

By the Committee on Banking and Insurance; and Senator Boyd

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1                   A bill to be entitled  
2           An act relating to residential property insurance;  
3           amending s. 627.428, F.S.; providing that, for certain  
4           attorney fees awarded for claims arising under  
5           property insurance policies, a strong presumption is  
6           created that a lodestar fee is sufficient and  
7           reasonable; providing that such presumption may be  
8           rebutted only under certain circumstances; amending s.  
9           627.7011, F.S.; providing that certain provisions  
10          relating to homeowners' policies, offers of  
11          replacement cost coverage, and offers of law and  
12          ordinance coverage do not prohibit insurers from  
13          providing specified property insurance policies by  
14          including roof surface reimbursement schedules;  
15          providing requirements for roof surface reimbursement  
16          schedules; prohibiting application of a roof surface  
17          reimbursement schedule under certain circumstances;  
18          amending s. 627.70132, F.S.; revising property  
19          insurance coverages for which a notice of claim must  
20          be given to the insurer within a specified timeframe;  
21          revising the timeframe for providing notices of  
22          property insurance claims; revising the definitions of  
23          the terms "supplemental claim" and "reopened claim";  
24          amending s. 627.7015, F.S.; conforming a provision to  
25          changes made by the act; creating s. 627.70152, F.S.;  
26          providing applicability; defining terms; requiring  
27          notice of intent to initiate litigation; specifying  
28          requirements for such notice; specifying an assignee's  
29          presuit obligations; specifying the timeframe within

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30 which a notice of intent to initiate litigation must  
31 be served; requiring dismissal of certain actions  
32 under specified circumstances; specifying the  
33 admissibility of certain evidence; providing  
34 construction; authorizing an insurer to request to  
35 inspect, photograph, or evaluate certain property;  
36 specifying requirements for such inspections,  
37 photographs, and evaluations; authorizing motions to  
38 abate suits under property insurance policies;  
39 specifying conditions for abatement; providing for an  
40 award of attorney fees for certain claims under  
41 specified circumstances; providing for an award of  
42 attorney fees following a voluntary dismissal under  
43 certain circumstances; requiring the court to stay  
44 proceedings under certain circumstances; amending s.  
45 627.7152, F.S.; deleting definitions; deleting a  
46 requirement for a notice of intent to initiate  
47 litigation; deleting requirements for such notice;  
48 deleting a requirement for a written response to the  
49 notice of intent to initiate litigation; deleting  
50 requirements for such response; deleting a provision  
51 related to an award of reasonable attorney fees and  
52 costs for certain claims arising under an assignment  
53 agreement; deleting a provision related to an award of  
54 reasonable attorney fees and costs following a  
55 voluntary dismissal under certain circumstances;  
56 deleting a requirement for the court to stay  
57 proceedings under certain circumstances; providing an  
58 effective date.

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

Section 1. Subsection (4) is added to section 627.428, Florida Statutes, to read:

627.428 Attorney fees.—

(4) In an award of attorney fees under this section for a claim arising under a property insurance policy, a strong presumption is created that a lodestar fee is sufficient and reasonable. Such presumption may be rebutted only in a rare and exceptional circumstance with evidence that competent counsel could not be retained in a reasonable manner.

Section 2. Paragraph (f) is added to subsection (5) of section 627.7011, Florida Statutes, to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(5) This section does not:

(f) Prohibit an insurer, notwithstanding paragraph (1)(a), from providing limited coverage on a personal lines residential property insurance policy by including a roof surface reimbursement schedule. If included in the policy, a roof surface reimbursement schedule must do all of the following:

1. Provide reimbursement for repair, replacement, and installation based on the annual age of a roof surface type.

2. Provide full replacement coverage for any roof surface type less than 10 years old.

3. Unless otherwise demonstrated to the office to be actuarially justified, provide for reimbursement amounts of no less than:

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- 88       a. Seventy percent for a metal roof type.  
89       b. Forty percent for a concrete tile and clay tile roof  
90 type.  
91       c. Forty percent for a wood shake and wood shingle roof  
92 type.  
93       d. Twenty-five percent for all other roof types.  
94       4. Include at the top of the schedule, in bold type no  
95 smaller than 12 points, the following statement:

96  
97 "PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO  
98 PURCHASE COVERAGE ON YOUR ROOF ACCORDING TO A ROOF SURFACE  
99 REIMBURSEMENT SCHEDULE. IF YOUR ROOF IS DAMAGED BY A COVERED  
100 PERIL, YOU WILL RECEIVE A PAYMENT AMOUNT FOR YOUR ROOF ACCORDING  
101 TO THE SCHEDULE BELOW. BE ADVISED THAT THIS MAY RESULT IN YOU  
102 HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF.  
103 PLEASE DISCUSS WITH YOUR INSURANCE AGENT."

- 104  
105       5. Allow for all actuarially sound methods of s. 627.062 to  
106 apply.  
107       6. Be approved by the office.  
108       7. Be provided to the insured with the policy documents at  
109 issuance and renewal.

110  
111 A roof surface reimbursement schedule may not be applied to a  
112 roof if there is a total loss to a primary structure in  
113 accordance with the valued policy law under s. 627.702 which is  
114 caused by a covered peril.

115       Section 3. Section 627.70132, Florida Statutes, is amended  
116 to read:

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117           627.70132 Notice of property insurance ~~windstorm or~~  
118 ~~hurricane~~ claim.—A claim, supplemental claim, or reopened claim  
119 under an insurance policy that provides property insurance, as  
120 defined in s. 624.604, ~~for loss or damage caused by the peril of~~  
121 ~~windstorm or hurricane~~ is barred unless notice of the claim,  
122 supplemental claim, or reopened claim is ~~was~~ given to the  
123 insurer in accordance with the terms of the policy within 2  
124 years ~~3 years~~ after the date of loss ~~hurricane first made~~  
125 ~~landfall or the windstorm caused the covered damage~~. For  
126 purposes of this section, the term “supplemental claim” or  
127 “reopened claim” means any additional claim for recovery from  
128 the insurer for losses ~~from the same hurricane or windstorm~~  
129 ~~which~~ the insurer has previously adjusted pursuant to the  
130 initial claim. This section does not affect any applicable  
131 limitation on civil actions provided in s. 95.11 for claims,  
132 supplemental claims, or reopened claims timely filed under this  
133 section.

134           Section 4. Subsection (9) of section 627.7015, Florida  
135 Statutes, is amended to read:

136           627.7015 Alternative procedure for resolution of disputed  
137 property insurance claims.—

138           (9) For purposes of this section, the term “claim” refers  
139 to any dispute between an insurer and a policyholder relating to  
140 a material issue of fact other than a dispute:

141           (a) With respect to which the insurer has a reasonable  
142 basis to suspect fraud;

143           (b) When, based on agreed-upon facts as to the cause of  
144 loss, there is no coverage under the policy;

145           (c) With respect to which the insurer has a reasonable

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146 basis to believe that the policyholder has intentionally made a  
147 material misrepresentation of fact which is relevant to the  
148 claim, and the entire request for payment of a loss has been  
149 denied on the basis of the material misrepresentation;

150 (d) With respect to which the amount in controversy is less  
151 than \$500, unless the parties agree to mediate a dispute  
152 involving a lesser amount; or

153 (e) With respect to a ~~windstorm or hurricane~~ loss that does  
154 not comply with s. 627.70132.

155 Section 5. Section 627.70152, Florida Statutes, is created  
156 to read:

157 627.70152 Suits arising under a property insurance policy.-

158 (1) APPLICATION.-This section applies to all suits under a  
159 property insurance policy, including actions brought by an  
160 assignee.

161 (2) DEFINITIONS.-As used in this section, the term:

162 (a) "Assignee" has the same meaning as in s. 627.7152.

163 (b) "Claimant" means an insured or assignee who is filing  
164 suit under a property insurance policy.

