

By Senator Farmer

34-00120-18

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1                                   A bill to be entitled  
2       An act relating to property insurance; amending s.  
3       627.062, F.S.; prohibiting certain attorney fees and  
4       costs paid by a property insurer from being included  
5       in such insurer's rate base and from being used to  
6       justify a rate increase or rate change; amending s.  
7       627.422, F.S.; prohibiting certain property insurance  
8       policies from prohibiting or limiting the post-loss  
9       assignment of benefits; providing that an assignment  
10      agreement is not valid unless it meets specified  
11      requirements; providing requirements and prohibitions  
12      for assignees of post-loss benefits; requiring  
13      insurers to provide specified contact information on  
14      their websites and in policies; requiring assignees to  
15      deliver executed assignment agreements to insurers  
16      within a specified timeframe; requiring insurers, upon  
17      receiving such agreements, to make any initial  
18      inspections of covered property within specified  
19      timeframes; requiring insureds or assignees to provide  
20      a certain prelitigation notice and invoice to insurers  
21      within a specified timeframe; providing construction;  
22      requiring certain settlement proposals to a plaintiff  
23      to be served no earlier than a specified time;  
24      requiring the Office of Insurance Regulation to  
25      require each insurer to report annually certain data  
26      relating to claims paid pursuant to assignment  
27      agreements; requiring insurers to report certain  
28      information to opposing counsel for verification or  
29      certification; requiring the opposing counsel to

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30 verify or certify such information to the office;  
31 providing applicability; amending s. 627.7011, F.S.;  
32 prohibiting specified acts of insurers relating to  
33 homeowners' insurance policies under certain  
34 circumstances; providing an effective date.

35  
36 Be It Enacted by the Legislature of the State of Florida:

37  
38 Section 1. Subsection (11) is added to section 627.062,  
39 Florida Statutes, to read:

40 627.062 Rate standards.—

41 (11) Attorney fees and costs paid by a property insurer  
42 pursuant to s. 627.428 may not be included in the property  
43 insurer's rate base and may not be used to justify a rate  
44 increase or rate change.

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

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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  
65 policy, a commercial residential property insurance policy, or a  
66 commercial property insurance policy may not prohibit or limit  
67 the post-loss assignment of benefits. This subsection does not  
68 affect the assignment of benefits in other insurance policies.

69 (a) An agreement to assign post-loss benefits under this  
70 subsection is not valid unless the agreement:

71 1. Is in writing between the policyholder and assignee and  
72 is delivered to the insurer as provided in paragraph (c);

73 2. Is limited to claims for work performed or to be  
74 performed by the assignee for damages claimed to be covered;

75 3. Allows the policyholder to unilaterally cancel the  
76 assignment of post-loss benefits without penalty or obligation  
77 within 7 days after the execution of the assignment by an  
78 insured; provided, however, that the policyholder or insurer may  
79 be responsible for payment for work already performed during  
80 such period;

81 4. Contains an accurate and up-to-date statement of the  
82 scope of work to be performed;

83 5. Includes proof that the assignee possesses a valid  
84 certification from an entity that requires water damage  
85 remediation to be performed according to a standard approved by  
86 the American National Standards Institute; and

87 6. Contains the following notice in at least 14-point,

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88 capitalized type:

89

90 YOU ARE AUTHORIZING THE ASSIGNEE OF YOUR POLICY TO COMMUNICATE  
91 WITH YOUR INSURANCE COMPANY ON YOUR BEHALF. THIS ASSIGNMENT  
92 GIVES YOUR ASSIGNEE THE PRIMARY AUTHORITY TO NEGOTIATE WITH YOUR  
93 INSURANCE COMPANY ON YOUR BEHALF. PLEASE READ AND UNDERSTAND  
94 THIS DOCUMENT BEFORE SIGNING IT. YOU HAVE THE RIGHT TO CANCEL  
95 THIS AGREEMENT WITHOUT PENALTY OR OBLIGATION WITHIN 7 DAYS AFTER  
96 THE DATE THIS AGREEMENT IS EXECUTED. SHOULD YOU CANCEL THIS  
97 AGREEMENT, YOU OR YOUR INSURER MAY BE RESPONSIBLE FOR ANY WORK  
98 THAT HAS ALREADY BEEN PERFORMED. THIS AGREEMENT DOES NOT CHANGE  
99 YOUR OBLIGATION TO PERFORM THE DUTIES UNDER YOUR PROPERTY  
100 INSURANCE POLICY.

101 (b) An assignee of post-loss benefits under this  
102 subsection:

103 1. Must provide the policyholder with accurate and up-to-  
104 date revised statements of the scope of work to be performed as  
105 supplemental or additional repairs are required, and must  
106 provide to the policyholder and insurer a final invoice and bill  
107 for service rendered within 7 business days after the date on  
108 which the work was completed;

109 2. Must guarantee to the policyholder that the work  
110 performed conforms to current and accepted industry standards;

111 3. May not charge the policyholder more than the applicable  
112 deductible contained in the policy unless the policyholder opts  
113 for additional work or betterment of materials at the  
114 policyholder's own expense;

115 4. May not pay referral fees totaling more than \$750 in  
116 connection with the assignment; and

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117 5. May not charge the policyholder directly, except for  
118 additional work not covered under the policy which includes:

119 a. Work performed that is rightfully denied as not covered;  
120 and

121 b. Betterments or additional work not part of the loss.

