

1 A bill to be entitled
 2 An act relating to property insurance assignment
 3 agreements; creating s. 627.7152, F.S.; providing
 4 definitions; providing requirements and limitations of
 5 assignment agreements; providing a burden of proof;
 6 providing an assignment agreement does not affect
 7 managed repair arrangements under an insurance policy;
 8 providing an insured's payment obligations under an
 9 assignment agreement; requiring notice of intent to
 10 initiate litigation; specifying requirements for such
 11 notice; providing for an award of reasonable attorney
 12 fees for certain claims arising under an assignment
 13 agreement; requiring the Office of Insurance
 14 Regulation to require insurers to report specified
 15 data; providing applicability; amending s. 627.422,
 16 F.S.; specifying certain residential property
 17 insurance policies may not prohibit assignment of
 18 post-loss benefits; providing an effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Section 627.7152, Florida Statutes, is created
 23 to read:

24 627.7152 Assignment agreements.-
 25 (1) As used in this section, the term:

26 (a) "Assignment agreement" means a written instrument by
27 which post-loss benefits under a residential property insurance
28 policy are assigned to a person providing services to protect,
29 repair, restore, or replace such property or to mitigate against
30 further damage to such property.

31 (b) "Disputed amount" means the difference between the
32 presuit settlement demand and the presuit settlement offer.

33 (c) "Judgment obtained" means damages recovered, if any,
34 but does not include any amount awarded for interest, attorney
35 fees, or costs.

36 (d) "Presuit settlement demand" means the presuit
37 settlement demand made by the assignee in the written notice of
38 intent to initiate litigation as required by paragraph (7) (a).

39 (e) "Presuit settlement offer" means the presuit
40 settlement offer made by the insurer in its written response to
41 the notice of intent to initiate litigation as required by
42 paragraph (7) (b).

43 (2) An assignment agreement that does not comply with this
44 subsection is invalid and unenforceable.

45 (a) An assignment agreement must:

46 1. Be in writing and executed concurrently by and between
47 a named insured and the assignee.

48 2. Contain a provision that allows the assignor to rescind
49 the assignment agreement, without a penalty or fee, by having
50 the assignor sign a notice within 7 business days after the

51 execution date of the assignment agreement and by notifying the
52 assignee of the rescission. The assignor may rescind the
53 assignment agreement for any reason during the 7-day period. The
54 assignor is responsible for payment for contracted work
55 performed before the agreement is rescinded.

56 3. Contain a provision requiring the assignee to provide a
57 copy of the executed assignment agreement to the insurer within
58 3 business days after the date the assignment agreement is
59 executed or the date work begins, whichever is earlier. Delivery
60 may be made:

61 a. By personal service, overnight delivery, or electronic
62 transmission, with evidence of delivery in the form of a receipt
63 or other paper or electronic acknowledgement by the insurer; or

64 b. To the location designated for receipt of such
65 agreements as specified in the policy.

66 4. Contain a written, itemized, per-unit cost estimate of
67 the services to be performed by the assignee. If the estimate of
68 services includes a claim for water restoration services, the
69 estimate must also include proof that the assignee or
70 subcontractor of the assignee possesses a valid certification
71 from an entity that requires water remediation to be performed
72 according to a standard that is approved by the American
73 National Standards Institute.

74 5. Relate only to work to be performed by the assignee for
75 services to protect, repair, restore, or replace dwellings or

76 structures or to mitigate against further damage to such
77 property.

78 6. Contain the following notice in uppercase 14-point
79 type:

80
81 YOU ARE AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR
82 INSURANCE POLICY TO A THIRD PARTY WHICH MAY RESULT IN LITIGATION
83 AGAINST YOUR INSURER. PLEASE READ AND UNDERSTAND THIS DOCUMENT
84 BEFORE SIGNING IT. YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT
85 WITHOUT PENALTY WITHIN 7 BUSINESS DAYS AFTER THE DATE THIS
86 AGREEMENT IS EXECUTED. HOWEVER, YOU ARE OBLIGATED FOR PAYMENT OF
87 ANY CONTRACTED WORK PERFORMED BEFORE THE AGREEMENT IS RESCINDED.
88 THIS AGREEMENT DOES NOT CHANGE YOUR OBLIGATION TO PERFORM THE
89 DUTIES REQUIRED UNDER YOUR PROPERTY INSURANCE POLICY.