165 (c) "Demand" means the specific amount alleged to be owed  
166 by the insurer to the claimant under the property insurance  
167 policy.

168 (d) "Demand-judgment quotient" means the quotient obtained  
169 by dividing the judgment by the demand.

170 (e) "Incurred attorney fees" means the total amount of  
171 attorney fees supported by sufficient evidence and determined by  
172 the court to have been incurred by the claimant in bringing the  
173 action.

174 (f) "Judgment" means damages recovered, if any, but does

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175 not include any amount awarded for attorney fees, costs, or  
176 interest.

177 (3) NOTICE.—

178 (a) As a condition precedent to filing a suit under a  
179 property insurance policy, a claimant must provide the insurer a  
180 written notice of intent to initiate litigation in accordance  
181 with this section. Such notice must be served by certified mail,  
182 return receipt requested, or electronic delivery at least 60  
183 days before filing suit. However, such notice may not be served  
184 before the insurer has made a determination of coverage under s.  
185 627.70131. An attorney or other representative of the claimant  
186 who provides such notice must provide a copy of the notice to  
187 the claimant. The notice and any copy must specify:

188 1. That the notice is being provided pursuant to this  
189 section;

190 2. The alleged acts or omissions of the insurer giving rise  
191 to the action;

192 3. The demand;

193 4. The amount of reasonable and necessary attorney fees  
194 incurred by the claimant, to be calculated by multiplying the  
195 number of hours actually worked on the claim as of the date of  
196 the notice by the claimant's attorney by a reasonable hourly  
197 rate; and

198 5. If provided by an attorney or other representative, that  
199 a copy of the notice was provided to the claimant.

200 (b) As a precondition to filing suit, an assignee also  
201 must:

202 1. Comply with s. 627.7152; and

203 2. Concurrent with the notice, provide the named insured,

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204 the insurer, and the assignor, if not the named insured, a  
205 detailed written invoice or estimate of services, including  
206 itemized information on equipment, materials, and supplies; the  
207 number of labor hours; and, in the case of work performed, proof  
208 that the work has been performed in accordance with accepted  
209 industry standards.

210 (c) A notice of intent to initiate litigation must be  
211 served within the time limits provided in s. 95.11 and is not  
212 required if the action is a counterclaim. Service of a notice  
213 tolls the time limits provided in s. 95.11 for 60 days if such  
214 time limits will expire before the end of the 60-day notice  
215 period.

216 (d) A court must dismiss without prejudice any action  
217 relating to a claim for which a notice of intent to initiate  
218 litigation is given as required by this subsection if such  
219 action is commenced before the expiration of the 60-day notice  
220 period, is brought by an insurer to whom notice was given, and  
221 is against the claimant giving notice.

222 (4) ADMISSIBILITY OF NOTICE AND RESPONSE.—The notice  
223 provided pursuant to subsection (3) and the submissions provided  
224 pursuant to subparagraph (3) (b)2.:

225 (a) Are admissible as evidence in a civil action or an  
226 alternative dispute resolution proceeding relating to the claim  
227 for which the notice is given;

228 (b) Do not limit the evidence of attorney fees, damages, or  
229 loss which may be offered at trial; and

230 (c) Do not relieve any obligation that an insured or  
231 assignee has to give notice under any other provision of law.

232 (5) INSPECTION.—Within 30 days after an insurer receives



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233 notice pursuant to subsection (3), the insurer may send a  
234 written request to the insured or assignee to inspect,  
235 photograph, or evaluate, in a reasonable manner and at a  
236 reasonable time, the property that is the subject of the claim.  
237 If reasonably possible, the insurer must complete the  
238 inspection, photography, and evaluation not later than 60 days  
239 after the insurer receives the presuit notice. After completing  
240 the inspection, the insurer must conduct an internal review by a  
241 duly-qualified claims adjuster to fairly and promptly evaluate  
242 the claim. This section does not limit any right provided in a  
243 property insurance policy or contract to inspect property.

