

By Senator Hukill

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1                   A bill to be entitled  
2       An act relating to the assignment of property  
3       insurance benefits; creating s. 627.7152, F.S.;  
4       defining the term "assignment agreement"; prohibiting  
5       certain awards of attorney fees to certain persons or  
6       entities in suits based on claims arising under  
7       property insurance policies; providing that an  
8       assignment agreement is not valid unless specified  
9       requirements are met; prohibiting certain provisions  
10      in an assignment agreement; specifying requirements  
11      for an assignee or transferee; requiring an assignee  
12      to meet certain requirements as a condition precedent  
13      to filing suit under a policy; providing construction;  
14      providing applicability; providing an effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18       Section 1. Section 627.7152, Florida Statutes, is created  
19      to read:

20       627.7152 Assignment of property insurance post-loss  
21      benefits.-

22       (1) As used in this section, the term "assignment  
23      agreement" means any instrument by which post-loss property  
24      insurance benefits for services to protect, repair, restore, or  
25      replace property, or to mitigate against further damage to  
26      property, are assigned, transferred, or conveyed, regardless of  
27      how named or styled.

28       (2) Notwithstanding any other law, as to suits based on  
29      claims arising under property insurance policies, attorney fees

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30 may not be awarded under s. 626.9373 or s. 627.428 in favor of  
31 any person or entity seeking relief against the insurer pursuant  
32 to an assignment agreement.

33 (3) An assignment agreement is not valid unless it meets  
34 all of the following requirements:

35 (a) The assignment agreement is in writing and is executed  
36 by all named insureds;

37 (b) The assignment agreement contains a provision that  
38 permits all named insureds to rescind the assignment agreement  
39 without any penalty or rescission or cancellation fee within 7  
40 business days after the date the assignment agreement is  
41 executed by all named insureds;

42 (c) The assignment agreement contains a provision requiring  
43 the assignee or transferee to provide a copy of the executed  
44 assignment agreement to the insurer no later than 3 business  
45 days after the assignment agreement is executed by any named  
46 insured; and

47 (d) The assignment agreement contains a written, itemized,  
48 per-unit cost estimate of the work to be performed by the  
49 assignee or transferee.

50 (4) The following provisions may not be included in an  
51 assignment agreement and are deemed to be invalid and  
52 unenforceable against the property insurer or named insureds:

53 (a) A penalty or fee for rescission of the assignment  
54 agreement pursuant to subsection (3);

55 (b) A check or mortgage processing fee;

56 (c) A penalty or fee for cancellation of the assignment  
57 agreement pursuant to subsection (3); or

58 (d) An administrative fee.

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59       (5) As to claims arising under an assignment agreement, the  
60 failure to comply with any provision of this subsection creates  
61 a presumption that the insurer is prejudiced by such failure to  
62 comply and shifts the burden in any proceeding or suit to the  
63 party seeking benefits, rights, or proceeds from the insurer to  
64 demonstrate that the insurer was not prejudiced. The assignee or  
65 transferee must do all of the following:

66       (a) Maintain records of all services provided under the  
67 assignment agreement;

68       (b) Cooperate with the insurer in the investigation of a  
69 claim;

70       (c) Provide the insurer with any and all records and  
71 documents requested related to services provided and permit the  
72 insurer to make copies;

73       (d) Deliver a copy of the executed assignment agreement to  
74 the insurer no later than 3 business days after the assignment  
75 agreement is executed by all named insureds; and

76       (e) Concurrently with any request for payment of benefits  
77 under the insurance policy, provide the insurer with a written,  
78 itemized, per-unit cost statement of services actually performed  
79 pursuant to the assignment agreement.

80       (6) As to claims arising under an assignment agreement, an  
81 assignee must, as a condition precedent to filing a suit under  
82 the policy:

83       (a) If required by the insurer, submit to examinations  
84 under oath and recorded statements conducted by the insurer or  
85 the insurer's representative which are limited to matters  
86 related to the services provided, the costs of services, and the  
87 assignment or transfer; and

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88 (b) Participate in an appraisal or other alternative  
89 dispute resolution method in accordance with the terms of the  
90 policy.

91 (7) An activity in compliance with subsections (5) and (6)  
92 does not constitute practice as a public adjuster pursuant to  
93 part VI of chapter 626.

94 (8) Notwithstanding any other law, the acceptance by a  
95 person of any assignment agreement constitutes a waiver by the  
96 assignee or transferee, and any subcontractor of the assignee or  
97 transferee, of any and all claims against all named insureds for  
98 payment arising from the specified loss, except that all named  
99 insureds remain responsible for the payment of any deductible  
100 amount provided for by the terms of the insurance policy and for  
101 the cost of any betterment ordered by all named insureds. This  
102 waiver remains in effect notwithstanding any subsequent  
103 determination that the assignment agreement is invalid or the  
104 rescission of the assignment agreement by all named insureds.

105 (9) This section does not permit an assignment agreement to  
106 modify or eliminate any term, condition, or defense relating to  
107 any managed repair arrangement provided for in the insurance  
108 policy to which the assignment agreement relates.

109 (10) This section does not apply to:

110 (a) An assignment, transfer, or conveyance granted to a  
111 subsequent purchaser of property who acquires an insurable  
112 interest in the property following a loss;

113 (b) A power of attorney granted to a management company,  
114 family member, guardian, or similarly situated person which  
115 complies with chapter 709 and which may include, as part of the  
116 authority granted, the authority to act on behalf of a principal

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117 as it relates to a property insurance claim; or

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

119 (11) This section applies to assignment agreements that are  
120 executed after July 1, 2018.

121 Section 2. This act shall take effect July 1, 2018.