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LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Thurston) recommended the following:

1 **Senate Substitute for Amendment (566142) (with title**
2 **amendment)**

3
4 Delete lines 52 - 157

5 and insert:

6 Section 1. Section 627.409, Florida Statutes, is amended to
7 read:

8 627.409 Representations in applications; warranties.-

9 (1) Any statement or description made by or on behalf of an
10 insured or annuitant in an application for an insurance policy
11 or annuity contract, or in negotiations for a policy or



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12 contract, is a representation and not a warranty. Except as
13 provided in subsection (3), a misrepresentation, omission,
14 concealment of fact, or incorrect statement may prevent recovery
15 under the contract or policy only if the misrepresentation,
16 omission, concealment of fact, or incorrect statement directly
17 relates to the cause of the claim being made and any of the
18 following apply:

19 (a) The misrepresentation, omission, concealment, or
20 statement is fraudulent or is material to the acceptance of the
21 risk or to the hazard assumed by the insurer.

22 (b) If the true facts relative to the loss claimed had been
23 known to the insurer pursuant to a policy requirement or other
24 requirement, the insurer in good faith would not have:

25 1. Issued the policy or contract; ~~it would not have~~
26 2. Issued the policy or contract ~~it~~ at a the same premium
27 rate at least 20 percent higher than the rate actually charged;
28 ~~would not have~~

29 3. Issued a policy or contract in as large an amount; ~~it~~ or

30 4. ~~would not have~~ Provided coverage with respect to the
31 hazard resulting in the loss.

32 (2) A breach or violation by the insured of a warranty,
33 condition, or provision of a wet marine or transportation
34 insurance policy, contract of insurance, endorsement, or
35 application does not void the policy or contract, or constitute
36 a defense to a loss thereon, unless such breach or violation
37 increased the hazard by any means within the control of the
38 insured.

39 (3) For residential property insurance, if a policy or
40 contract has been in effect for more than 90 days, a claim filed



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41 by the insured cannot be denied based on credit information
42 available in public records.

43 (4) This section may not be construed to allow fraudulent
44 insurance claims as described in s. 817.234.

45 Section 2. Section 627.422, Florida Statutes, is amended to
46 read:

47 627.422 Assignment of policies or post-loss benefits.—A
48 policy may be assignable, or not assignable, as provided by its
49 terms.

50 (1) LIFE OR HEALTH INSURANCE POLICIES.—Subject to its terms
51 relating to assignability, any life or health insurance policy
52 under the terms of which the beneficiary may be changed upon the
53 sole request of the policyowner may be assigned either by pledge
54 or transfer of title, by an assignment executed by the
55 policyowner alone and delivered to the insurer, whether or not
56 the pledgee or assignee is the insurer. Any such assignment
57 shall entitle the insurer to deal with the assignee as the owner
58 or pledgee of the policy in accordance with the terms of the
59 assignment, until the insurer has received at its home office
60 written notice of termination of the assignment or pledge or
61 written notice by or on behalf of some other person claiming
62 some interest in the policy in conflict with the assignment.

63 (2) POST-LOSS BENEFITS UNDER CERTAIN PROPERTY INSURANCE
64 POLICIES.—A personal lines residential property insurance policy
65 or a commercial residential property insurance policy may not
66 restrict the assignment of post-loss benefits.

67 Section 3. Paragraph (a) of subsection (3) of section
68 627.7011, Florida Statutes, is amended to read:

69 627.7011 Homeowners' policies; offer of replacement cost



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70 coverage and law and ordinance coverage.—

71 (3) In the event of a loss for which a dwelling or personal
72 property is insured on the basis of replacement costs:

73 (a) For a dwelling:—

74 1. The insurer must initially pay at least the actual cash
75 value of the insured loss, less any applicable deductible. The
76 insurer shall pay any remaining amounts necessary to perform
77 such repairs as work is performed and expenses are incurred. If
78 a total loss of a dwelling occurs, the insurer shall pay the
79 replacement cost coverage without reservation or holdback of any
80 depreciation in value, pursuant to s. 627.702.

81 2. The insurer may not require that a particular vendor
82 make repairs to such dwelling.

83 3. The insurer may not, unless expressly requested by the
84 insured, recommend or suggest a particular vendor for repairs to
85 be made to such dwelling.

86 Section 4. Section 627.7152, Florida Statutes, is created
87 to read:

88 627.7152 Assignment of residential homeowner's property
89 insurance post-loss benefits; prelitigation invoice; offer of
90 settlement; annual reporting.—

91 (1) An agreement to assign post-loss benefits of a
92 residential homeowner's property insurance policy is not valid
93 unless the agreement:

94 (a) Is in writing;

95 (b) Is limited to claims for work performed or work to be
96 performed by the assignee;

97 (c) Contains an accurate and up-to-date statement of the
98 scope of work to be performed;



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99 (d) Allows the insured to rescind the assignment within 7
100 days after the execution of the assignment without a penalty or
101 fee;

102 (e) Prohibits any check or mortgage processing fee or
103 administrative fee;

104 (f) Provides that the insured or the insurer may be
105 responsible for payment for any work performed before the
106 rescission of the assignment; and

107 (g) Contains a provision, in 14-point boldfaced type, which
108 allows the insured to rescind the agreement within 7 days after
109 execution of the assignment, and with a notice that if the
110 assignment is rescinded, the homeowner is responsible to pay for
111 the work done up to the date of the rescission and that the
112 homeowner is not otherwise responsible to pay for the work
113 covered by the assignment.

114 (2) (a) The assignee shall provide a copy of the assignment
115 agreement to the insurer within 5 days after execution of the
116 agreement if the insurer has a facsimile number and

117
118 ===== T I T L E A M E N D M E N T =====

119 And the title is amended as follows:

120 Delete lines 2 - 11

121 and insert:

122 An act relating to insurance; amending s. 627.409,
123 F.S.; adding and revising conditions under which
124 certain misrepresentations, omissions, concealments of
125 fact, or incorrect statements may prevent recovery
126 under an insurance policy or annuity contract;
127 providing construction; amending s. 627.422, F.S.;



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providing that