

By the Committees on Rules; Judiciary; and Banking and Insurance; and Senators Broxson, Hooper, Simmons, and Stewart

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1 A bill to be entitled
2 An act relating to insurance assignment agreements;
3 creating s. 627.7152, F.S.; providing definitions;
4 providing requirements and limitations for property
5 insurance assignment agreements; providing a burden of
6 proof; providing that an assignment agreement does not
7 affect managed repair arrangements under a property
8 insurance policy; providing that an assignment
9 agreement does not confer or create authority to
10 adjust, negotiate, or settle a claim without
11 authorization under part VI of chapter 626; providing
12 that an acceptance by an assignee of an assignment
13 agreement is a waiver by the assignee and its
14 subcontractors of certain claims against an insured;
15 specifying an insured's payment obligations under an
16 assignment agreement; requiring notice of intent to
17 initiate litigation; specifying requirements for such
18 notice; requiring a written response to the notice of
19 intent to initiate litigation; specifying requirements
20 for such response; providing for an award of
21 reasonable attorney fees for certain claims arising
22 under an assignment agreement; providing for an award
23 of reasonable attorney fees following a voluntary
24 dismissal under certain circumstances; requiring the
25 court to stay proceedings under certain circumstances;
26 directing the Office of Insurance Regulation to
27 require insurers to report specified data; requiring
28 the Financial Services Commission to adopt rules;
29 providing applicability; creating s. 627.7153, F.S.;

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30 defining the term "assignment agreement"; authorizing
31 insurers to make available property insurance policies
32 restricting the assignment of post-loss benefits under
33 certain conditions; requiring annual notice of
34 coverage options; requiring a written or electronic
35 waiver under certain circumstances; requiring the
36 office to approve a waiver form; providing
37 applicability; amending s. 627.422, F.S.; providing
38 that residential or commercial property insurance
39 policies may not prohibit the assignment of post-lost
40 benefits; providing an exception; prohibiting Citizens
41 Property Insurance Corporation from implementing rate
42 changes for certain policies; providing an exception;
43 requiring certain rate filings to include specified
44 information; requiring the corporation to inform
45 policyholders of certain information; providing
46 severability; providing an effective date.

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

49
50 Section 1. Section 627.7152, Florida Statutes, is created
51 to read:

52 627.7152 Assignment agreements.-

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

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

56 (b) "Assignment agreement" means any instrument by which
57 post-loss benefits under a residential property insurance policy
58 or commercial property insurance policy, as that term is defined

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59 in s. 627.0625(1), are assigned or transferred, or acquired in
60 any manner, in whole or in part, to or from a person providing
61 services to protect, repair, restore, or replace property or to
62 mitigate against further damage to the property.

63 (c) "Assignor" means a person who assigns post-loss
64 benefits under a residential property insurance policy or
65 commercial property insurance policy to another person through
66 an assignment agreement.

67 (d) "Disputed amount" means the difference between the
68 assignee's presuit settlement demand and the insurer's presuit
69 settlement offer.

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

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

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

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

80 1. Be in writing and executed by and between the assignor
81 and the assignee.

82 2. Contain a provision that allows the assignor to rescind
83 the assignment agreement without a penalty or fee by submitting
84 a written notice of rescission signed by the assignor to the
85 assignee within 14 days after the execution of the agreement, at
86 least 30 days after the date work on the property is scheduled
87 to commence if the assignee has not substantially performed, or

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88 at least 30 days after the execution of the agreement if the
89 agreement does not contain a commencement date and the assignee
90 has not begun substantial work on the property.

91 3. Contain a provision requiring the assignee to provide a
92 copy of the executed assignment agreement to the insurer within
93 3 business days after the date on which the assignment agreement
94 is executed or the date on which work begins, whichever is
95 earlier. Delivery of the copy of the assignment agreement to the
96 insurer may be made:

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

100 b. To the location designated for receipt of such
101 agreements as specified in the policy.

