

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

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1 Committee/Subcommittee hearing bill: Insurance & Banking  
2 Subcommittee

3 Representative Grant, J. offered the following:

4  
5 **Amendment**

6 Remove everything after the enacting clause and insert:

7  
8 Section 1. Section 627.7152, Florida Statutes, is created  
9 to read:

10 627.7152 Assignment agreements.-

11 (1) As used in this section, the term "assignment  
12 agreement" means a written instrument by which post-loss  
13 benefits under a residential property insurance policy are  
14 assigned to a person providing services to protect, repair,  
15 restore, or replace such property or to mitigate against further  
16 damage to such property.

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17 (2) An assignment agreement that does not comply with this  
18 subsection is invalid and unenforceable.

19 (a) An assignment agreement must:

20 1. Be in writing and executed by and between a named  
21 insured and a licensed general contractor as defined in s.  
22 489.105(3)(a).

23 2. Contain a provision that allows the assignor to rescind  
24 the assignment agreement, without any penalty, rescission fee,  
25 or cancellation fee, by having the assignor sign a notice within  
26 7 business days after the execution date of the assignment  
27 agreement and by notifying the assignee of the rescission. The  
28 assignor may rescind the assignment agreement for any reason  
29 during the 7-day period. The assignor shall be responsible for  
30 payment for contracted work performed before the agreement is  
31 rescinded.

32 3. Contain a provision requiring the assignee to provide a  
33 copy of the executed assignment agreement to the insurer within  
34 3 business days after the date the assignment agreement is  
35 executed. Delivery may be made:

36 a. By personal service, overnight delivery, or electronic  
37 transmission, with evidence of delivery in the form of a receipt  
38 or other paper or electronic acknowledgement by the insurer or  
39 the insurer's agent; or

40 b. To the location designated for receipt of such  
41 agreements as specified in the policy.

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42 4. Contain a written, itemized, per-unit cost estimate of  
43 the services to be performed by the assignee. If the statement  
44 of services includes a claim for water restoration services, the  
45 statement must also include proof that the assignee or  
46 subcontractor of the assignee, possesses a valid certification  
47 from an entity that requires water remediation to be performed  
48 according to a standard that is approved by the American  
49 National Standards Institute.

50 5. Relate only to work to be performed by the assignee for  
51 services to protect, repair, restore, or replace dwellings or  
52 structures covered by the insurance policy or to mitigate  
53 against further damage to such property.

54 6. Contain the following notice in uppercase 14-point  
55 type:

56  
57 YOU ARE AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR  
58 INSURANCE POLICY TO A THIRD PARTY WHICH MAY RESULT IN LITIGATION  
59 AGAINST YOUR INSURER. PLEASE READ AND UNDERSTAND THIS DOCUMENT  
60 BEFORE SIGNING IT. YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT  
61 WITHOUT PENALTY WITHIN 7 BUSINESS DAYS AFTER THE DATE THIS  
62 AGREEMENT IS EXECUTED, HOWEVER, YOU ARE OBLIGATED FOR PAYMENT OF  
63 ANY CONTRACTED WORK PERFORMED BEFORE THE AGREEMENT HAS BEEN  
64 RESCINDED. THIS AGREEMENT DOES NOT CHANGE YOUR OBLIGATION TO  
65 PERFORM THE DUTIES REQUIRED UNDER YOUR PROPERTY INSURANCE  
66 POLICY.

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- 67        (b) An assignment agreement may not contain:
- 68        1. A penalty or fee for rescission of the assignment
- 69 agreement pursuant to subparagraph (a)2.;
- 70        2. A check or mortgage processing fee;
- 71        3. A penalty or fee for cancellation of the assignment
- 72 agreement; or
- 73        4. An administrative fee.
- 74        (3) In a claim arising under an assignment agreement, an
- 75 assignee has the burden to demonstrate that the insurer is not
- 76 prejudiced by the failure of the assignee to:
- 77        (a) Maintain records of all services provided under an
- 78 assignment agreement.
- 79        (b) Cooperate with the insurer in the investigation of a
- 80 claim.
- 81        (c) Provide the insurer with requested records and
- 82 documents related to the services provided and to permit the
- 83 insurer to make copies of such records and documents.
- 84        (d) Deliver a copy of the executed assignment agreement to
- 85 the insurer within 3 business days after the execution of the
- 86 assignment agreement.
- 87        (e) Participate in appraisal or other alternative dispute
- 88 resolution method in accordance with the terms of the property
- 89 insurance policy.
- 90        (4) An assignee:

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91 (a) Must provide the assignor with accurate and up-to-date  
92 revised statements of the scope of work to be performed as  
93 supplemental or additional repairs are required;

94 (b) Must guarantee to the assignor that the work performed  
95 conforms to current and accepted industry standards;

96 (c) May not charge the assignor more than the applicable  
97 deductible under the policy unless the assignor chose to have  
98 additional work performed at the assignor's own expense; and

99 (d) May not pay more than \$300 in referral fees in  
100 connection with the claim.

101 (5) An assignment agreement and this section do not modify  
102 or eliminate any term, condition, or defense relating to any  
103 managed repair arrangement provided for in the property  
104 insurance policy.

105 (6) Notwithstanding any other provision of law, the  
106 acceptance by an assignee of an assignment agreement is a waiver  
107 by the assignee and subcontractors of the assignee, of claims  
108 against named insureds for payments arising from the assignment  
109 agreement. However, named insureds remain responsible for the  
110 payment of any deductible amount under an insurance policy, any  
111 contracted work performed before the rescission of an assignment  
112 agreement, and for the cost of any betterment ordered and  
113 approved by the assignor. This waiver remains in effect after  
114 rescission of the assignment agreement by the assignor or after  
115 a determination that the assignment agreement is invalid.

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116 (7)

117 (a)

118 1. If the insurer inspected the property within 3 days of  
119 first notice of loss, an assignee must provide the insurer and  
120 the assignor with a written notice of intent in order to  
121 initiate litigation related to an assignment agreement at least  
122 7 days before filing a complaint. The notice must specify the  
123 damages in dispute, the amount claimed, and any presuit  
124 settlement demand. An insurer must respond in writing to the  
125 notice within the 7-day period by providing a determination of  
126 coverage and damages and making a presuit settlement offer, or  
127 requiring appraisal or other method of alternative dispute  
128 resolution as may be provided in the policy. The notice may not  
129 be filed until the insurer has made a determination of coverage  
130 and damages; however, if a determination has not been made  
131 sooner than the timeframe specified in s. 627.70131, no notice  
132 is required.

133 2. Notwithstanding s. 627.70131, if the insurer failed to  
134 inspect the property within 3 days of first notice of loss,  
135 unless the failure to inspect was the result of an event for  
136 which the Governor has declared a state of emergency, the  
137 assignee must provide the insurer and the assignor with a  
138 written notice of intent in order to initiate litigation not  
139 less than 21 days before filing the complaint. The notice must  
140 specify the damages in dispute, the amount claimed, and any

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141 presuit settlement demand. An insurer must respond in writing to  
142 the notice within the 21-day period by providing a determination  
143 of coverage and damages and making a presuit settlement offer,  
144 or requiring appraisal or other method of alternative dispute  
145 resolution as may be provided in the policy.

146 (b) Concurrent with the notice required by this subsection  
147 and as a precondition to filing a complaint, the assignee must  
148 provide the insurer and the assignor a detailed written invoice  
149 or estimate, including itemized information on equipment,  
150 materials, and supplies, the number of labor hours, and, in the  
151 case of work performed, proof the work has been performed in  
152 accordance with current industry standards. If the invoice or  
153 estimate includes a claim for water restoration services, the  
154 assignee must provide proof of the certification required by  
155 subparagraph (2) (a) 4.

156 (c) An insurer must have a procedure for the prompt  
157 investigation, review, and evaluation of the dispute stated in  
158 such notice and must investigate such claims in good faith.

159 (8) Notwithstanding any other law to the contrary, in a  
160 proceeding related to an assignment agreement for post-loss  
161 claims arising under a residential property insurance policy,  
162 attorney fees and costs may only be recovered under s. 57.105  
163 and this subsection. As used in this subsection, the term  
164 "presuit settlement demand" means the presuit settlement demand  
165 made by the assignee in the written notice of intent to initiate

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166 litigation as required by paragraph (7) (a). The term "presuit  
167 settlement offer" means the presuit settlement offer made by the  
168 insurer in its written response to the notice of intent to  
169 initiate litigation as required by paragraph (7) (c).

