

By 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; creating s.
15 627.7152, F.S.; providing that an agreement to assign
16 post-loss benefits of a residential homeowner's
17 property insurance is not valid unless specified
18 conditions are met; requiring the assignee, under
19 certain circumstances, to provide a copy of the
20 assignment agreement and a specified written estimate
21 to the insurer within a specified timeframe; requiring
22 the estimate to be timely updated if conditions
23 require a change in scope; providing construction
24 relating to failure to comply with such requirement;
25 authorizing an insurer to inspect the property at any
26 time; providing that an insurer's failure to make a
27 certain attempt to inspect the property and deliver a
28 certain notice, under certain circumstances, may estop
29 certain assertions by the insurer; providing that an

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

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

48
49 Section 1. Subsection (11) is added to section 627.062,
50 Florida Statutes, to read:

51 627.062 Rate standards.—

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

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

58 627.409 Representations in applications; warranties.—

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

69 (a) The misrepresentation, omission, concealment, or
 70 statement is fraudulent or is material to the acceptance of the
 71 risk or to the hazard assumed by the insurer.

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

- 75 1. Issued the policy or contract;~~7 would not have~~
- 76 2. Issued the policy or contract at a the same premium
 77 rate at least 20 percent higher than the rate actually charged;~~7~~
 78 ~~would not have~~
- 79 3. Issued a policy or contract in as large an amount;~~7~~ or
- 80 4. would not have Provided coverage with respect to the
 81 hazard resulting in the loss.

82 Section 3. Section 627.422, Florida Statutes, is amended to
 83 read:

84 627.422 Assignment of policies or post-loss benefits.—A
 85 policy may be assignable, or not assignable, as provided by its
 86 terms.

87 (1) LIFE OR HEALTH INSURANCE POLICIES.—Subject to its terms

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

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

104 Section 4. Section 627.7152, Florida Statutes, is created
105 to read:

106 627.7152 Assignment of residential homeowner's property
107 insurance post-loss benefits; prelitigation invoice; offer of
108 settlement; annual reporting.-

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

112 (a) Is in writing;

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

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

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

119 (e) Provides that the insured may be responsible for
120 payment for any work performed before the rescission of the
121 assignment; and

122 (f) Contains a provision, in 14-point boldfaced type, which
123 allows the insured to rescind the agreement within 7 days after
124 execution of the assignment, and with a notice that if the
125 assignment is rescinded, the homeowner is responsible to pay for
126 the work done up to the date of the rescission and that the
127 homeowner is not otherwise responsible to pay for the work
128 covered by the assignment.

129 (2) (a) The assignee shall provide a copy of the assignment
130 agreement to the insurer within 7 days after execution of the
131 agreement, or within 48 hours after beginning nonemergency work,
132 whichever is earlier, if the insurer has a facsimile number and
133 e-mail address on its website designated for the delivery of
134 such documents. This notice must be accompanied by a written
135 estimate of the work to be done, with unit prices indicated
136 where appropriate, and the basis for calculating lump sum fees
137 if unit prices are inappropriate. The estimate must be timely
138 updated if conditions require a change in scope. The failure to
139 comply with this requirement constitutes a defense to any
140 payment obligation under the policy or the assignment, if the
141 insurer can establish prejudice resulting from the failure.

142 (b) The insurer may inspect the property at any time. If
143 the insurer fails to attempt in good faith to do so within 7
144 days after learning of the loss and promptly deliver to the
145 assignee written notice of any perceived deficiency in the

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146 assignee's notice or the work being performed, the failure may
147 be raised to estop the insurer from asserting that work done was
148 not reasonably necessary or that the notice was insufficient to
149 comply with this section.

150 (3) Notwithstanding any other law, the acceptance by an
151 assignee of a valid assignment agreement constitutes a waiver by
152 the assignee or transferee, and any subcontractor of the
153 assignee or transferee, of any and all claims against named
154 insureds for payment arising from the specified loss, except
155 that all named insureds remain responsible for:

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

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

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

163 (d) A misrepresentation of the existence of homeowner's
164 coverage by the homeowner.

165
166 The waiver in this subsection is valid even if the assignment
167 agreement is determined to be invalid.

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

173 (5) In a civil action relating to a residential homeowner's
174 property insurance claim under a policy in which an assignment

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175 agreement under this section was executed, an offer of
176 settlement under s. 768.79 by any party may be made no earlier
177 than 30 days after the civil action has commenced.

178 (6) The office shall require each insurer to report by
179 January 30, 2021, and each year thereafter, data on each
180 residential property insurance claim paid in the prior calendar
181 year pursuant to an assignment agreement. Such data must
182 include, but are not limited to, specific data about claims
183 adjustment and settlement timeframes and trends grouped by
184 whether litigated or not litigated, by loss adjustment expenses,
185 and by the amount and type of attorney fees incurred or paid.
186 The office may adopt rules to administer this subsection.

187 (7) This section does not apply to:

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

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

195 Section 5. This act shall take effect July 1, 2018.