



338298

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/18/2019	.	
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The Committee on Rules (Broxson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

627.7152 Assignment agreements.-

(1) As used in this section, the term:

(a) "Assignee" means a person who is assigned post-loss
benefits through an assignment agreement.

(b) "Assignment agreement" means any instrument by which



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12 post-loss benefits under a residential property insurance policy
13 or commercial property insurance policy, as that term is defined
14 in s. 627.0625(1), are assigned or transferred, or acquired in
15 any manner, in whole or in part, to or from a person providing
16 services to protect, repair, restore, or replace property or to
17 mitigate against further damage to the property.

18 (c) "Assignor" means a person who assigns post-loss
19 benefits under a residential property insurance policy or
20 commercial property insurance policy to another person through
21 an assignment agreement.

22 (d) "Disputed amount" means the difference between the
23 assignee's presuit settlement demand and the insurer's presuit
24 settlement offer.

25 (e) "Judgment obtained" means damages recovered, if any,
26 but does not include any amount awarded for attorney fees,
27 costs, or interest.

28 (f) "Presuit settlement demand" means the demand made by
29 the assignee in the written notice of intent to initiate
30 litigation as required by paragraph (9) (a).

31 (g) "Presuit settlement offer" means the offer made by the
32 insurer in its written response to the notice of intent to
33 initiate litigation as required by paragraph (9) (b).

34 (2) (a) An assignment agreement must:

35 1. Be in writing and executed by and between the assignor
36 and the assignee.

37 2. Contain a provision that allows the assignor to rescind
38 the assignment agreement without a penalty or fee by submitting
39 a written notice of rescission signed by the assignor to the
40 assignee within 14 days after the execution of the agreement, at



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41 least 30 days after the date work on the property is scheduled
42 to commence if the assignee has not substantially performed, or
43 at least 30 days after the execution of the agreement if the
44 agreement does not contain a commencement date and the assignee
45 has not begun substantial work on the property.

46 3. Contain a provision requiring the assignee to provide a
47 copy of the executed assignment agreement to the insurer within
48 3 business days after the date on which the assignment agreement
49 is executed or the date on which work begins, whichever is
50 earlier. Delivery of the copy of the assignment agreement to the
51 insurer may be made:

52 a. By personal service, overnight delivery, or electronic
53 transmission, with evidence of delivery in the form of a receipt
54 or other paper or electronic acknowledgement by the insurer; or

55 b. To the location designated for receipt of such
56 agreements as specified in the policy.

57 4. Contain a written, itemized, per-unit cost estimate of
58 the services to be performed by the assignee.

59 5. Relate only to work to be performed by the assignee for
60 services to protect, repair, restore, or replace a dwelling or
61 structure or to mitigate against further damage to such
62 property.

63 6. Contain the following notice in 18-point uppercase and
64 boldfaced type:

65
66 YOU ARE AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR
67 INSURANCE POLICY TO A THIRD PARTY, WHICH MAY RESULT IN
68 LITIGATION AGAINST YOUR INSURER. PLEASE READ AND UNDERSTAND THIS
69 DOCUMENT BEFORE SIGNING IT. YOU HAVE THE RIGHT TO CANCEL THIS



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70 AGREEMENT WITHOUT PENALTY WITHIN 14 DAYS AFTER THE DATE THIS
71 AGREEMENT IS EXECUTED, AT LEAST 30 DAYS AFTER THE DATE WORK ON
72 THE PROPERTY IS SCHEDULED TO COMMENCE IF THE ASSIGNEE HAS NOT
73 SUBSTANTIALLY PERFORMED, OR AT LEAST 30 DAYS AFTER THE EXECUTION
74 OF THE AGREEMENT IF THE AGREEMENT DOES NOT CONTAIN A
75 COMMENCEMENT DATE AND THE ASSIGNEE HAS NOT BEGUN SUBSTANTIAL
76 WORK ON THE PROPERTY. HOWEVER, YOU ARE OBLIGATED FOR PAYMENT OF
77 ANY CONTRACTED WORK PERFORMED BEFORE THE AGREEMENT IS RESCINDED.
78 THIS AGREEMENT DOES NOT CHANGE YOUR OBLIGATION TO PERFORM THE
79 DUTIES REQUIRED UNDER YOUR PROPERTY INSURANCE POLICY.