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

104 5. Relate only to work to be performed by the assignee for
105 services to protect, repair, restore, or replace a dwelling or
106 structure or to mitigate against further damage to such
107 property.

108 6. Contain the following notice in 18-point uppercase and
109 boldfaced type:

110
111 YOU ARE AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR
112 INSURANCE POLICY TO A THIRD PARTY, WHICH MAY RESULT IN
113 LITIGATION AGAINST YOUR INSURER. PLEASE READ AND UNDERSTAND THIS
114 DOCUMENT BEFORE SIGNING IT. YOU HAVE THE RIGHT TO CANCEL THIS
115 AGREEMENT WITHOUT PENALTY WITHIN 14 DAYS AFTER THE DATE THIS
116 AGREEMENT IS EXECUTED, AT LEAST 30 DAYS AFTER THE DATE WORK ON

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117 THE PROPERTY IS SCHEDULED TO COMMENCE IF THE ASSIGNEE HAS NOT
118 SUBSTANTIALLY PERFORMED, OR AT LEAST 30 DAYS AFTER THE EXECUTION
119 OF THE AGREEMENT IF THE AGREEMENT DOES NOT CONTAIN A
120 COMMENCEMENT DATE AND THE ASSIGNEE HAS NOT BEGUN SUBSTANTIAL
121 WORK ON THE PROPERTY. HOWEVER, YOU ARE OBLIGATED FOR PAYMENT OF
122 ANY CONTRACTED WORK PERFORMED BEFORE THE AGREEMENT IS RESCINDED.
123 THIS AGREEMENT DOES NOT CHANGE YOUR OBLIGATION TO PERFORM THE
124 DUTIES REQUIRED UNDER YOUR PROPERTY INSURANCE POLICY.

125
126 7. Contain a provision requiring the assignee to indemnify
127 and hold harmless the assignor from all liabilities, damages,
128 losses, and costs, including, but not limited to, attorney fees,
129 should the policy subject to the assignment agreement prohibit,
130 in whole or in part, the assignment of benefits.

131 (b) An assignment agreement may not contain:

132 1. A penalty or fee for rescission under subparagraph

133 (a)2.;

134 2. A check or mortgage processing fee;

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

136 4. An administrative fee.

137 (c) If an assignor acts under an urgent or emergency
138 circumstance to protect property from damage and executes an
139 assignment agreement to protect, repair, restore, or replace
140 property or to mitigate against further damage to the property,
141 an assignee may not receive an assignment of post-loss benefits
142 under a residential property insurance policy in excess of the
143 greater of \$3,000 or 1 percent of the Coverage A limit under
144 such policy. For purposes of this paragraph, the term "urgent or
145 emergency circumstance" means a situation in which a loss to

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146 property, if not addressed immediately, will result in
147 additional damage until measures are completed to prevent such
148 damage.

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

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

154 (a) Maintain records of all services provided under the
155 assignment agreement.

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

157 (c) Provide the insurer with requested records and
158 documents related to the services provided, and permit the
159 insurer to make copies of such records and documents.

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

163 (4) An assignee:

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

167 (b) Must perform the work in accordance with accepted
168 industry standards.

169 (c) May not seek payment from the assignor exceeding the
170 applicable deductible under the policy unless the assignor has
171 chosen to have additional work performed at the assignor's own
172 expense.

173 (d) Must, as a condition precedent to filing suit under the
174 policy, and, if required by the insurer, submit to examinations

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175 under oath and recorded statements conducted by the insurer or
176 the insurer's representative that are reasonably necessary,
177 based on the scope of the work and the complexity of the claim,
178 which examinations and recorded statements must be limited to
179 matters related to the services provided, the cost of the
180 services, and the assignment agreement.

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

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

188 (6) An assignment agreement does not transfer or create any
189 authority to adjust, negotiate, or settle any portion of a claim
190 to a person or entity not authorized to adjust, negotiate, or
191 settle a claim on behalf of an assignor or a claimant under part
192 VI of chapter 626.