244 (6) ABATEMENT.—

245 (a) In addition to taking any other action allowed by an  
246 insurance policy or a contract or by any other provision of law,  
247 an insurer may file a motion to abate a suit under a property  
248 insurance policy if the insurer:

249 1. Files the motion no later than the 30th day after the  
250 insurer filed an original answer in the court in which the  
251 action is pending; and

252 2. Did not receive notice required pursuant to subsection  
253 (3) or requested an inspection pursuant to subsection (5) but  
254 was not provided a reasonable opportunity to inspect,  
255 photograph, or evaluate the property that is the subject of the  
256 claim.

257 (b) The court shall abate the action if the court finds  
258 that the insurer did not receive the notice required by  
259 subsection (3) or requested an inspection pursuant to subsection  
260 (5) but was not provided a reasonable opportunity to inspect,  
261 photograph, or evaluate the property that is the subject of the

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262 claim.

263 (c) The action is abated without a court order beginning on  
264 the 11th day after the motion to abate is filed if the motion to  
265 abate:

266 1. Is verified and states that the insurer did not receive  
267 the notice required by subsection (3) or requested an inspection  
268 pursuant to subsection (5) but was not provided a reasonable  
269 opportunity to inspect, photograph, or evaluate the property  
270 that is the subject of the claim; and

271 2. Is not controverted by an affidavit filed by the insured  
272 or assignee within 10 days after the date the plea in abatement  
273 is filed.

274 (d) An affidavit filed pursuant to subparagraph (c)2. must  
275 include as an attachment a copy of the written notice sent  
276 pursuant to subsection (3) and state the date on which such  
277 notice was given.

278 (e) Abatement under this subsection continues until the  
279 later of:

280 1. Sixty days after the claimant provides notice to the  
281 insurer in compliance with subsection (3); or

282 2. Fifty days after the insurer completes the requested  
283 inspection, photographing, or evaluating of the property  
284 pursuant to subsection (5).

285 (f) If an action is abated pursuant to this subsection, a  
286 court may not compel during the abatement period participation  
287 in mediation pursuant to s. 627.7015 or neutral evaluation  
288 pursuant to s. 627.7074.

289 (7) ATTORNEY FEES.—

290 (a) Notwithstanding any other provision of law, in a suit

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291 arising under a residential or commercial property insurance  
292 policy, attorney fees and costs may be recovered by a claimant  
293 only pursuant to s. 57.105 and this subsection. Attorney fees  
294 may be awarded to a claimant under this section as follows:

295 1. If the demand-judgment quotient is greater than or equal  
296 to 0.8, the full amount of incurred attorney fees may be  
297 awarded.

298 2. If the demand-judgment quotient is equal to or greater  
299 than 0.2 but less than 0.8, the attorney fees must equal the  
300 product of multiplying the incurred attorney fees by the demand-  
301 judgment quotient.

302 3. If the demand-judgment quotient is less than 0.2,  
303 attorney fees may not be awarded.

304 (b) If an insurer pleads and proves that it did not receive  
305 notice that complies with subsection (3) and files such pleading  
306 no later than the 30th day after the insurer files an original  
307 answer in the court in which the action is pending, the court  
308 may not award to the claimant any incurred attorney fees for  
309 services rendered after the date on which the insurer files such  
310 pleading with the court.

311 (c) If a claimant commences an action in any court of this  
312 state based upon or including the same claim against the same  
313 adverse party that such insured or assignee has previously  
314 voluntarily dismissed in a court of this state, the court may  
315 order the insured or assignee to pay the attorney fees and costs  
316 of the adverse party resulting from the action previously  
317 voluntarily dismissed. The court shall stay the proceedings in  
318 the subsequent action until the insured or assignee has complied  
319 with the order.

