

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 1064

INTRODUCER: Senator Hukill

SUBJECT: Assignment of Post-loss Insurance Policy Benefits

DATE: March 20, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Billmeier	Knudson	BI	Pre-meeting
2.		JU	
3.		RC	

I. Summary:

SB 1064 amends s. 627.422, F.S., to provide that post-loss benefits provided under an insurance policy may or may not be assignable according to the terms of the insurance policy.

An assignment is the transfer of the rights of one party under a contract to another party. Section 627.422, F.S., provides that an insurance policy may or may not be assignable, according to its terms. Courts have held that the statutory language allows an insurance policy to prohibit the assignment of an entire policy. Historically, Florida courts have generally held that an insurance policy may not prohibit an insurance policyholder from assigning the benefits of the policy, such as the right to be paid, to another party. There is, however, ongoing litigation over whether s. 627.422, F.S., allows an insurance contract to prohibit the assignment of the benefits which accrue after a loss has occurred.

II. Present Situation:

Background on Assignment of Benefits

An assignment is the transfer of the rights of one party under a contract to another party. Current law generally allows an insurance policyholder to assign the benefits of the policy, such as the right to be paid, to another party. Once an assignment is made, the assignee can take action to enforce the contract. Accordingly, if the benefits are assigned and the insurer refuses to pay, the assignee can file a lawsuit against the insurer to recover the benefits. Section 627.422, F.S., governs assignability of insurance contracts and provides that a policy may or may not be assignable according to its terms. In *Lexington Insurance Company v. Simkins Industries*,¹ the court held that a provision in an insurance contract prohibiting assignment was enforceable under the plain language of s. 627.422, F.S. The court explained that the purpose of a provision

¹ 704 So2d 1384 (Fla. 1998).

prohibiting assignment was to protect an insurer against unbargained-for risks.² However, Florida courts have held that an assignment made after the loss is valid even if the contract states otherwise.³ In *Continental Casualty Company v. Ryan Incorporated*,⁴ the court noted that it is a “well-settled rule that [anti-assignment provisions do] not apply to an assignment after loss. A court recently explained that the rationale for post-loss assignments is that “[a]n assignment of the policy, or rights under the policy, before the loss is incurred transfers the insurer's contractual relationship to a party with whom it never intended to contract, but an assignment after loss is simply the transfer of the right to a claim for money” and “has no effect upon the insurer's duty under the policy.”⁵

Assignments have been prohibited by statute in other insurance contexts. In *Kohl v. Blue Cross Blue Shield of Florida, Inc.*,⁶ the court found anti-assignment language was sufficiently clear and upheld language prohibiting the assignment of a health insurance claim. The court explained that anti-assignment clauses “prohibiting an insured's assignments to out-of-network medical providers are valuable tools in persuading health [care] providers to keep their costs down and as such override the general policy favoring the free alienability of choses in action.”⁷

Assignment of Benefits in Property Insurance Cases

Assignment of benefits is becoming increasingly common in property insurance claims, especially in water damage claims where a homeowner assigns his or her right to receive benefits under their property insurance policy to a contractor or vendor who repairs the damaged property. In a recent presentation to the Florida House of Representatives Insurance and Banking Subcommittee, Citizens Property Insurance Company (“Citizens”) provided its 2013 litigation study statistics. Water claims represented 50 percent of all new reported claims and 75 percent of all litigation.⁸ Citizens reported that during accident years 2007-2010, the percentage of water cases in which there was an assignment of benefits was less than 1 percent each year. In 2011, the percentage of water cases in which there was an assignment of benefits was 2.32 percent. In 2012, it was 8.26 percent and in 2013, it was 10.93 percent.⁹ Citizens reported that its loss adjustment expense in a litigated claim involving assignment of benefits is 60 percent higher than a litigated claim without an assignment of benefits.¹⁰

² *Id.* at 1386.

