

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Hunschofsky offered the following:

Amendment (with title amendment)

Remove lines 523-560 and insert:

Section 14. Effective upon this act becoming a law, paragraph (b) of subsection (1), paragraphs (a) and (d) of subsection (2), paragraph (a) of subsection (9), and paragraph (b) of subsection (10) of section 627.7152, Florida Statutes, are amended to read:

627.7152 Assignment agreements.—

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

(b) "Assignment agreement" means any instrument by which post-loss benefits under a residential property insurance policy

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14 or commercial property insurance policy, as that term is defined
15 in s. 627.0625(1), are assigned or transferred, or acquired in
16 any manner, in whole or in part, to or from a person providing
17 any services related to the insured property, including, but not
18 limited to, services to inspect, examine, estimate, protect,
19 repair, restore, or replace property, ~~or~~ to mitigate against
20 further damage to the property, or to attempt to settle,
21 prosecute, or otherwise resolve a claim for such post-loss
22 benefits. The term does not include:

23 1. A valid agreement with an attorney for the provision of
24 legal services; or

25 2. A contract with a public adjuster for the provision of
26 public adjuster services which provides the public adjuster
27 compensation in accordance with s. 626.854 but does not
28 otherwise assign or transfer post-loss benefits.

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

30 1. Be in writing and executed by and between the assignor
31 and the assignee. Only a named insured may be the assignor.

32 2. Contain a provision that allows the assignor to rescind
33 the assignment agreement without a penalty or fee by submitting
34 a written notice of rescission signed by the assignor to the
35 assignee within 14 days after the execution of the agreement, at
36 least 30 days after the date work on the property is scheduled
37 to commence if the assignee has not substantially performed, or
38 at least 30 days after the execution of the agreement if the

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39 agreement does not contain a commencement date and the assignee
40 has not begun substantial work on the property.

41 3. Contain a provision requiring the assignee to provide a
42 copy of the executed assignment agreement to the assignor, each
43 named insured, and the insurer within 3 business days after the
44 date on which the assignment agreement is executed or the date
45 on which work begins, whichever is earlier. Delivery of the copy
46 of the assignment agreement to the insurer may be made:

47 a. By personal service, overnight delivery, or electronic
48 transmission, with evidence of delivery in the form of a receipt
49 or other paper or electronic acknowledgment by the insurer; or

50 b. To the location designated for receipt of such
51 agreements as specified in the policy.

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

54 5. Relate only to work to be performed by the assignee for
55 services to protect, repair, restore, or replace a dwelling or
56 structure or to mitigate against further damage to such
57 property.

58 6. Contain the following notice in 18-point uppercase and
59 boldfaced type:

60
61 YOU ARE AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR
62 INSURANCE POLICY TO A THIRD PARTY, WHICH MAY RESULT IN
63 LITIGATION AGAINST YOUR INSURER. PLEASE READ AND UNDERSTAND THIS

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64 DOCUMENT BEFORE SIGNING IT. YOU HAVE THE RIGHT TO CANCEL THIS
65 AGREEMENT WITHOUT PENALTY WITHIN 14 DAYS AFTER THE DATE THIS
66 AGREEMENT IS EXECUTED, AT LEAST 30 DAYS AFTER THE DATE WORK ON
67 THE PROPERTY IS SCHEDULED TO COMMENCE IF THE ASSIGNEE HAS NOT
68 SUBSTANTIALLY PERFORMED, OR AT LEAST 30 DAYS AFTER THE EXECUTION
69 OF THE AGREEMENT IF THE AGREEMENT DOES NOT CONTAIN A
70 COMMENCEMENT DATE AND THE ASSIGNEE HAS NOT BEGUN SUBSTANTIAL
71 WORK ON THE PROPERTY. HOWEVER, YOU ARE OBLIGATED FOR PAYMENT OF
72 ANY CONTRACTED WORK PERFORMED BEFORE THE AGREEMENT IS RESCINDED.
73 THIS AGREEMENT DOES NOT CHANGE YOUR OBLIGATION TO PERFORM THE
74 DUTIES REQUIRED UNDER YOUR PROPERTY INSURANCE POLICY.

75

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

81 (d) An assignment agreement that does not comply with this
82 subsection is invalid and unenforceable. An insurer that
83 receives a copy of a noncompliant assignment agreement must
84 refuse to recognize an assignee as the owner of post-loss
85 benefits for any portion of the claim that is the subject of a
86 noncompliant assignment agreement. The insurer may adjust any
87 portion of a claim that is not the subject of a valid and
88 enforceable assignment agreement with the insured or the

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89 insured's representative and may make payments directly to the
90 insured if any are due under the terms of the policy. An insurer
91 is not liable to an assignee for any payment of post-loss
92 benefits made to an insured if such benefits were not the
93 subject of a valid and enforceable assignment agreement.

94 (9) (a) An assignee must provide the named insured,
95 insurer, and the assignor, if not the named insured, with a
96 written notice of intent to initiate litigation before filing
97 suit under the policy. Such notice must be served at least 10
98 business days before filing suit, but not before the insurer has
99 made a determination of coverage under s. 627.70131, by
100 certified mail, return receipt requested, to the name and
101 mailing address designated by the insurer in the policy forms or
102 by electronic delivery to the e-mail address designated by the
103 insurer in the policy forms at least 10 business days before
104 ~~filing suit, but may not be served before the insurer has made a~~
105 ~~determination of coverage under s. 627.70131.~~ The notice must
106 specify the damages in dispute, the amount claimed, and a
107 presuit settlement demand. Concurrent with the notice, and as a
108 precondition to filing suit, the assignee must provide the named
109 insured, insurer, and the assignor, if not the named insured, a
110 detailed written invoice or estimate of services, including
111 itemized information on equipment, materials, and supplies; the
112 number of labor hours; and, in the case of work performed, proof

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113 that the work has been performed in accordance with accepted
114 industry standards

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

120 (b) If the insurer does not ~~fails to~~ inspect the property
121 or provide written or oral authorization for repairs at any time
122 ~~within 7 calendar days~~ after the first notice of loss until 14
123 calendar days after a valid and enforceable assignment agreement
124 has been delivered to the insurer, the insurer waives its right
125 to an award of attorney fees under this subsection. If the
126 failure to inspect the property or provide written or oral
127 authorization for repairs is the result of an event for which
128 the Governor had declared a state of emergency under s. 252.36,
129 factors beyond the control of the insurer which reasonably
130 prevented an inspection or written or oral authorization for
131 repairs, or the named insured's failure or inability to allow an
132 inspection of the property after a request by the insurer, the
133 insurer does not waive its right to an award of attorney fees
134 under this subsection.

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137 **T I T L E A M E N D M E N T**

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138 Remove lines 45-46 and insert:
139 "assignment agreement"; revising requirements for
140 assignment agreements; requiring insurers to refuse to
141 recognize assignees as owners of post-loss benefits
142 for certain portions of claims under a specified
143 circumstance; authorizing insurers to adjust certain
144 portions of claims and to make payments to insureds
145 under a specified circumstance; providing that
146 insurers are not liable to assignees for payments of
147 post-loss benefits made to insureds under a specified
148 circumstance; specifying the addresses to which a
149 notice of intent must be served; revising
150 circumstances under which insurers waive their rights
151 to awards of attorney fees; amending s.

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