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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/04/2019	.	
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The Committee on Banking and Insurance (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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

627.062 Rate standards.—

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



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11 increase or rate change.

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

14 627.409 Representations in applications; warranties.—

15 (1) Any statement or description made by or on behalf of an
16 insured or annuitant in an application for an insurance policy
17 or annuity contract, or in negotiations for a policy or
18 contract, is a representation and not a warranty. Except as
19 provided in subsection (3), a misrepresentation, omission,
20 concealment of fact, or incorrect statement may prevent recovery
21 under the contract or policy only if the misrepresentation,
22 omission, concealment of fact, or incorrect statement directly
23 relates to the cause of the claim being made and any of the
24 following apply:

25 (a) The misrepresentation, omission, concealment, or
26 statement is fraudulent or is material to the acceptance of the
27 risk or to the hazard assumed by the insurer.

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

31 1. Issued the policy or contract;~~it would not have~~

32 2. Issued the policy or contract at a the same premium
33 rate at least 20 percent higher than the rate actually charged;~~it~~
34 ~~would not have~~

35 3. Issued a policy or contract in as large an amount;~~it~~ or

36 4. would not have Provided coverage with respect to the
37 hazard resulting in the loss.

38 Section 3. Section 627.422, Florida Statutes, is amended to
39 read:



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40 627.422 Assignment of policies or post-loss benefits.-A
41 policy may be assignable, or not assignable, as provided by its
42 terms.

43 (1) LIFE OR HEALTH INSURANCE POLICIES.-Subject to its terms
44 relating to assignability, any life or health insurance policy
45 under the terms of which the beneficiary may be changed upon the
46 sole request of the policyowner may be assigned either by pledge
47 or transfer of title, by an assignment executed by the
48 policyowner alone and delivered to the insurer, whether or not
49 the pledgee or assignee is the insurer. Any such assignment
50 shall entitle the insurer to deal with the assignee as the owner
51 or pledgee of the policy in accordance with the terms of the
52 assignment, until the insurer has received at its home office
53 written notice of termination of the assignment or pledge or
54 written notice by or on behalf of some other person claiming
55 some interest in the policy in conflict with the assignment.

56 (2) POST-LOSS BENEFITS UNDER CERTAIN PROPERTY INSURANCE
57 POLICIES.-A personal lines residential property insurance policy
58 or a commercial residential property insurance policy may not
59 restrict the assignment of post-loss benefits.

60 Section 4. Section 627.7152, Florida Statutes, is created
61 to read:

62 627.7152 Assignment of residential homeowner's property
63 insurance post-loss benefits; prelitigation invoice; offer of
64 settlement; annual reporting.-

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

68 (a) Is in writing;



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

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

73 (d) Allows the insured to rescind the assignment within 7
74 days after the execution of the assignment;

75 (e) Provides that the insured may be responsible for
76 payment for any work performed before the rescission of the
77 assignment; and

78 (f) Contains a provision, in 14-point boldfaced type, which
79 allows the insured to rescind the agreement within 7 days after
80 execution of the assignment, and with a notice that if the
81 assignment is rescinded, the homeowner is responsible to pay for
82 the work done up to the date of the rescission and that the
83 homeowner is not otherwise responsible to pay for the work
84 covered by the assignment.

85 (2) (a) The assignee shall provide a copy of the assignment
86 agreement to the insurer within 7 days after execution of the
87 agreement, or within 48 hours after beginning nonemergency work,
88 whichever is earlier, if the insurer has a facsimile number and
89 e-mail address on its website designated for the delivery of
90 such documents. This notice must be accompanied by a written
91 estimate of the work to be done, with unit prices indicated
92 where appropriate, and the basis for calculating lump sum fees
93 if unit prices are inappropriate. The estimate must be timely
94 updated if conditions require a change in scope. The failure to
95 comply with this requirement constitutes a defense to any
96 payment obligation under the policy or the assignment, if the
97 insurer can establish prejudice resulting from the failure.



