

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

590-02950-18

20181168c2

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

590-02950-18

20181168c2

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,

590-02950-18

20181168c2

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.

590-02950-18

20181168c2

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~~

590-02950-18

20181168c2

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

590-02950-18

20181168c2

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

590-02950-18

20181168c2

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

590-02950-18

20181168c2

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.