90
91 (b) An assignment agreement may not contain:

92 1. A penalty or fee for rescission of the assignment
93 agreement pursuant to subparagraph (a)2.;

94 2. A check or mortgage processing fee;

95 3. A penalty or fee for cancellation of the assignment
96 agreement; or

97 4. An administrative fee.

98 (3) In a claim arising under an assignment agreement, an
99 assignee has the burden to demonstrate that the insurer is not
100 prejudiced by the failure of the assignee to:

101 (a) Maintain records of all services provided under an
102 assignment agreement.

103 (b) Cooperate with the insurer in the investigation of a
104 claim.

105 (c) Provide the insurer with requested records and
106 documents related to the services provided and to permit the
107 insurer to make copies of such records and documents.

108 (d) Deliver a copy of the executed assignment agreement to
109 the insurer within 3 business days after the execution of the
110 assignment agreement or work has begun, whichever is earlier.

111 (4) An assignee:

112 (a) Must provide the assignor with accurate and up-to-date
113 revised estimates of the scope of work to be performed as
114 supplemental or additional repairs are required.

115 (b) Must perform the work to conform with current and
116 accepted industry standards.

117 (c) May not seek payment from the assignor exceeding the
118 applicable deductible under the policy unless the assignor has
119 chosen to have additional work performed at the assignor's own
120 expense.

121 (d) Must, as a condition precedent to filing suit under
122 the policy, and if required by the insurer, submit to
123 examinations under oath and recorded statements conducted by the
124 insurer or the insurer's representative that are reasonably
125 necessary, based on the scope of the work and the complexity of

126 the claim, which examinations and recorded statements must be
127 limited to matters related to the services provided, the cost of
128 the services, and the assignment.

129 (e) Must, as a condition precedent to filing suit under
130 the policy, and if required by the insurer, participate in
131 appraisal or other alternative dispute resolution methods in
132 accordance with the terms of the property insurance policy.

133 (5) An assignment agreement and this section do not modify
134 or eliminate any term, condition, or defense relating to any
135 managed repair arrangement provided in the property insurance
136 policy.

137 (6) Notwithstanding any other provision of law, the
138 acceptance by an assignee of an assignment agreement is a waiver
139 by the assignee and subcontractors of the assignee, of claims
140 against named insureds for payments arising from the assignment
141 agreement. The assignee and subcontractors may not collect or
142 attempt to collect money from, maintain any action at law
143 against, or claim a lien on the real property of an insured or
144 report an insured to a credit agency for payments arising from
145 the assignment agreement. However, named insureds remain
146 responsible for the payment of any deductible amount under an
147 insurance policy, any contracted work performed before the
148 assignor rescinded the assignment agreement, and any betterment
149 ordered and approved by the assignor. Such waiver remains in
150 effect after rescission of the assignment agreement by the

151 assignor or after a determination that the assignment agreement
152 is invalid.

153 (7) (a) An assignee must provide the insurer and the
154 assignor with a written notice of intent to initiate litigation
155 before filing suit under the policy. Such notice must be served
156 at least 10 business days before filing suit, but may not be
157 served before the insurer has made a determination of coverage
158 pursuant to s. 627.70131. The notice must specify the damages in
159 dispute, the amount claimed, and any presuit settlement demand.
160 Concurrent with the notice, and as a precondition to filing
161 suit, the assignee must provide the insurer and the assignor a
162 detailed written invoice or estimate of services, including
163 itemized information on equipment, materials, and supplies; the
164 number of labor hours; and, in the case of work performed, proof
165 the work has been performed in accordance with current industry
166 standards. If the invoice or estimate includes a claim for water
167 restoration services, the assignee must provide proof of the
168 certification required by subparagraph (2) (a)4.