193 (7) (a) Notwithstanding any other provision of law, and
194 except as provided in paragraph (b), acceptance by an assignee
195 of an assignment agreement is a waiver by the assignee and its
196 subcontractors of claims against a named insured for payments
197 arising from the assignment agreement. The assignee and its
198 subcontractors may not collect or attempt to collect money from
199 an insured, maintain any action at law against an insured, claim
200 a lien on the real property of an insured, or report an insured
201 to a credit agency for payments arising from the assignment
202 agreement. Such waiver remains in effect after the assignment
203 agreement is rescinded by the assignor or after a determination

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204 that the assignment agreement is invalid.

205 (b) A named insured is responsible for the payment of all
206 of the following:

207 1. Any deductible amount due under the policy.

208 2. Any betterment ordered and performed that is approved by
209 the named insured.

210 3. Any contracted work performed before the assignment
211 agreement is rescinded.

212 (8) The assignee shall indemnify and hold harmless the
213 assignor from all liabilities, damages, losses, and costs,
214 including, but not limited to, attorney fees, should the policy
215 subject to the assignment agreement prohibit, in whole or in
216 part, the assignment of benefits.

217 (9) (a) An assignee must provide the named insured, insurer,
218 and the assignor, if not the named insured, with a written
219 notice of intent to initiate litigation before filing suit under
220 the policy. Such notice must be served by certified mail, return
221 receipt requested, or electronic delivery at least 10 business
222 days before filing suit, but may not be served before the
223 insurer has made a determination of coverage under s. 627.70131.
224 The notice must specify the damages in dispute, the amount
225 claimed, and a presuit settlement demand. Concurrent with the
226 notice, and as a precondition to filing suit, the assignee must
227 provide the named insured, insurer, and the assignor, if not the
228 named insured, a detailed written invoice or estimate of
229 services, including itemized information on equipment,
230 materials, and supplies; the number of labor hours; and, in the
231 case of work performed, proof that the work has been performed
232 in accordance with accepted industry standards.

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233 (b) An insurer must respond in writing to the notice within
234 10 business days after receiving the notice specified in
235 paragraph (a) by making a presuit settlement offer or requiring
236 the assignee to participate in appraisal or other method of
237 alternative dispute resolution under the policy. An insurer must
238 have a procedure for the prompt investigation, review, and
239 evaluation of the dispute stated in the notice and must
240 investigate each claim contained in the notice in accordance
241 with the Florida Insurance Code.

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

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

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

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

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

256 (b) If the insurer fails to inspect the property or provide
257 written or oral authorization for repairs within 7 calendar days
258 after the first notice of loss, the insurer waives its right to
259 an award of attorney fees under this subsection. If the failure
260 to inspect the property or provide written or oral authorization
261 for repairs is the result of an event for which the Governor had

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262 declared a state of emergency under s. 252.36, factors beyond
263 the control of the insurer which reasonably prevented an
264 inspection or written or oral authorization for repairs, or the
265 named insured's failure or inability to allow an inspection of
266 the property after a request by the insurer, the insurer does
267 not waive its right to an award of attorney fees under this
268 subsection.

269 (c) If an assignee commences an action in any court of this
270 state based upon or including the same claim against the same
271 adverse party that such assignee has previously voluntarily
272 dismissed in a court of this state, the court may order the
273 assignee to pay the attorney fees and costs of the adverse party
274 resulting from the action previously voluntarily dismissed. The
275 court shall stay the proceedings in the subsequent action until
276 the assignee has complied with the order.

277 (11) This section does not apply to:

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

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

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

286 (12) The office shall require each insurer to report by
287 January 30, 2022, and each year thereafter data on each
288 residential and commercial property insurance claim paid in the
289 prior calendar year under an assignment agreement. The Financial
290 Services Commission shall adopt by rule a list of the data

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291 required, which must include specific data about claims
292 adjustment and settlement timeframes and trends, grouped by
293 whether litigated or not litigated and by loss adjustment
294 expenses.

