

By the Committees on Judiciary; and Banking and Insurance; and
Senator Steube

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

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

46
47 Be It Enacted by the Legislature of the State of Florida:

48
49 Section 1. Section 627.409, Florida Statutes, is amended to
50 read:

51 627.409 Representations in applications; warranties.—

52 (1) Any statement or description made by or on behalf of an
53 insured or annuitant in an application for an insurance policy
54 or annuity contract, or in negotiations for a policy or
55 contract, is a representation and not a warranty. Except as
56 provided in subsection (3), a misrepresentation, omission,
57 concealment of fact, or incorrect statement may prevent recovery
58 under the contract or policy only if the misrepresentation,

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59 omission, concealment of fact, or incorrect statement directly
60 relates to the cause of the claim being made and any of the
61 following apply:

62 (a) The misrepresentation, omission, concealment, or
63 statement is fraudulent or is material to the acceptance of the
64 risk or to the hazard assumed by the insurer.

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

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

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

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

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

75 (2) A breach or violation by the insured of a warranty,
76 condition, or provision of a wet marine or transportation
77 insurance policy, contract of insurance, endorsement, or
78 application does not void the policy or contract, or constitute
79 a defense to a loss thereon, unless such breach or violation
80 increased the hazard by any means within the control of the
81 insured.

82 (3) For residential property insurance, if a policy or
83 contract has been in effect for more than 90 days, a claim filed
84 by the insured cannot be denied based on credit information
85 available in public records.

86 (4) This section may not be construed to allow fraudulent
87 insurance claims as described in s. 817.234.

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88 Section 2. Section 627.422, Florida Statutes, is amended to
89 read:

90 627.422 Assignment of policies or post-loss benefits.—A
91 policy may be assignable, or not assignable, as provided by its
92 terms.

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

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

110 Section 3. Paragraph (a) of subsection (3) of section
111 627.7011, Florida Statutes, is amended to read:

112 627.7011 Homeowners' policies; offer of replacement cost
113 coverage and law and ordinance coverage.—

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

116 (a) For a dwelling: ~~7~~

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117 1. The insurer must initially pay at least the actual cash
118 value of the insured loss, less any applicable deductible. The
119 insurer shall pay any remaining amounts necessary to perform
120 such repairs as work is performed and expenses are incurred. If
121 a total loss of a dwelling occurs, the insurer shall pay the
122 replacement cost coverage without reservation or holdback of any
123 depreciation in value, pursuant to s. 627.702.

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

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

129 Section 4. Section 627.7152, Florida Statutes, is created
130 to read:

131 627.7152 Assignment of residential homeowner's property
132 insurance post-loss benefits; prelitigation invoice; offer of
133 settlement; annual reporting.-

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

137 (a) Is in writing;

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

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

142 (d) Allows the insured to rescind the assignment within 7
143 days after the execution of the assignment without a penalty or
144 fee;

145 (e) Prohibits any check or mortgage processing fee or

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146 administrative fee;

147 (f) Provides that the insured or the insurer may be
148 responsible for payment for any work performed before the
149 rescission of the assignment; and

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

157 (2) (a) The assignee shall provide a copy of the assignment
158 agreement to the insurer within 5 days after execution of the
159 agreement if the insurer has a facsimile number and e-mail
160 address on its website designated for the delivery of such
161 documents. This assignment agreement must be accompanied by a
162 written estimate of the work to be done, with unit prices
163 indicated where appropriate, and the basis for calculating lump
164 sum fees if unit prices are inappropriate. The estimate must be
165 timely updated if conditions require a change in scope. The
166 failure to comply with this requirement constitutes a defense to
167 any payment obligation under the policy or the assignment, if
168 the insurer can establish prejudice resulting from the failure.

169 (b) The insurer may inspect the property at any time. If
170 the insurer fails to attempt in good faith to do so within 7
171 days after learning of the loss and promptly deliver to the
172 assignee written notice of any perceived deficiency in the
173 assignee's notice or the work being performed, the failure may
174 be raised to estop the insurer from asserting that work done was

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175 not reasonably necessary or that the notice was insufficient to
176 comply with this section.

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

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

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

201 (6) The office shall require each insurer to report by
202 January 30, 2021, and each year thereafter, data on each
203 residential property insurance claim paid in the prior calendar

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204 year pursuant to an assignment agreement. Such data must
205 include, but are not limited to, specific data about claims
206 adjustment and settlement timeframes and trends grouped by
207 whether litigated or not litigated, by loss adjustment expenses,
208 and by the amount and type of attorney fees incurred or paid.
209 The commission may adopt rules to administer this subsection.

210 (7) This section does not apply to:

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

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

218 Section 5. The amendment made by this act to s. 627.422,
219 Florida Statutes, and the creation by this act of s. 627.7152,
220 Florida Statutes, apply to assignment agreements executed on or
221 after July 1, 2018.

222 Section 6. This act shall take effect July 1, 2018.