverage and provision of only catastrophic ground cover
181 collapse.

182 c. Subject to the provisions of this subsection and the
183 insurer's approved underwriting or insurability guidelines,
184 provide each policyholder with the opportunity to purchase an
185 endorsement to his or her policy providing sinkhole coverage
186 and may require an inspection of the property before issuance
187 of a sinkhole coverage endorsement.

188 (c) Any claim, including, but not limited to, initial,
189 supplemental, and reopened claims under an insurance policy
190 that provides sinkhole coverage is barred unless the insurer
191 was given notice of the claim in accordance with the terms of
192 the policy within two years after the policyholder knew or
193 reasonably should have known about the sinkhole loss.

194 Section 3. (a) Upon receipt of a claim for a sinkhole
195 loss to a covered building, an insurer must satisfy each of
196 the following requirements in investigating a claim:



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197 (1) Inspect the policyholder's premises to determine if
198 there is structural damage that may be the result of sinkhole
199 activity.

200 (2) If the insurer confirms that structural damage
201 exists but is unable to identify a valid cause of such damage
202 or discovers that the damage is consistent with sinkhole loss,
203 the insurer shall engage a professional engineer or a
204 professional geologist to conduct testing as provided in
205 Section 4 to determine the cause of the loss within a
206 reasonable professional probability and issue a report as
207 provided in Section 5 only if sinkhole loss is covered under
208 the policy. Except as provided in paragraph (b)(1)c. and
209 subsection (d), the fees and costs of the professional
210 engineer or professional geologist shall be paid by the
211 insurer.

212 (3) Following the initial inspection of the
213 policyholder's premises, the insurer shall provide written
214 notice to the policyholder disclosing all of the following
215 information:

216 a. What the insurer has determined to be the cause of
217 damage, if the insurer has made such a determination.

218 b. A statement of the circumstances under which the
219 insurer is required to engage a professional engineer or a
220 professional geologist to verify or eliminate sinkhole loss
221 and to engage a professional engineer to make recommendations
222 regarding land and building stabilization and foundation
223 repair.

224 c. A statement regarding the right of the policyholder



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225 to request testing by a professional engineer or a
226 professional geologist, the circumstances under which the
227 policyholder may demand certain testing, and the circumstances
228 under which the policyholder may incur costs associated with
229 testing.

230 (b) (1) If the insurer determines that there is no
231 sinkhole loss, the insurer may deny the claim.

232 a. If coverage for sinkhole loss is available and the
233 insurer denies the claim without performing testing under
234 Section 4, the policyholder may demand testing by the insurer
235 under Section 4.

236 b. The policyholder's demand for testing must be
237 communicated to the insurer in writing within 60 days after
238 the policyholder's receipt of the insurer's denial of the
239 claim.

240 c. The policyholder shall pay 50 percent of the actual
241 costs of the analyses and services provided under Sections 4
242 and 5 or two thousand five hundred dollars (\$2,500), whichever
243 is less.

244 d. The insurer shall reimburse the policyholder for the
245 costs if the insurer's engineer or geologist provides written
246 certification pursuant to Section 5 that there is sinkhole
247 loss.

248 (2)a. If a sinkhole loss is verified, the insurer shall
249 pay to stabilize the land and covered building and repair the
250 foundation in accordance with the recommendations of the
251 professional engineer engaged pursuant to subdivision (a) (2),
252 with notice to the policyholder, subject to the coverage and



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253 terms of the policy. The insurer shall pay for other repairs
254 to the structure and contents in accordance with the terms of
255 the policy. If a covered building suffers a sinkhole loss or a
256 catastrophic ground cover collapse, the policyholder must
257 repair such damage or loss in accordance with the insurer's
258 professional engineer's recommended repairs. However, if the
259 insurer's professional engineer determines that the repair
260 cannot be completed within policy limits, the insurer must pay
261 to complete the repairs recommended by the insurer's
262 professional engineer or tender the policy limits to the
263 policyholder.

264 b. The insurer may limit its total claims payment to
265 the actual cash value of the sinkhole loss, which does not
266 include underpinning or grouting or any other repair technique
267 performed below the existing foundation of the building, until
268 the policyholder enters into a contract for the performance of
269 building stabilization or foundation repairs in accordance
270 with the recommendations set forth in the insurer's report
271 issued pursuant to Section 5.