80
81 7. Contain a provision requiring the assignee to indemnify
82 and hold harmless the assignor from all liabilities, damages,
83 losses, and costs, including, but not limited to, attorney fees,
84 should the policy subject to the assignment agreement prohibit,
85 in whole or in part, the assignment of benefits.

86 (b) An assignment agreement may not contain:

87 1. A penalty or fee for rescission under subparagraph

88 (a)2.;

89 2. A check or mortgage processing fee;

90 3. A penalty or fee for cancellation of the agreement; or

91 4. An administrative fee.

92 (c) If an assignor acts under an urgent or emergency
93 circumstance to protect property from damage and executes an
94 assignment agreement to protect, repair, restore, or replace
95 property or to mitigate against further damage to the property,
96 an assignee may not receive an assignment of post-loss benefits
97 under a residential property insurance policy in excess of the
98 greater of \$3,000 or 1 percent of the Coverage A limit under



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99 such policy. For purposes of this paragraph, the term "urgent or
100 emergency circumstance" means a situation in which a loss to
101 property, if not addressed immediately, will result in
102 additional damage until measures are completed to prevent such
103 damage.

104 (d) An assignment agreement that does not comply with this
105 subsection is invalid and unenforceable.

106 (3) In a claim arising under an assignment agreement, an
107 assignee has the burden to demonstrate that the insurer is not
108 prejudiced by the assignee's failure to:

109 (a) Maintain records of all services provided under the
110 assignment agreement.

111 (b) Cooperate with the insurer in the claim investigation.

112 (c) Provide the insurer with requested records and
113 documents related to the services provided, and permit the
114 insurer to make copies of such records and documents.

115 (d) Deliver a copy of the executed assignment agreement to
116 the insurer within 3 business days after executing the
117 assignment agreement or work has begun, whichever is earlier.

118 (4) An assignee:

119 (a) Must provide the assignor with accurate and up-to-date
120 revised estimates of the scope of work to be performed as
121 supplemental or additional repairs are required.

122 (b) Must perform the work in accordance with accepted
123 industry standards.

124 (c) May not seek payment from the assignor exceeding the
125 applicable deductible under the policy unless the assignor has
126 chosen to have additional work performed at the assignor's own
127 expense.



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128 (d) Must, as a condition precedent to filing suit under the
129 policy, and, if required by the insurer, submit to examinations
130 under oath and recorded statements conducted by the insurer or
131 the insurer's representative that are reasonably necessary,
132 based on the scope of the work and the complexity of the claim,
133 which examinations and recorded statements must be limited to
134 matters related to the services provided, the cost of the
135 services, and the assignment agreement.

136 (e) Must, as a condition precedent to filing suit under the
137 policy, and, if required by the insurer, participate in
138 appraisal or other alternative dispute resolution methods in
139 accordance with the terms of the policy.

140 (5) An assignment agreement and this section do not modify
141 or eliminate any term, condition, or defense relating to any
142 managed repair arrangement provided in the policy.

143 (6) An assignment agreement does not transfer or create any
144 authority to adjust, negotiate, or settle any portion of a claim
145 to a person or entity not authorized to adjust, negotiate, or
146 settle a claim on behalf of an assignor or a claimant under part
147 VI of chapter 626.