³ See *West Florida Grocery Company v. Teutonia Fire Insurance Company*, 77 So. 209 (Fla. 1917); *Better Construction, Inc. v. National Union Fire Insurance Company of Pittsburgh*, 651 So2d 141 (Fla. 3d DCA 1995)(reversal a dismissal based on a no-assignment provision because “a provision against assignment of an insurance policy does not bar an insured's assignment of an after-loss claim”); *Gisela Investments v. Liberty Mutual Ins. Co.*, 452 So2d 1056 (Fla. 3d DCA 1984)(holding that a “provision in a policy of insurance which prohibits assignment thereof except with consent of the insurer does not apply to prevent assignment of the claim or interest in the insurance money then due, after loss”).

⁴ 974 So2d 368, 377 n. 7 (Fla. 2008)

⁵ *Wehr Constructors, Inc. v. Assurance Company of America*, 384 S.W.3d 680, 683 (Ky. 2012).

⁶ 955 So2d 1140 (Fla. 4th DCA 2007).

⁷ *Id.* at 1144-1145.

⁸ See PowerPoint presentation by Citizens Property Insurance Company to the Florida House of Representatives Insurance and Banking Subcommittee, February 9, 2015 (on file with the Florida Senate Banking and Insurance Committee).

⁹ *See Id.*

¹⁰ *See Id.*

Ongoing Litigation Involving Assignment of Benefits

At least four cases are pending in state appellate courts relating to assignment of benefits. In *Security First Insurance Company v. Florida Office of Insurance Regulation*,¹¹ an insurer is appealing the Office of Insurance Regulation's denial of policy language that would prohibit the assignment of "any benefit or post-loss right" without the consent of the insurer. On March 24, 2015, the Fourth District Court of Appeal is scheduled to hear oral arguments in three cases relating to assignment of benefits to water remediation companies. In those cases, the water remediation companies are arguing that post-loss benefits are freely assignable and the insurers are arguing that the assignments of benefits to water remediation companies are invalid.¹²

III. Effect of Proposed Changes:

The bill provides that the post-loss benefits provided under an insurance policy may be assignable, or not, according to the terms of the policy. This provision would allow an insurance contract to prohibit the policyholder from agreeing to a post-loss assignment of rights, causes of action, or benefits under the policy. This bill would apply to all insurance policies and not only to property insurance policies.

This bill takes effect on July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, s. 2, Fla. Const., provides that all persons have the right to acquire, possess and protect property. Opponents of the bill may argue that an insurance claim is chose in action and therefore is a property interest.¹³ Accordingly, it could be argued that the

¹¹ Case No. 1D14-1865 (Fla. 1st DCA). Briefing is complete and oral argument is not scheduled. The court will likely decide the case on the briefs.

¹² *ASAP Restoration and Construction, Inc. v. Tower Hill Signature Inc. Co.*, Case No. 4D13-4174 (Fla. 4th DCA), *One Call Property Services, Inc. v. Security First Insurance Company*, Case No. 4D14-424 (Fla. 4th DCA), *Emergency Services 24, Inc. v. United Property Casualty Ins. Co.*, Case No. 4D14-576 (Fla. 4th DCA).

¹³ See *Castellanos v. Citizens Property Insurance Corp.*, 98 So3d 1180, 1183 (Fla. 3d DCA 2012)(explaining that an "insurance claim is a chose in action and because personal property is an asset)(citations omitted); *Sunspan Engineering & Const. Co. v. Spring-Lock Scaffolding Co.*, 310 So2d 4, 8 (Fla. 1975)(noting that "it has been held that a vested cause of action, or 'chose in action' is personal property entitled to protection from arbitrary laws).

assignment of a post-loss insurance claim cannot be prohibited. The Florida Supreme Court has held that property rights are not absolute:

Of course, even constitutionally protected property rights are not absolute, and are held subject to the fair exercise of the power inherent in the State to promote the general welfare of the people through regulations that are reasonably necessary to secure the health, safety, good order, and general welfare.¹⁴

The court weighs whether the statute is reasonably necessary to accomplish the asserted state goals at the cost of offending property interests protected by the Florida Constitution. If this bill is challenged, the court would have to determine whether its provisions are reasonably necessary to justify the limitation on the property rights.¹⁵

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.422 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

¹⁴ *Shriners Hospitals for Crippled Children v. Zrillic*, 563 So2d 64 (Fla. 1990).

¹⁵ *Id.*

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