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98 (b) The insurer may inspect the property at any time. If
99 the insurer fails to attempt in good faith to do so within 7
100 days after learning of the loss and promptly deliver to the
101 assignee written notice of any perceived deficiency in the
102 assignee's notice or the work being performed, the failure may
103 be raised to estop the insurer from asserting that work done was
104 not reasonably necessary or that the notice was insufficient to
105 comply with this section.

106 (3) Notwithstanding any other law, the acceptance by an
107 assignee of a valid assignment agreement constitutes a waiver by
108 the assignee or transferee, and any subcontractor of the
109 assignee or transferee, of any and all claims against named
110 insureds for payment arising from the specified loss, except
111 that all named insureds remain responsible for:

112 (a) The payment of any deductible amount provided for by
113 the terms of the insurance policy;

114 (b) The payment for work performed before the rescission of
115 the assignment agreement, if there is a rescission;

116 (c) The cost of any betterment specifically authorized by
117 the insured in a writing that identifies the work as betterment
118 for which the insured will be liable; and

119 (d) A misrepresentation of the existence of homeowner's
120 coverage by the homeowner.

121
122 The waiver in this subsection is valid even if the assignment
123 agreement is determined to be invalid.

124 (4) No later than 30 days before an assignee initiates
125 litigation against an insurer relating to a residential
126 homeowner's property insurance claim, the assignee must provide



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127 the insurer an invoice for all work that has been performed and
128 a current estimate of work remaining to be performed.

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

134 (6) The office shall require each insurer to report by
135 January 30, 2022, and each year thereafter, data on each
136 residential property insurance claim paid in the prior calendar
137 year pursuant to an assignment agreement. Such data must
138 include, but are not limited to, specific data about claims
139 adjustment and settlement timeframes and trends grouped by
140 whether litigated or not litigated, by loss adjustment expenses,
141 and by the amount and type of attorney fees incurred or paid.
142 The office may adopt rules to administer this subsection.

143 (7) This section does not apply to:

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

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

151 Section 5. This act shall take effect July 1, 2019.

152
153 ===== T I T L E A M E N D M E N T =====

154 And the title is amended as follows:

155 Delete everything before the enacting clause



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156 and insert:

157 A bill to be entitled
158 An act relating to insurance; amending s. 627.062,
159 F.S.; providing that certain attorney fees and costs;
160 providing an effective paid by property insurers may
161 not be included in the property insurer's rate base
162 and may not be used to justify a rate increase or rate
163 change; amending s. 627.409, F.S.; adding and revising
164 conditions under which certain misrepresentations,
165 omissions, concealments of fact, or incorrect
166 statements may prevent recovery under an insurance
167 policy or annuity contract; amending s. 627.422, F.S.;
168 providing that personal lines residential and
169 commercial residential property insurance policies may
170 not restrict the assignment of post-loss benefits;
171 creating s. 627.7152, F.S.; providing that an
172 agreement to assign post-loss benefits of a
173 residential homeowner's property insurance is not
174 valid unless specified conditions are met; requiring
175 the assignee, under certain circumstances, to provide
176 a copy of the assignment agreement and a specified
177 written estimate to the insurer within a specified
178 timeframe; requiring the estimate to be timely updated
179 if conditions require a change in scope; providing
180 construction relating to failure to comply with such
181 requirement; authorizing an insurer to inspect the
182 property at any time; providing that an insurer's
183 failure to make a certain attempt to inspect the
184 property and deliver a certain notice, under certain



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185 circumstances, may estop certain assertions by the
186 insurer; providing that an assignee's acceptance of a
187 valid assignment agreement constitutes a waiver by the
188 assignee or transferee, or any subcontractor of the
189 assignee or transferee, of certain claims against
190 named insureds, except under specified circumstances;
191 providing construction relating to the validity of
192 such waiver; requiring an assignee, before initiating
193 certain litigation against an insurer, to provide a
194 certain invoice and estimate to the insurer within a
195 specified timeframe; providing that certain offers of
196 settlement in certain civil actions may not be made
197 until after a specified timeframe; requiring the
198 office to require each insurer to annually report
199 specified data relating to certain claims paid
200 pursuant to assignment agreements; authorizing the
201 office to adopt rules; providing applicability;
202 providing an effective date.