169 (b) An insurer must respond in writing to the notice
170 within the 10-day period specified in paragraph (a) by making a
171 presuit settlement offer or requiring appraisal or other method
172 of alternative dispute resolution as may be provided in the
173 policy. An insurer must have a procedure for the prompt
174 investigation, review, and evaluation of the dispute stated in
175 such notice and must investigate the claims contained in the

176 notice in accordance with the Florida Insurance Code.

177 (8) Notwithstanding any other law to the contrary, in a
178 proceeding related to an assignment agreement for post-loss
179 claims arising under a residential property insurance policy,
180 attorney fees and costs may only be recovered by an assignee
181 under s. 57.105 and this subsection.

182 (a) If the difference between the judgment obtained by the
183 assignee and the presuit settlement offer is less than 25
184 percent of the disputed amount, the insurer is entitled to an
185 award of reasonable attorney fees. If the difference between the
186 judgment obtained by the assignee and the presuit settlement
187 offer is at least 25 percent but less than 50 percent of the
188 disputed amount, no party is entitled to an award of attorney
189 fees. If the difference between the judgment obtained by the
190 assignee and the presuit settlement offer is at least 50 percent
191 of the disputed amount, the assignee is entitled to an award of
192 reasonable attorney fees.

193 (b) If the insurer fails either to inspect the property or
194 to provide written or verbal authorization for repairs within 7
195 calendar days after the first notice of loss, the insurer waives
196 its right to an award of attorney fees under this subsection. If
197 the failure to inspect the property or to provide written or
198 verbal authorization for repairs is the result of an event for
199 which the Governor had declared a state of emergency pursuant to
200 s. 252.36, factors beyond the control of the insurer which

201 reasonably prevented an inspection or written or verbal
202 authorization for repairs, or the named insureds' failure or
203 inability to allow an inspection of the property after a request
204 by the insurer, the insurer does not waive its right to an award
205 of attorney fees under this subsection.

206 (9) This section does not apply to:

207 (a) An assignment, transfer, or conveyance granted to a
208 subsequent purchaser of the property with an insurable interest
209 in the property following a loss;

210 (b) A power of attorney under chapter 709 that grants to a
211 management company, family member, guardian, or similarly
212 situated person of an insured that includes the authority to act
213 on behalf of an insured as it relates to a property insurance
214 claim; or

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

216 (10) The office shall require each insurer to report by
217 January 30, 2021, and each year thereafter, data on each
218 residential property insurance claim paid in the prior calendar
219 year pursuant to an assignment agreement. Such data must
220 include, but are not limited to, specific data about claims
221 adjustment and settlement timeframes and trends, grouped by
222 whether litigated or not litigated; by loss adjustment expenses;
223 and by the amount and type of attorney fees incurred or paid.

224 (11) This section applies to assignment agreements
225 executed after July 1, 2018.

226 Section 2. Section 627.422, Florida Statutes, is amended
 227 to read:

228 627.422 Assignment of policies or post-loss benefits.—A
 229 policy may be assignable, or not assignable, as provided by its
 230 terms.

231 (1) LIFE OR HEALTH INSURANCE POLICIES.—Subject to its
 232 terms relating to assignability, any life or health insurance
 233 policy under the terms of which the beneficiary may be changed
 234 upon the sole request of the policyowner may be assigned either
 235 by pledge or transfer of title, by an assignment executed by the
 236 policyowner alone and delivered to the insurer, whether or not
 237 the pledgee or assignee is the insurer. Any such assignment
 238 entitles ~~shall entitle~~ the insurer to deal with the assignee as
 239 the owner or pledgee of the policy in accordance with the terms
 240 of the assignment, until the insurer has received at its home
 241 office written notice of termination of the assignment or pledge
 242 or written notice by or on behalf of some other person claiming
 243 some interest in the policy in conflict with the assignment.

244 (2) POST-LOSS BENEFITS UNDER CERTAIN PROPERTY INSURANCE
 245 POLICIES.—A personal lines residential property insurance policy
 246 or a commercial residential property insurance policy may not
 247 prohibit the assignment of post-loss benefits.

248 Section 3. This act shall take effect July 1, 2018.