170 (a) An insurer is entitled to an award of reasonable  
171 attorney fees from the assignee if the judgment obtained by the  
172 assignee is no more than 5 percent greater than the difference  
173 between the presuit settlement offer and the presuit settlement  
174 demand added to the presuit settlement offer.

175 (b) Attorney fees may not be awarded to either party if  
176 the judgment obtained by the assignee is more than 5 percent but  
177 less than 15 percent greater than the difference between the  
178 presuit settlement offer and the presuit demand added to the  
179 presuit settlement offer.

180 (c) An assignee is entitled to an award of 50 percent of  
181 the assignee's reasonable attorney fees if the judgment obtained  
182 by the assignee is at least 15 percent but less than 50 percent  
183 greater than the difference between the presuit settlement offer  
184 and the presuit settlement demand added to the presuit  
185 settlement offer.

186 (d) An assignee is entitled to an award of reasonable  
187 attorney fees from the insurer if the judgment obtained by the  
188 assignee is at least 50 percent greater than the difference  
189 between the presuit settlement offer and the presuit settlement  
190 demand added to the presuit settlement offer.

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- 191       (9) This section does not apply to:
- 192       (a) An assignment, transfer, or conveyance granted to a  
193 subsequent purchaser of the property with an insurable interest  
194 in the property following a loss;
- 195       (b) A power of attorney under chapter 709 that grants to a  
196 management company, family member, guardian, or similarly  
197 situated person of an insured that includes the authority to act  
198 on behalf of an insured as it relates to a property insurance  
199 claim; or
- 200       (c) Liability coverage under a property insurance policy.
- 201       (10) The office shall require each insurer to report by  
202 January 30, 2019, and each year thereafter, data on each claim  
203 paid in the prior calendar year pursuant to an assignment  
204 agreement. Such data must include, but are not limited to:
- 205       (a) The number of days between first notice of loss and  
206 the initial inspection.
- 207       (b) Loss severity.
- 208       (c) Allocated loss adjustment expense.
- 209       (d) For litigated claims:
- 210       1. Any amount paid prior to litigation, the amount in  
211 dispute, the amount of any proposal for settlement, and the  
212 settlement or judgment amount;
- 213       2. The amount of fees paid to the claimant's attorney  
214 and;

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215 3. The amount and structure, whether fixed, hourly, or  
216 contingency, of fees paid to the insurer's attorney.

217 (e) For non-litigated claims, the difference between the  
218 insurer's initial offer and the amount paid on the claim;

219 (f) The time from first notice of loss until the claim was  
220 closed.

221 (g) For claims involving water damage, whether the  
222 adjuster possessed certification consistent with the  
223 requirements in subparagraph (2) (a)4.

224 (11) This section applies to assignment agreements  
225 executed after July 1, 2017.

226 Section 2. Section 627.422, Florida Statutes, is amended  
227 to read:

228 627.422 Assignment of policies or post-loss benefits.—A  
229 policy may be assignable, or not assignable, as provided by its  
230 terms.

231 (1) Life or health insurance policies.—Subject to its  
232 terms relating to assignability, any life or health insurance  
233 policy under the terms of which the beneficiary may be changed  
234 upon the sole request of the policyowner may be assigned either  
235 by pledge or transfer of title, by an assignment executed by the  
236 policyowner alone and delivered to the insurer, whether or not  
237 the pledgee or assignee is the insurer. Any such assignment  
238 shall entitle the insurer to deal with the assignee as the owner  
239 or pledgee of the policy in accordance with the terms of the

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240 assignment, until the insurer has received at its home office  
241 written notice of termination of the assignment or pledge or  
242 written notice by or on behalf of some other person claiming  
243 some interest in the policy in conflict with the assignment.

244 (2) Post-loss benefits under certain property insurance  
245 policies.—A personal lines residential property insurance policy  
246 or a commercial residential property insurance policy may not  
247 prohibit the assignment of post-loss benefits.

248 Section 3. This act shall take effect July 1, 2017.