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320 Section 6. Paragraphs (d) through (g) of subsection (1) and  
321 subsections (9) and (10) of section 627.7152, Florida Statutes,  
322 are amended to read:

323 627.7152 Assignment agreements.—

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

325 ~~(d) "Disputed amount" means the difference between the~~  
326 ~~assignee's presuit settlement demand and the insurer's presuit~~  
327 ~~settlement offer.~~

328 ~~(e) "Judgment obtained" means damages recovered, if any,~~  
329 ~~but does not include any amount awarded for attorney fees,~~  
330 ~~costs, or interest.~~

331 ~~(f) "Presuit settlement demand" means the demand made by~~  
332 ~~the assignee in the written notice of intent to initiate~~  
333 ~~litigation as required by paragraph (9) (a).~~

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

337 ~~(9) (a) An assignee must provide the named insured, insurer,~~  
338 ~~and the assignor, if not the named insured, with a written~~  
339 ~~notice of intent to initiate litigation before filing suit under~~  
340 ~~the policy. Such notice must be served by certified mail, return~~  
341 ~~receipt requested, or electronic delivery at least 10 business~~  
342 ~~days before filing suit, but may not be served before the~~  
343 ~~insurer has made a determination of coverage under s. 627.70131.~~  
344 ~~The notice must specify the damages in dispute, the amount~~  
345 ~~claimed, and a presuit settlement demand. Concurrent with the~~  
346 ~~notice, and as a precondition to filing suit, the assignee must~~  
347 ~~provide the named insured, insurer, and the assignor, if not the~~  
348 ~~named insured, a detailed written invoice or estimate of~~

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349 ~~services, including itemized information on equipment,~~  
350 ~~materials, and supplies; the number of labor hours; and, in the~~  
351 ~~ease of work performed, proof that the work has been performed~~  
352 ~~in accordance with accepted industry standards.~~

353 ~~(b) An insurer must respond in writing to the notice within~~  
354 ~~10 business days after receiving the notice specified in~~  
355 ~~paragraph (a) by making a presuit settlement offer or requiring~~  
356 ~~the assignee to participate in appraisal or other method of~~  
357 ~~alternative dispute resolution under the policy. An insurer must~~  
358 ~~have a procedure for the prompt investigation, review, and~~  
359 ~~evaluation of the dispute stated in the notice and must~~  
360 ~~investigate each claim contained in the notice in accordance~~  
361 ~~with the Florida Insurance Code.~~

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

367 ~~(a) If the difference between the judgment obtained by the~~  
368 ~~assignee and the presuit settlement offer is:~~

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

371 ~~2. At least 25 percent but less than 50 percent of the~~  
372 ~~disputed amount, no party is entitled to an award of attorney~~  
373 ~~fees.~~

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

376 ~~(b) If the insurer fails to inspect the property or provide~~  
377 ~~written or oral authorization for repairs within 7 calendar days~~

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378 ~~after the first notice of loss, the insurer waives its right to~~  
379 ~~an award of attorney fees under this subsection. If the failure~~  
380 ~~to inspect the property or provide written or oral authorization~~  
381 ~~for repairs is the result of an event for which the Governor had~~  
382 ~~declared a state of emergency under s. 252.36, factors beyond~~  
383 ~~the control of the insurer which reasonably prevented an~~  
384 ~~inspection or written or oral authorization for repairs, or the~~  
385 ~~named insured's failure or inability to allow an inspection of~~  
386 ~~the property after a request by the insurer, the insurer does~~  
387 ~~not waive its right to an award of attorney fees under this~~  
388 ~~subsection.~~

389 ~~(c) If an assignee commences an action in any court of this~~  
390 ~~state based upon or including the same claim against the same~~  
391 ~~adverse party that such assignee has previously voluntarily~~  
392 ~~dismissed in a court of this state, the court may order the~~  
393 ~~assignee to pay the attorney fees and costs of the adverse party~~  
394 ~~resulting from the action previously voluntarily dismissed. The~~  
395 ~~court shall stay the proceedings in the subsequent action until~~  
396 ~~the assignee has complied with the order.~~

397 Section 7. This act shall take effect July 1, 2021.