148 (7) (a) Notwithstanding any other provision of law, and
149 except as provided in paragraph (b), acceptance by an assignee
150 of an assignment agreement is a waiver by the assignee and its
151 subcontractors of claims against a named insured for payments
152 arising from the assignment agreement. The assignee and its
153 subcontractors may not collect or attempt to collect money from
154 an insured, maintain any action at law against an insured, claim
155 a lien on the real property of an insured, or report an insured
156 to a credit agency for payments arising from the assignment



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157 agreement. Such waiver remains in effect after the assignment
158 agreement is rescinded by the assignor or after a determination
159 that the assignment agreement is invalid.

160 (b) A named insured is responsible for the payment of all
161 of the following:

162 1. Any deductible amount due under the policy.

163 2. Any betterment ordered and performed that is approved by
164 the named insured.

165 3. Any contracted work performed before the assignment
166 agreement is rescinded.

167 (8) The assignee shall indemnify and hold harmless the
168 assignor from all liabilities, damages, losses, and costs,
169 including, but not limited to, attorney fees, should the policy
170 subject to the assignment agreement prohibit, in whole or in
171 part, the assignment of benefits.

172 (9) (a) An assignee must provide the named insured, insurer,
173 and the assignor, if not the named insured, with a written
174 notice of intent to initiate litigation before filing suit under
175 the policy. Such notice must be served by certified mail, return
176 receipt requested, or electronic delivery at least 10 business
177 days before filing suit, but may not be served before the
178 insurer has made a determination of coverage under s. 627.70131.

179 The notice must specify the damages in dispute, the amount
180 claimed, and a presuit settlement demand. Concurrent with the
181 notice, and as a precondition to filing suit, the assignee must
182 provide the named insured, insurer, and the assignor, if not the
183 named insured, a detailed written invoice or estimate of
184 services, including itemized information on equipment,
185 materials, and supplies; the number of labor hours; and, in the



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186 case of work performed, proof that the work has been performed
187 in accordance with accepted industry standards.

188 (b) An insurer must respond in writing to the notice within
189 10 business days after receiving the notice specified in
190 paragraph (a) by making a presuit settlement offer or requiring
191 the assignee to participate in appraisal or other method of
192 alternative dispute resolution under the policy. An insurer must
193 have a procedure for the prompt investigation, review, and
194 evaluation of the dispute stated in the notice and must
195 investigate each claim contained in the notice in accordance
196 with the Florida Insurance Code.

197 (10) Notwithstanding any other provision of law, in a suit
198 related to an assignment agreement for post-loss claims arising
199 under a residential or commercial property insurance policy,
200 attorney fees and costs may be recovered by an assignee only
201 under s. 57.105 and this subsection.

202 (a) If the difference between the judgment obtained by the
203 assignee and the presuit settlement offer is:

204 1. Less than 25 percent of the disputed amount, the insurer
205 is entitled to an award of reasonable attorney fees.

206 2. At least 25 percent but less than 50 percent of the
207 disputed amount, no party is entitled to an award of attorney
208 fees.

209 3. At least 50 percent of the disputed amount, the assignee
210 is entitled to an award of reasonable attorney fees.

211 (b) If the insurer fails to inspect the property or provide
212 written or oral authorization for repairs within 7 calendar days
213 after the first notice of loss, the insurer waives its right to
214 an award of attorney fees under this subsection. If the failure



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215 to inspect the property or provide written or oral authorization
216 for repairs is the result of an event for which the Governor had
217 declared a state of emergency under s. 252.36, factors beyond
218 the control of the insurer which reasonably prevented an
219 inspection or written or oral authorization for repairs, or the
220 named insured's failure or inability to allow an inspection of
221 the property after a request by the insurer, the insurer does
222 not waive its right to an award of attorney fees under this
223 subsection.

224 (c) If an assignee commences an action in any court of this
225 state based upon or including the same claim against the same
226 adverse party that such assignee has previously voluntarily
227 dismissed in a court of this state, the court may order the
228 assignee to pay the attorney fees and costs of the adverse party
229 resulting from the action previously voluntarily dismissed. The
230 court shall stay the proceedings in the subsequent action until
231 the assignee has complied with the order.

