

By the Committee on Banking and Insurance; and Senator Steube

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1 A bill to be entitled
2 An act relating to insurance; amending s. 627.062,
3 F.S.; providing that certain attorney fees and costs
4 paid by property insurers may not be included in the
5 property insurer's rate base and may not be used to
6 justify a rate increase or rate change; amending s.
7 627.409, F.S.; adding and revising conditions under
8 which certain misrepresentations, omissions,
9 concealments of fact, or incorrect statements may
10 prevent recovery under an insurance policy or annuity
11 contract; amending s. 627.422, F.S.; providing that
12 personal lines residential and commercial residential
13 property insurance policies may not restrict the
14 assignment of post-loss benefits; amending s.
15 627.7011, F.S.; prohibiting specified acts by insurers
16 relating to certain losses under homeowners' insurance
17 policies; creating s. 627.7152, F.S.; providing that
18 an agreement to assign post-loss benefits of a
19 residential homeowner's property insurance is not
20 valid unless specified conditions are met; requiring
21 the assignee, under certain circumstances, to provide
22 a copy of the assignment agreement and a specified
23 written estimate to the insurer within a specified
24 timeframe; requiring the estimate to be timely updated
25 if conditions require a change in scope; providing
26 construction relating to failure to comply with such
27 requirement; authorizing an insurer to inspect the
28 property at any time; providing that an insurer's
29 failure to make a certain attempt to inspect the

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30 property and deliver a certain notice, under certain
31 circumstances, may estop certain assertions by the
32 insurer; providing that a person's acceptance of an
33 assignment agreement constitutes a waiver by the
34 assignee or transferee, or any subcontractor of the
35 assignee or transferee, of certain claims against
36 named insureds, except under specified circumstances;
37 providing construction relating to such waiver;
38 requiring an assignee, before initiating certain
39 litigation against an insurer, to provide a certain
40 invoice and estimate to the insurer within a specified
41 timeframe; providing that certain offers of settlement
42 in certain civil actions may not be made until after a
43 specified timeframe; requiring the Office of Insurance
44 Regulation to require each insurer to annually report
45 specified data relating to certain claims paid
46 pursuant to assignment agreements; authorizing the
47 Financial Services Commission to adopt rules;
48 providing applicability; providing an effective date.

49
50 Be It Enacted by the Legislature of the State of Florida:

51
52 Section 1. Subsection (11) is added to section 627.062,
53 Florida Statutes, to read:

54 627.062 Rate standards.—

55 (11) Attorney fees and costs paid by a property insurer
56 pursuant to s. 627.428 may not be included in the property
57 insurer's rate base and may not be used to justify a rate
58 increase or rate change.

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59 Section 2. Subsection (1) of section 627.409, Florida
60 Statutes, is amended to read:

61 627.409 Representations in applications; warranties.—

62 (1) Any statement or description made by or on behalf of an
63 insured or annuitant in an application for an insurance policy
64 or annuity contract, or in negotiations for a policy or
65 contract, is a representation and not a warranty. Except as
66 provided in subsection (3), a misrepresentation, omission,
67 concealment of fact, or incorrect statement may prevent recovery
68 under the contract or policy only if the misrepresentation,
69 omission, concealment of fact, or incorrect statement directly
70 relates to the cause of the claim being made and any of the
71 following apply:

72 (a) The misrepresentation, omission, concealment, or
73 statement is fraudulent or is material to the acceptance of the
74 risk or to the hazard assumed by the insurer.

75 (b) If the true facts relative to the loss claimed had been
76 known to the insurer pursuant to a policy requirement or other
77 requirement, the insurer in good faith would not have:

78 1. Issued the policy or contract;~~7 would not have~~

79 2. Issued the policy or contract ~~it~~ at a ~~the same~~ premium
80 rate at least 20 percent higher than the rate actually charged;~~7~~
81 ~~would not have~~

82 3. Issued a policy or contract in as large an amount;~~7~~ or

83 4. ~~would not have~~ Provided coverage with respect to the
84 hazard resulting in the loss.

85 Section 3. Section 627.422, Florida Statutes, is amended to
86 read:

87 627.422 Assignment of policies or post-loss benefits.—A

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88 policy may be assignable, or not assignable, as provided by its
89 terms.

90 (1) LIFE OR HEALTH INSURANCE POLICIES.—Subject to its terms
91 relating to assignability, any life or health insurance policy
92 under the terms of which the beneficiary may be changed upon the
93 sole request of the policyowner may be assigned either by pledge
94 or transfer of title, by an assignment executed by the
95 policyowner alone and delivered to the insurer, whether or not
96 the pledgee or assignee is the insurer. Any such assignment
97 shall entitle the insurer to deal with the assignee as the owner
98 or pledgee of the policy in accordance with the terms of the
99 assignment, until the insurer has received at its home office
100 written notice of termination of the assignment or pledge or
101 written notice by or on behalf of some other person claiming
102 some interest in the policy in conflict with the assignment.

103 (2) POST-LOSS BENEFITS UNDER CERTAIN PROPERTY INSURANCE
104 POLICIES.—A personal lines residential property insurance policy
105 or a commercial residential property insurance policy may not
106 restrict the assignment of post-loss benefits.