122 (c) An insurer shall provide on its website and in the  
123 policy its contact information for receiving the agreement that  
124 meets the requirements of paragraph (a). The contact information  
125 must include at least a dedicated facsimile number. After  
126 executing the assignment agreement, the assignee must deliver  
127 the agreement to the insurer within the later of:

128 1. If a state of emergency was declared under s. 252.36 for  
129 a hurricane or other natural disaster and the property covered  
130 under the policy was damaged as a result of the hurricane or  
131 natural disaster, 7 days after the state of emergency is  
132 terminated; or

133 2. Seven business days after execution of the agreement.

134 (d) Notwithstanding s. 627.70131, upon receiving the  
135 agreement in paragraph (a), the insurer must make any initial  
136 inspections of the covered property within the later of:

137 1. If a state of emergency was declared under s. 252.36 for  
138 a hurricane or other natural disaster and the property covered  
139 under the policy was damaged as a result of the hurricane or  
140 natural disaster, 7 days after the state of emergency is  
141 terminated; or

142 2. Seven business days after receiving the agreement.

143 (e) No later than 7 days before an insured or assignee  
144 initiates litigation against an insurer relating to a denied or  
145 limited claim, the insured or assignee must provide the insurer

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146 with notice of intent to initiate such litigation. The notice of  
147 intent must include a copy of the final invoice required under  
148 subparagraph (b)1. for the work that has been performed or an  
149 estimate of the work to be performed. This paragraph does not  
150 increase the time periods prescribed in s. 627.70131.

151 (f) Notwithstanding any other law, in a dispute relating to  
152 the assignment of benefits for a personal lines residential  
153 property insurance policy, commercial residential property  
154 insurance policy, or commercial property insurance policy in  
155 which an assignee but not the named insured is a party, for any  
156 proposal for settlement made to a plaintiff, such proposal shall  
157 be served no earlier than 10 days after the date of commencement  
158 of the action.

159 (g) This section does not apply to:

160 1. An assignment, transfer, or conveyance granted to a  
161 subsequent purchaser of the property with an insurable interest  
162 in the property following a loss;

163 2. A power of attorney under chapter 709 which grants to a  
164 management company, family member, guardian, or similarly  
165 situated person of an insured the authority to act on behalf of  
166 an insured as it relates to a property insurance claim; or

167 3. Liability coverage under a property insurance policy.

168 (3) ANNUAL REPORT.—The office shall require each insurer to  
169 report by March 31, 2020, and each year thereafter, data on each  
170 claim paid in the prior calendar year pursuant to an assignment  
171 agreement. Such data must include, but are not limited to:

172 (a) The number of days between the first notice of loss and  
173 the initial inspection.

174 (b) Loss severity.

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175 (c) Allocated loss adjustment expense.

176 (d) For litigated claims:

177 1. Any amount paid before litigation, the amount in  
178 dispute, the amount of any proposal for settlement, and the  
179 settlement or judgment amount;

180 2. The amount of fees paid to the claimant's attorney; and

181 3. The amount and structure, whether fixed, hourly, or  
182 contingent, of fees paid to the insurer's attorney.

183

184 All information the insurer reports under this paragraph must  
185 first be reported to the opposing counsel on the litigated claim  
186 for verification or certification. The opposing counsel on the  
187 litigated claim shall report to the office its agreement or  
188 disagreement with the accuracy of the figures reported.

189 (e) For nonlitigated claims, the difference between the  
190 insurer's initial offer and the amount paid on the claim.

191 (f) The time from the first notice of loss until the claim  
192 was closed.

193 (g) For claims involving water damage, whether the adjuster  
194 possessed certification from an entity that requires water  
195 damage remediation to be performed according to a standard  
196 approved by the American National Standards Institute.

197 Section 3. The amendments made by this act to s. 627.422,  
198 Florida Statutes, apply to assignment agreements entered into on  
199 or after January 1, 2019.

200 Section 4. Paragraph (a) of subsection (3) of section  
201 627.7011, Florida Statutes, is amended to read:

202 627.7011 Homeowners' policies; offer of replacement cost  
203 coverage and law and ordinance coverage.-

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

206 (a) For a dwelling:~~r~~

207 1. The insurer must initially pay at least the actual cash  
208 value of the insured loss, less any applicable deductible. The  
209 insurer shall pay any remaining amounts necessary to perform  
210 such repairs as work is performed and expenses are incurred. If  
211 a total loss of a dwelling occurs, the insurer shall pay the  
212 replacement cost coverage without reservation or holdback of any  
213 depreciation in value, pursuant to s. 627.702.

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

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

219 Section 5. This act shall take effect January 1, 2019.