232 (11) This section does not apply to:

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

236 (b) A power of attorney under chapter 709 that grants to a
237 management company, family member, guardian, or similarly
238 situated person of an insured the authority to act on behalf of
239 an insured as it relates to a property insurance claim; or

240 (c) Liability coverage under a property insurance policy.

241 (12) The office shall require each insurer to report by
242 January 30, 2022, and each year thereafter data on each
243 residential and commercial property insurance claim paid in the



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244 prior calendar year under an assignment agreement. The Financial
245 Services Commission shall adopt by rule a list of the data
246 required, which must include specific data about claims
247 adjustment and settlement timeframes and trends, grouped by
248 whether litigated or not litigated and by loss adjustment
249 expenses.

250 (13) This section applies to an assignment agreement
251 executed on or after July 1, 2019.

252 Section 2. Section 627.7153, Florida Statutes, is created
253 to read:

254 627.7153 Policies restricting assignment of post-loss
255 benefits under a property insurance policy.-

256 (1) As used in this section, the term "assignment
257 agreement" has the same meaning as provided in s. 627.7152.

258 (2) An insurer may make available a policy that restricts
259 in whole or in part an insured's right to execute an assignment
260 agreement only if all of the following conditions are met:

261 (a) The insurer makes available to the insured or potential
262 insured at the same time the same coverage under a policy that
263 does not restrict the right to execute an assignment agreement.

264 (b) Each restricted policy is available at a lower cost
265 than the unrestricted policy.

266 (c) The policy prohibiting assignment in whole is available
267 at a lower cost than any policy prohibiting assignment in part.

268 (d) Each restricted policy include on its face the
269 following notice in 18-point uppercase and boldfaced type:

270
271 THIS POLICY DOES NOT ALLOW THE UNRESTRICTED ASSIGNMENT OF POST-
272 LOSS INSURANCE BENEFITS. BY SELECTING THIS POLICY, YOU WAIVE



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273 YOUR RIGHT TO FREELY ASSIGN OR TRANSFER THE POST-LOSS PROPERTY
274 INSURANCE BENEFITS AVAILABLE UNDER THIS POLICY TO A THIRD PARTY
275 OR TO OTHERWISE FREELY ENTER INTO AN ASSIGNMENT AGREEMENT AS THE
276 TERM IS DEFINED IN SECTION 627.7152 OF THE FLORIDA STATUTES.

277
278 (3) The insurer shall notify the insured at least annually
279 of the coverage options the insurer makes available under this
280 section. Such notice must be part of and attached to the notice
281 of premium.

282 (4) A named insured must reject a fully assignable policy
283 in writing or electronically. The rejection of a fully
284 assignable policy shall be made on a form approved by the
285 office. The form must state that the policy restricts the
286 assignment of benefits. The heading of the form shall be in 18-
287 point uppercase and boldfaced type and state:

288
289 YOU ARE ELECTING TO PURCHASE AN INSURANCE POLICY THAT RESTRICTS
290 THE ASSIGNMENT OF BENEFITS UNDER THE POLICY IN WHOLE OR IN PART.
291 PLEASE READ CAREFULLY.

292
293 (5) This section applies to a policy issued or renewed on
294 or after July 1, 2019.

295 Section 3. Section 627.422, Florida Statutes, is amended to
296 read:

297 627.422 Assignment of policies or post-loss benefits.—A
298 policy may be assignable, or not assignable, as provided by its
299 terms. Any such assignment shall entitle the insurer to deal
300 with the assignee as the owner or pledgee of the policy in
301 accordance with the terms of the assignment, until the insurer



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302 has received at its home office written notice of termination of
303 the assignment or pledge or written notice by or on behalf of
304 some other person claiming some interest in the policy in
305 conflict with the assignment.

