



804018

LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Broxson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

627.7152 Assignment of property insurance post-loss
benefits.—

(1) As used in this section, the term "assignment
agreement" means any instrument by which post-loss property



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11 insurance benefits for services to protect, repair, restore, or
12 replace property, or to mitigate against further damage to
13 property, are assigned, transferred, or conveyed, regardless of
14 how named or styled.

15 (2) Notwithstanding any other law, as to suits based on
16 claims arising under property insurance policies, attorney fees
17 may not be awarded under s. 626.9373 or s. 627.428 in favor of
18 any person or entity seeking relief against the insurer pursuant
19 to an assignment agreement.

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

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

24 (b) The assignment agreement contains a provision that
25 permits all named insureds to rescind the assignment agreement
26 without any penalty or rescission or cancellation fee within 7
27 business days after the date the assignment agreement is
28 executed by all named insureds;

29 (c) The assignment agreement contains a provision requiring
30 the assignee or transferee to provide a copy of the executed
31 assignment agreement to the insurer no later than 3 business
32 days after the assignment agreement is executed by any named
33 insured; and

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

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



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- 40 (a) A penalty or fee for rescission of the assignment
41 agreement pursuant to subsection (3);
- 42 (b) A check or mortgage processing fee;
- 43 (c) A penalty or fee for cancellation of the assignment
44 agreement pursuant to subsection (3); or
- 45 (d) An administrative fee.
- 46 (5) As to claims arising under an assignment agreement, the
47 failure to comply with any provision of this subsection creates
48 a presumption that the insurer is prejudiced by such failure to
49 comply and shifts the burden in any proceeding or suit to the
50 party seeking benefits, rights, or proceeds from the insurer to
51 demonstrate that the insurer was not prejudiced. The assignee or
52 transferee must do all of the following:
- 53 (a) Maintain records of all services provided under the
54 assignment agreement;
- 55 (b) Cooperate with the insurer in the investigation of a
56 claim;
- 57 (c) Provide the insurer with any and all records and
58 documents requested related to services provided and permit the
59 insurer to make copies;
- 60 (d) Deliver a copy of the executed assignment agreement to
61 the insurer no later than 3 business days after the assignment
62 agreement is executed by all named insureds; and
- 63 (e) Concurrently with any request for payment of benefits
64 under the insurance policy, provide the insurer with a written,
65 itemized, per-unit cost statement of services actually performed
66 pursuant to the assignment agreement.
- 67 (6) As to claims arising under an assignment agreement, an
68 assignee must, as a condition precedent to filing a suit under



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69 the policy:

70 (a) If required by the insurer, submit to examinations
71 under oath and recorded statements conducted by the insurer or
72 the insurer's representative which are limited to matters
73 related to the services provided, the costs of services, and the
74 assignment or transfer; and

75 (b) Participate in an appraisal or other alternative
76 dispute resolution method in accordance with the terms of the
77 policy.

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

81 (8) Notwithstanding any other law, the acceptance by a
82 person of any assignment agreement constitutes a waiver by the
83 assignee or transferee, and any subcontractor of the assignee or
84 transferee, of any and all claims against all named insureds for
85 payment arising from the specified loss, except that all named
86 insureds remain responsible for the payment of any deductible
87 amount provided for by the terms of the insurance policy and for
88 the cost of any betterment ordered by all named insureds. This
89 waiver remains in effect notwithstanding any subsequent
90 determination that the assignment agreement is invalid or the
91 rescission of the assignment agreement by all named insureds.

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

96 (10) This section does not apply to:

97 (a) An assignment, transfer, or conveyance granted to a



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98 subsequent purchaser of property who acquires an insurable
99 interest in the property following a loss;

100 (b) A power of attorney granted to a management company,
101 family member, guardian, or similarly situated person which
102 complies with chapter 709 and which may include, as part of the
103 authority granted, the authority to act on behalf of a principal
104 as it relates to a property insurance claim; or

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

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

108 Section 2. (1) Within 60 days after the effective date of
109 this section, the Office of Insurance Regulation shall enter
110 into a contract with an independent consultant to calculate the
111 savings expected as a result of this act. The contract must
112 require the use of generally accepted actuarial techniques and
113 standards in determining the expected impact on losses and
114 expenses. By September 15, 2018, the office shall submit to the
115 Governor, the President of the Senate, and the Speaker of the
116 House of Representatives a report concerning the results of the
117 independent consultant's calculations.

118 (2) By October 1, 2018, an insurer writing property
119 insurance in this state shall make a rate filing with the Office
120 of Insurance Regulation. A rate certification does not satisfy
121 this requirement. If the insurer requests a rate in excess of a
122 10 percent reduction as applied to the current rate in its
123 overall base rate for property insurance, the insurer must
124 include in its rate filing a detailed explanation of the reasons
125 for its failure to achieve a 10 percent reduction.

126 (3) By January 1, 2020, an insurer writing property



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127 insurance in this state shall make a rate filing with the Office
128 of Insurance Regulation. A rate certification does not satisfy
129 this requirement. If the insurer requests a rate in excess of a
130 25 percent reduction as applied to the rate in effect as of July
131 1, 2018, in its overall base rate for property insurance since
132 July 1, 2018, the insurer must include in its rate filing a
133 detailed explanation of the reasons for its failure to achieve a
134 25 percent reduction.

135 (4) If an insurer fails to provide the detailed explanation
136 required by subsection (2) or subsection (3), the Office of
137 Insurance Regulation must order the insurer to stop writing new
138 property insurance policies in this state until it provides the
139 required explanation.

140 (5) The sum of \$200,000 of nonrecurring revenue is
141 appropriated from the Insurance Regulatory Trust Fund to the
142 Office of Insurance Regulation for the purpose of implementing
143 the requirements of subsection (1) during the 2017-2018 fiscal
144 year. Any unexpended balance of the appropriation at the end of
145 the fiscal year shall be carried forward and be available for
146 expenditure for that purpose during the 2018-2019 fiscal year.
147 Notwithstanding s. 287.057, Florida Statutes, the office may
148 retain an independent consultant to implement the requirements
149 of subsection (1) without a competitive solicitation.

150 (6) This section shall take effect upon this act becoming a
151 law.

152 Section 3. Except as otherwise expressly provided in this
153 act and except for this section, which shall take effect upon
154 this act becoming a law, this act shall take effect July 1,
155 2018.



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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to the assignment of property
insurance benefits; creating s. 627.7152, F.S.;
defining the term "assignment agreement"; prohibiting
certain awards of attorney fees to certain persons or
entities in suits based on claims arising under
property insurance policies; providing that an
assignment agreement is not valid unless specified
requirements are met; prohibiting certain provisions
in an assignment agreement; specifying requirements
for an assignee or transferee; requiring an assignee
to meet certain requirements as a condition precedent
to filing suit under a policy; providing construction;
providing applicability; requiring the Office of
Insurance Regulation, within a specified timeframe, to
contract with an independent consultant to calculate
expected savings as a result of this act; requiring
the contract to require the use of certain actuarial
techniques and standards; requiring the office to
submit a certain report to the Governor and the
Legislature by a specified date; requiring property
insurers to make rate filings with the office by
specified dates; providing construction; requiring an
insurer to include a certain explanation in its rate



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185 filing under certain circumstances; requiring the
186 office to order an insurer that fails to provide such
187 explanation to stop writing new property insurance
188 policies until it provides the explanation; providing
189 an appropriation; authorizing the office to retain the
190 consultant without a competitive solicitation;
191 providing effective dates.