272 c. In order to prevent additional damage to the
273 building or structure, the policyholder must enter into a
274 contract for the performance of building stabilization and
275 foundation repairs within 90 days after the insurance company
276 confirms coverage for the sinkhole loss and notifies the
277 policyholder of such confirmation.

278 d. After the policyholder enters into the contract for
279 the performance of building stabilization and foundation
280 repairs, the insurer shall pay the amounts necessary to begin



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281 and perform such repairs as the work is performed and the
282 expenses are incurred. The insurer may not require the
283 policyholder to advance payment for such repairs. If repair
284 covered by a personal lines residential property insurance
285 policy has begun and the professional engineer selected or
286 approved by the insurer determines that the repair cannot be
287 completed within the policy limits, the insurer must complete
288 the professional engineer's recommended repair or tender the
289 policy limits to the policyholder without a reduction for the
290 repair expenses incurred.

291 e. The stabilization and all other repairs to the
292 structure and contents must be completed within 12 months
293 after entering into the contract for repairs described in
294 paragraph d. unless any of the following occur:

295 1. There is a mutual agreement between the insurer and
296 the policyholder.

297 2. The claim is in litigation.

298 3. The claim is under appraisal or mediation.

299 f. Upon the insurer's obtaining the written approval of
300 any lienholder, the insurer may make payment directly to the
301 persons selected by the policyholder to perform the land and
302 building stabilization and foundation repairs. The decision by
303 the insurer to make payment to such persons does not hold the
304 insurer liable for the work performed.

305 (c) The policyholder may not accept a rebate from any
306 person performing the repairs specified in this section. If a
307 policyholder receives a rebate, coverage is void and the
308 policyholder must refund the amount of the rebate to the



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309 insurer. Any person performing the repairs specified in this
310 section who offers a rebate commits a Class D felony. As used
311 in this subsection, the term "rebate" means a remuneration,
312 payment, gift, discount, or transfer of any item of value to
313 the policyholder by or on behalf of a person performing the
314 repairs specified in this section as an incentive or
315 inducement to obtain repairs performed by that person.

316 (d) If the insurer obtains written certification
317 pursuant to Section 5 that there is no sinkhole loss or that
318 the cause of the damage was not sinkhole activity, and if the
319 policyholder has submitted the sinkhole claim without good
320 faith grounds for submitting the claim, the policyholder shall
321 reimburse the insurer for 50 percent of the actual costs of
322 the analyses and services provided under Sections 4 and 5;
323 however, a policyholder is not required to reimburse an
324 insurer more than two thousand five hundred dollars (\$2,500)
325 with respect to any claim. A policyholder is required to pay
326 reimbursement under this subsection only if the policyholder
327 requested the analyses and services pursuant to Sections 4 and
328 5, and the insurer, before ordering the analyses pursuant to
329 Section 4, informs the policyholder in writing of the
330 policyholder's potential liability for reimbursement and gives
331 the policyholder the opportunity to withdraw the claim.

332 (e) An insurer may not nonrenew any policy of property
333 insurance on the basis of filing of claims for sinkhole loss
334 if the total of such payments does not equal or exceed the
335 policy limits of coverage for the policy in effect on the date
336 of loss, for property damage to the covered building as set



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337 forth on the declarations page, or if the policyholder
338 repaired the structure in accordance with the engineering
339 recommendations made pursuant to subdivision (a)(2) upon which
340 any payment or policy proceeds were based. If the insurer pays
341 such limits, the insurer may nonrenew the policy.

342 (f) The insurer may engage a professional structural
343 engineer to make recommendations as to the repair of a
344 structure.

345 Section 4. A professional engineer and professional
346 geologist shall perform such tests as sufficient, in their
347 professional opinion, to determine the presence or absence of
348 sinkhole loss or other cause of damage within reasonable
349 professional probability and for the professional engineer to
350 make recommendations regarding necessary building
351 stabilization and foundation repair.

352 Section 5. (a)(1) Upon completion of testing pursuant
353 to Section 4, the professional engineer or professional
354 geologist shall issue a report and certification to the
355 insurer and the policyholder as provided in this section.