306 (1) LIFE OR HEALTH INSURANCE POLICIES.—Subject to its terms
307 relating to assignability, any life or health insurance policy
308 under the terms of which the beneficiary may be changed upon the
309 sole request of the policyowner may be assigned either by pledge
310 or transfer of title, by an assignment executed by the
311 policyowner alone and delivered to the insurer, whether or not
312 the pledgee or assignee is the insurer. ~~Any such assignment~~
313 ~~shall entitle the insurer to deal with the assignee as the owner~~
314 ~~or pledgee of the policy in accordance with the terms of the~~
315 ~~assignment, until the insurer has received at its home office~~
316 ~~written notice of termination of the assignment or pledge or~~
317 ~~written notice by or on behalf of some other person claiming~~
318 ~~some interest in the policy in conflict with the assignment.~~

319 (2) POST-LOSS BENEFITS UNDER CERTAIN PROPERTY INSURANCE
320 POLICIES.—A residential or commercial property insurance policy
321 may not prohibit the assignment of post-loss benefits unless it
322 complies with s. 627.7153.

323 Section 4. Citizens Property Insurance Corporation may not
324 implement rate changes in 2019 for DP-3 and HO-3 policies unless
325 the rate filing reflects projected rate savings from this act.
326 Such rate filing must include an exhibit demonstrating the
327 impact of this act on indicated rates for DP-3 and HO-3
328 policies. Citizens Property Insurance Corporation shall provide
329 policyholders with details on the projected rate savings from
330 this act.



331 Section 5. If any provision of this act or its application
332 to any person or circumstance is held invalid, the invalidity
333 does not affect the remaining provisions or applications of the
334 act which can be given effect without the invalid provision or
335 application, and to this end the provisions of this act are
336 severable.

337 Section 6. This act shall take effect July 1, 2019.

338
339 ===== T I T L E A M E N D M E N T =====

340 And the title is amended as follows:

341 Delete everything before the enacting clause
342 and insert:

343 A bill to be entitled
344 An act relating to insurance assignment agreements;
345 creating s. 627.7152, F.S.; providing definitions;
346 providing requirements and limitations for property
347 insurance assignment agreements; providing a burden of
348 proof; providing that an assignment agreement does not
349 affect managed repair arrangements under a property
350 insurance policy; providing that an assignment
351 agreement does not confer or create authority to
352 adjust, negotiate, or settle a claim without
353 authorization under part VI of chapter 626; providing
354 that an acceptance by an assignee of an assignment
355 agreement is a waiver by the assignee and its
356 subcontractors of certain claims against an insured;
357 specifying an insured's payment obligations under an
358 assignment agreement; requiring notice of intent to
359 initiate litigation; specifying requirements for such



360 notice; requiring a written response to the notice of
361 intent to initiate litigation; specifying requirements
362 for such response; providing for an award of
363 reasonable attorney fees for certain claims arising
364 under an assignment agreement; providing for an award
365 of reasonable attorney fees following a voluntary
366 dismissal under certain circumstances; requiring the
367 court to stay proceedings under certain circumstances;
368 directing the Office of Insurance Regulation to
369 require insurers to report specified data; requiring
370 the Financial Services Commission to adopt rules;
371 providing applicability; creating s. 627.7153, F.S.;
372 defining the term "assignment agreement"; authorizing
373 insurers to make available property insurance policies
374 restricting the assignment of post-loss benefits under
375 certain conditions; requiring annual notice of
376 coverage options; requiring a written or electronic
377 waiver under certain circumstances; requiring the
378 office to approve a waiver form; providing
379 applicability; amending s. 627.422, F.S.; providing
380 that residential or commercial property insurance
381 policies may not prohibit the assignment of post-lost
382 benefits; providing an exception; prohibiting Citizens
383 Property Insurance Corporation from implementing rate
384 changes for certain policies; providing an exception;
385 requiring certain rate filings to include specified
386 information; requiring the corporation to inform
387 policyholders of certain information; providing
388 severability; providing an effective date.