

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; requiring the Division of Consumer Services to
16 develop and implement a public information campaign
17 for specified purposes; providing campaign
18 requirements; providing applicability; amending s.
19 627.422, F.S.; specifying certain residential property
20 insurance policies may not prohibit assignment of
21 post-loss benefits; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Section 627.7152, Florida Statutes, is created

26 | to read:

27 | 627.7152 Assignment agreements.-

28 | (1) As used in this section, the term:

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

34 | (b) "Disputed amount" means the difference between the
 35 | presuit settlement demand and the presuit settlement offer.

36 | (c) "Judgment obtained" means damages recovered, if any,
 37 | but does not include any amount awarded for interest, attorney
 38 | fees, or costs.

39 | (d) "Presuit settlement demand" means the presuit
 40 | settlement demand made by the assignee in the written notice of
 41 | intent to initiate litigation as required by paragraph (7) (a).

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

46 | (2) An assignment agreement that does not comply with this
 47 | subsection is invalid and unenforceable.

48 | (a) An assignment agreement must:

49 | 1. Be in writing and executed concurrently by and between
 50 | a named insured and the assignee.

51 2. Contain a provision that allows the assignor to rescind
52 the assignment agreement, without a penalty or fee, by having
53 the assignor sign a notice within 7 business days after the
54 execution date of the assignment agreement and by notifying the
55 assignee of the rescission. The assignor may rescind the
56 assignment agreement for any reason during the 7-day period. The
57 assignor is responsible for payment for contracted work
58 performed before the agreement is rescinded.

59 3. Contain a provision requiring the assignee to provide a
60 copy of the executed assignment agreement to the insurer within
61 3 business days after the date the assignment agreement is
62 executed or the date work begins, whichever is earlier. Delivery
63 may be made:

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

67 b. To the location designated for receipt of such
68 agreements as specified in the policy.

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

76 National Standards Institute.

77 5. Relate only to work to be performed by the assignee for
78 services to protect, repair, restore, or replace dwellings or
79 structures or to mitigate against further damage to such
80 property.

81 6. Contain the following notice in uppercase 14-point
82 type:

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

93
94 (b) An assignment agreement may not contain:

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

97 2. A check or mortgage processing fee;

98 3. A penalty or fee for cancellation of the assignment
99 agreement; or

100 4. An administrative fee.

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

104 (a) Maintain records of all services provided under an
105 assignment agreement.

106 (b) Cooperate with the insurer in the investigation of a
107 claim.

108 (c) Provide the insurer with requested records and
109 documents related to the services provided and to permit the
110 insurer to make copies of such records and documents.

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

114 (4) An assignee:

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

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

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

124 (d) Must, as a condition precedent to filing suit under
125 the policy, and if required by the insurer, submit to

126 examinations under oath and recorded statements conducted by the
127 insurer or the insurer's representative that are reasonably
128 necessary, based on the scope of the work and the complexity of
129 the claim, which examinations and recorded statements must be
130 limited to matters related to the services provided, the cost of
131 the services, and the assignment.

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

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

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

151 assignor rescinded the assignment agreement, and any betterment
152 ordered and approved by the assignor. Such waiver remains in
153 effect after rescission of the assignment agreement by the
154 assignor or after a determination that the assignment agreement
155 is invalid.

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

172 (b) An insurer must respond in writing to the notice
173 within the 10-day period specified in paragraph (a) by making a
174 presuit settlement offer or requiring appraisal or other method
175 of alternative dispute resolution as may be provided in the

176 policy. An insurer must have a procedure for the prompt
177 investigation, review, and evaluation of the dispute stated in
178 such notice and must investigate the claims contained in the
179 notice in accordance with the Florida Insurance Code.

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

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

196 (b) If the insurer fails either to inspect the property or
197 to provide written or verbal authorization for repairs within 7
198 calendar days after the first notice of loss, the insurer waives
199 its right to an award of attorney fees under this subsection. If
200 the failure to inspect the property or to provide written or

201 verbal authorization for repairs is the result of an event for
202 which the Governor had declared a state of emergency pursuant to
203 s. 252.36, factors beyond the control of the insurer which
204 reasonably prevented an inspection or written or verbal
205 authorization for repairs, or the named insureds' failure or
206 inability to allow an inspection of the property after a request
207 by the insurer, the insurer does not waive its right to an award
208 of attorney fees under this subsection.

209 (9) This section does not apply to:

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

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

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

219 (10) The office shall require each insurer to report by
220 January 30, 2022, and each year thereafter, data on each
221 residential property insurance claim paid in the prior calendar
222 year pursuant to an assignment agreement. Such data must
223 include, but are not limited to, specific data about claims
224 adjustment and settlement timeframes and trends, grouped by
225 whether litigated or not litigated; by loss adjustment expenses;

226 and by the amount and type of attorney fees incurred or paid.

227 (11) The Division of Consumer Services shall develop and
228 implement a public information campaign directed towards
229 consumers regarding this section. The campaign shall include
230 information on the requirements and limitations of assignment
231 agreements; obligations of the insured; litigation notice
232 requirements; award of attorney fees; and the limitation on
233 insurance policies from prohibiting certain post-loss
234 assignments. The campaign shall include television, radio, and
235 outdoor advertising; public service announcements; and peer-to-
236 peer outreach. Each campaign message and concept shall be
237 evaluated with members of the target group to ensure its
238 effectiveness.

239 (12) This section applies to assignment agreements
240 executed after July 1, 2019.

241 Section 2. Section 627.422, Florida Statutes, is amended
242 to read:

243 627.422 Assignment of policies or post-loss benefits.—A
244 policy may be assignable, or not assignable, as provided by its
245 terms.

246 (1) LIFE OR HEALTH INSURANCE POLICIES.—Subject to its
247 terms relating to assignability, any life or health insurance
248 policy under the terms of which the beneficiary may be changed
249 upon the sole request of the policyowner may be assigned either
250 by pledge or transfer of title, by an assignment executed by the

251 | policyowner alone and delivered to the insurer, whether or not
252 | the pledgee or assignee is the insurer. Any such assignment
253 | entitles ~~shall entitle~~ the insurer to deal with the assignee as
254 | the owner or pledgee of the policy in accordance with the terms
255 | of the assignment, until the insurer has received at its home
256 | office written notice of termination of the assignment or pledge
257 | or written notice by or on behalf of some other person claiming
258 | some interest in the policy in conflict with the assignment.

259 | (2) POST-LOSS BENEFITS UNDER CERTAIN PROPERTY INSURANCE
260 | POLICIES.—A personal lines residential property insurance policy
261 | or a commercial residential property insurance policy may not
262 | prohibit the assignment of post-loss benefits.

263 | Section 3. This act shall take effect July 1, 2019.