356 (2) Sinkhole loss is verified if, based upon tests
357 performed pursuant to Section 4, a professional engineer or a
358 professional geologist issues a written report and
359 certification providing answers to all of the following:

360 a. That structural damage to the covered building has
361 been identified within a reasonable professional probability.

362 b. That the cause of the structural damage is sinkhole
363 activity within a reasonable professional probability.

364 c. That the analyses conducted were of sufficient scope



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365 to identify sinkhole activity as the cause of damage within a
366 reasonable professional probability.

367 d. A description of the tests performed.

368 e. A recommendation by the professional engineer of
369 methods for stabilizing the land and building and for making
370 repairs to the foundation.

371 (3) If there is no structural damage or if sinkhole
372 activity is eliminated as the cause of such damage to the
373 covered building, the professional engineer or professional
374 geologist shall issue a written report and certification to
375 the policyholder and the insurer stating any of the following:

376 a. That there is no structural damage or the cause of
377 such damage is not sinkhole activity within a reasonable
378 professional probability.

379 b. That the analyses and tests conducted were of
380 sufficient scope to eliminate sinkhole activity as the cause
381 of the structural damage within a reasonable professional
382 probability.

383 c. The cause of the structural damage within a
384 reasonable professional probability.

385 d. A description of the tests performed.

386 (4) The respective findings, opinions, and
387 recommendations of the insurer's professional engineer or
388 professional geologist as to the cause of damage to the
389 property and the findings, opinions, and recommendations of
390 the insurer's professional engineer as to land and building
391 stabilization and foundation repair set forth in this section
392 shall be presumed correct.



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393 (b) (1) An insurer that has paid a claim for a sinkhole
394 loss shall file a copy of the report and certification,
395 prepared pursuant to subsection (a), including the legal
396 description of the real property and the name of the property
397 owner, which indicates that sinkhole activity caused the
398 damage claimed, a copy of the certification indicating that
399 stabilization has been completed, if applicable, and the
400 amount of the payment, with the county clerk of court, who
401 shall record the report and certification. The insurer shall
402 bear the cost of filing and recording one or more reports and
403 certifications. There shall be no cause of action or liability
404 against an insurer for compliance with this section.

405 (2) The recording of the report and certification does
406 not constitute or create any of the following:

407 a. A lien, encumbrance, or restriction on the title to
408 the real property or constitute a defect in the title to the
409 real property.

410 b. Any cause of action or liability against any grantor
411 of the real property for breach of any warranty of good title
412 or warranty against encumbrances.

413 c. Any cause of action or liability against any title
414 insurer that insures the title to the real property.

415 (3) As a precondition to accepting payment for a
416 sinkhole loss, the policyholder must file with the judge of
417 probate for the county where the property is located, a copy
418 of any sinkhole report regarding the insured property which
419 was prepared on behalf or at the request of the policyholder.
420 The policyholder shall bear the cost of filing and recording



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421 the sinkhole report. The recording of the report does not
422 constitute or create any of the following:

423 a. A lien, encumbrance, or restriction on the title to
424 the real property or constitute a defect in the title to the
425 real property.

426 b. Any cause of action or liability against any grantor
427 of the real property for breach of any warranty of good title
428 or warranty against encumbrances.

429 c. Any cause of action or liability against a title
430 insurer that insures the title to the real property.

431 (c) (1) Upon completion of any building stabilization or
432 foundation repairs for a verified sinkhole loss, the
433 professional engineer responsible for monitoring the repairs
434 shall issue a report to the property owner which specifies
435 what repairs have been performed and certifies within a
436 reasonable degree of professional probability that such
437 repairs have been properly performed.

438 (2) The professional engineer issuing the report shall
439 file a copy of the report and certification, which includes a
440 legal description of the real property and the name of the
441 property owner, with the judge of probate for the county where
442 the property is located, who shall record the report and
443 certification. This subsection does not create liability for
444 an insurer based on any representation or certification by a
445 professional engineer related to the stabilization or
446 foundation repairs for the verified sinkhole loss.

447 (d) The seller of real property upon which a sinkhole
448 claim has been made by the seller and paid by the insurer must



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449 disclose to the buyer of such property, before the closing,
450 that a claim has been paid and whether or not the full amount
451 of the proceeds was used to repair the sinkhole damage.

452 Section 6. This act shall become effective on October
453 1, 2024.