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

297 Section 2. Section 627.7153, Florida Statutes, is created
298 to read:

299 627.7153 Policies restricting assignment of post-loss
300 benefits under a property insurance policy.-

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

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

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

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

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

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

315
316 THIS POLICY DOES NOT ALLOW THE UNRESTRICTED ASSIGNMENT OF POST-
317 LOSS INSURANCE BENEFITS. BY SELECTING THIS POLICY, YOU WAIVE
318 YOUR RIGHT TO FREELY ASSIGN OR TRANSFER THE POST-LOSS PROPERTY
319 INSURANCE BENEFITS AVAILABLE UNDER THIS POLICY TO A THIRD PARTY

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320 OR TO OTHERWISE FREELY ENTER INTO AN ASSIGNMENT AGREEMENT AS THE
321 TERM IS DEFINED IN SECTION 627.7152 OF THE FLORIDA STATUTES.

323 (3) The insurer shall notify the insured at least annually
324 of the coverage options the insurer makes available under this
325 section. Such notice must be part of and attached to the notice
326 of premium.

327 (4) A named insured must reject a fully assignable policy
328 in writing or electronically. The rejection of a fully
329 assignable policy shall be made on a form approved by the
330 office. The form must state that the policy restricts the
331 assignment of benefits. The heading of the form shall be in 18-
332 point uppercase and boldfaced type and state:

333
334 YOU ARE ELECTING TO PURCHASE AN INSURANCE POLICY THAT RESTRICTS
335 THE ASSIGNMENT OF BENEFITS UNDER THE POLICY IN WHOLE OR IN PART.
336 PLEASE READ CAREFULLY.

337
338 (5) This section applies to a policy issued or renewed on
339 or after July 1, 2019.

340 Section 3. Section 627.422, Florida Statutes, is amended to
341 read:

342 627.422 Assignment of policies or post-loss benefits.—A
343 policy may be assignable, or not assignable, as provided by its
344 terms. Any such assignment shall entitle the insurer to deal
345 with the assignee as the owner or pledgee of the policy in
346 accordance with the terms of the assignment, until the insurer
347 has received at its home office written notice of termination of
348 the assignment or pledge or written notice by or on behalf of

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349 some other person claiming some interest in the policy in
350 conflict with the assignment.

351 (1) LIFE OR HEALTH INSURANCE POLICIES.—Subject to its terms
352 relating to assignability, any life or health insurance policy
353 under the terms of which the beneficiary may be changed upon the
354 sole request of the policyowner may be assigned either by pledge
355 or transfer of title, by an assignment executed by the
356 policyowner alone and delivered to the insurer, whether or not
357 the pledgee or assignee is the insurer. ~~Any such assignment~~
358 ~~shall entitle the insurer to deal with the assignee as the owner~~
359 ~~or pledgee of the policy in accordance with the terms of the~~
360 ~~assignment, until the insurer has received at its home office~~
361 ~~written notice of termination of the assignment or pledge or~~
362 ~~written notice by or on behalf of some other person claiming~~
363 ~~some interest in the policy in conflict with the assignment.~~

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

368 Section 4. Citizens Property Insurance Corporation may not
369 implement rate changes in 2019 for DP-3 and HO-3 policies unless
370 the rate filing reflects projected rate savings from this act.
371 Such rate filing must include an exhibit demonstrating the
372 impact of this act on indicated rates for DP-3 and HO-3
373 policies. Citizens Property Insurance Corporation shall provide
374 policyholders with details on the projected rate savings from
375 this act.

376 Section 5. If any provision of this act or its application
377 to any person or circumstance is held invalid, the invalidity

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378 does not affect the remaining provisions or applications of the
379 act which can be given effect without the invalid provision or
380 application, and to this end the provisions of this act are
381 severable.

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