107 Section 4. Paragraph (a) of subsection (3) of section
108 627.7011, Florida Statutes, is amended to read:

109 627.7011 Homeowners' policies; offer of replacement cost
110 coverage and law and ordinance coverage.—

111 (3) In the event of a loss for which a dwelling or personal
112 property is insured on the basis of replacement costs:

113 (a) For a dwelling:—

114 1. The insurer must initially pay at least the actual cash
115 value of the insured loss, less any applicable deductible. The
116 insurer shall pay any remaining amounts necessary to perform

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117 such repairs as work is performed and expenses are incurred. If
118 a total loss of a dwelling occurs, the insurer shall pay the
119 replacement cost coverage without reservation or holdback of any
120 depreciation in value, pursuant to s. 627.702.

121 2. The insurer may not require that a particular vendor
122 make repairs to such dwelling.

123 3. The insurer may not, unless expressly requested by the
124 insured, recommend or suggest a particular vendor for repairs to
125 be made to such dwelling.

126 Section 5. Section 627.7152, Florida Statutes, is created
127 to read:

128 627.7152 Assignment of residential homeowner's property
129 insurance post-loss benefits; prelitigation invoice; offer of
130 settlement; annual reporting.-

131 (1) An agreement to assign post-loss benefits of a
132 residential homeowner's property insurance policy is not valid
133 unless the agreement:

134 (a) Is in writing;

135 (b) Is limited to claims for work performed or work to be
136 performed by the assignee;

137 (c) Contains an accurate and up-to-date statement of the
138 scope of work to be performed;

139 (d) Allows the insured to rescind the assignment within 7
140 days after the execution of the assignment without a penalty or
141 fee;

142 (e) Prohibits any check or mortgage processing fee or
143 administrative fee;

144 (f) Provides that the insured may be responsible for
145 payment for any work performed before the rescission of the

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146 assignment; and

147 (g) Contains a provision, in 14-point boldfaced type, which
148 allows the insured to rescind the agreement within 7 days after
149 execution of the assignment, and with a notice that if the
150 assignment is rescinded, the homeowner is responsible to pay for
151 the work done up to the date of the rescission and that the
152 homeowner is not otherwise responsible to pay for the work
153 covered by the assignment.

154 (2) (a) The assignee shall provide a copy of the assignment
155 agreement to the insurer within 7 days after execution of the
156 agreement, or within 48 hours after beginning nonemergency work,
157 whichever is earlier, if the insurer has a facsimile number and
158 e-mail address on its website designated for the delivery of
159 such documents. This assignment agreement must be accompanied by
160 a written estimate of the work to be done, with unit prices
161 indicated where appropriate, and the basis for calculating lump
162 sum fees if unit prices are inappropriate. The estimate must be
163 timely updated if conditions require a change in scope. The
164 failure to comply with this requirement constitutes a defense to
165 any payment obligation under the policy or the assignment, if
166 the insurer can establish prejudice resulting from the failure.

167 (b) The insurer may inspect the property at any time. If
168 the insurer fails to attempt in good faith to do so within 7
169 days after learning of the loss and promptly deliver to the
170 assignee written notice of any perceived deficiency in the
171 assignee's notice or the work being performed, the failure may
172 be raised to estop the insurer from asserting that work done was
173 not reasonably necessary or that the notice was insufficient to
174 comply with this section.

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175 (3) Notwithstanding any other law, the acceptance by a
176 person of any assignment agreement constitutes a waiver by the
177 assignee or transferee, and any subcontractor of the assignee or
178 transferee, of any and all claims against all named insureds for
179 payment arising from the specified loss, except that all named
180 insureds remain responsible for the payment of any deductible
181 amount provided for by the terms of the insurance policy and for
182 the cost of any betterment ordered by all named insureds. This
183 waiver remains in effect notwithstanding any subsequent
184 determination that the assignment agreement is invalid or
185 notwithstanding the rescission of the assignment agreement by
186 all named insureds, except that the assignee is entitled to
187 payment for the reasonable cost of any contracted work performed
188 before the assignor rescinded the assignment agreement.

189 (4) No later than 30 days before an assignee initiates
190 litigation against an insurer relating to a residential
191 homeowner's property insurance claim, the assignee must provide
192 the insurer an invoice for all work that has been performed and
193 a current estimate of work remaining to be performed.

194 (5) In a civil action relating to a residential homeowner's
195 property insurance claim under a policy in which an assignment
196 agreement under this section was executed, an offer of
197 settlement under s. 768.79 by any party may be made no earlier
198 than 30 days after the civil action has commenced.

199 (6) The office shall require each insurer to report by
200 January 30, 2021, and each year thereafter, data on each
201 residential property insurance claim paid in the prior calendar
202 year pursuant to an assignment agreement. Such data must
203 include, but are not limited to, specific data about claims

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204 adjustment and settlement timeframes and trends grouped by
205 whether litigated or not litigated, by loss adjustment expenses,
206 and by the amount and type of attorney fees incurred or paid.
207 The commission may adopt rules to administer this subsection.

208 (7) This section does not apply to:

209 (a) An assignment, transfer, or conveyance granted to a
210 subsequent purchaser of the property with an insurable interest
211 in the property following a loss; or

212 (b) A power of attorney under chapter 709 which grants to a
213 management company, family member, guardian, or similarly
214 situated person of an insured the authority to act on behalf of
215 an insured as it relates to a property insurance claim.

216 Section 6. The amendment made by this act to s. 627.422,
217 Florida Statutes, and the creation by this act of s. 627.7152,
218 Florida Statutes, apply to assignment agreements executed on or
219 after July 1, 2018.

220 Section 7. This act shall take effect July 1, 2018.