

By the Committee on Banking and Insurance; and Senator Boyd

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1 A bill to be entitled
2 An act relating to residential property insurance;
3 amending s. 627.428, F.S.; providing that, for certain
4 attorney fees awarded for claims arising under
5 property insurance policies, a strong presumption is
6 created that a lodestar fee is sufficient and
7 reasonable; providing that such presumption may be
8 rebutted only under certain circumstances; amending s.
9 627.7011, F.S.; providing that certain provisions
10 relating to homeowners' policies, offers of
11 replacement cost coverage, and offers of law and
12 ordinance coverage do not prohibit insurers from
13 providing specified property insurance policies by
14 including roof surface reimbursement schedules;
15 providing requirements for roof surface reimbursement
16 schedules; prohibiting application of a roof surface
17 reimbursement schedule under certain circumstances;
18 amending s. 627.70132, F.S.; revising property
19 insurance coverages for which a notice of claim must
20 be given to the insurer within a specified timeframe;
21 revising the timeframe for providing notices of
22 property insurance claims; revising the definitions of
23 the terms "supplemental claim" and "reopened claim";
24 amending s. 627.7015, F.S.; conforming a provision to
25 changes made by the act; creating s. 627.70152, F.S.;
26 providing applicability; defining terms; requiring
27 notice of intent to initiate litigation; specifying
28 requirements for such notice; specifying an assignee's
29 presuit obligations; specifying the timeframe within

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which a notice of intent to initiate litigation must be served; requiring dismissal of certain actions under specified circumstances; specifying the admissibility of certain evidence; providing construction; authorizing an insurer to request to inspect, photograph, or evaluate certain property; specifying requirements for such inspections, photographs, and evaluations; authorizing motions to abate suits under property insurance policies; specifying conditions for abatement; providing for an award of attorney fees for certain claims under specified circumstances; providing for an award of attorney fees following a voluntary dismissal under certain circumstances; requiring the court to stay proceedings under certain circumstances; amending s. 627.7152, F.S.; deleting definitions; deleting a requirement for a notice of intent to initiate litigation; deleting requirements for such notice; deleting a requirement for a written response to the notice of intent to initiate litigation; deleting requirements for such response; deleting a provision related to an award of reasonable attorney fees and costs for certain claims arising under an assignment agreement; deleting a provision related to an award of reasonable attorney fees and costs following a voluntary dismissal under certain circumstances; deleting a requirement for the court to stay proceedings under certain circumstances; providing an effective date.

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60 Be It Enacted by the Legislature of the State of Florida:

61
62 Section 1. Subsection (4) is added to section 627.428,
63 Florida Statutes, to read:

64 627.428 Attorney fees.—

65 (4) In an award of attorney fees under this section for a
66 claim arising under a property insurance policy, a strong
67 presumption is created that a lodestar fee is sufficient and
68 reasonable. Such presumption may be rebutted only in a rare and
69 exceptional circumstance with evidence that competent counsel
70 could not be retained in a reasonable manner.

71 Section 2. Paragraph (f) is added to subsection (5) of
72 section 627.7011, Florida Statutes, to read:

73 627.7011 Homeowners' policies; offer of replacement cost
74 coverage and law and ordinance coverage.—

75 (5) This section does not:

76 (f) Prohibit an insurer, notwithstanding paragraph (1)(a),
77 from providing limited coverage on a personal lines residential
78 property insurance policy by including a roof surface
79 reimbursement schedule. If included in the policy, a roof
80 surface reimbursement schedule must do all of the following:

81 1. Provide reimbursement for repair, replacement, and
82 installation based on the annual age of a roof surface type.

83 2. Provide full replacement coverage for any roof surface
84 type less than 10 years old.

85 3. Unless otherwise demonstrated to the office to be
86 actuarially justified, provide for reimbursement amounts of no
87 less than:

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- 88 a. Seventy percent for a metal roof type.
89 b. Forty percent for a concrete tile and clay tile roof
90 type.
91 c. Forty percent for a wood shake and wood shingle roof
92 type.
93 d. Twenty-five percent for all other roof types.
94 4. Include at the top of the schedule, in bold type no
95 smaller than 12 points, the following statement:

96
97 "PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO
98 PURCHASE COVERAGE ON YOUR ROOF ACCORDING TO A ROOF SURFACE
99 REIMBURSEMENT SCHEDULE. IF YOUR ROOF IS DAMAGED BY A COVERED
100 PERIL, YOU WILL RECEIVE A PAYMENT AMOUNT FOR YOUR ROOF ACCORDING
101 TO THE SCHEDULE BELOW. BE ADVISED THAT THIS MAY RESULT IN YOU
102 HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF.
103 PLEASE DISCUSS WITH YOUR INSURANCE AGENT."

- 104
105 5. Allow for all actuarially sound methods of s. 627.062 to
106 apply.
107 6. Be approved by the office.
108 7. Be provided to the insured with the policy documents at
109 issuance and renewal.

110
111 A roof surface reimbursement schedule may not be applied to a
112 roof if there is a total loss to a primary structure in
113 accordance with the valued policy law under s. 627.702 which is
114 caused by a covered peril.

115 Section 3. Section 627.70132, Florida Statutes, is amended
116 to read:

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117 627.70132 Notice of property insurance windstorm or
118 ~~hurricane~~ claim.—A claim, supplemental claim, or reopened claim
119 under an insurance policy that provides property insurance, as
120 defined in s. 624.604, ~~for loss or damage caused by the peril of~~
121 ~~windstorm or hurricane~~ is barred unless notice of the claim,
122 supplemental claim, or reopened claim is was given to the
123 insurer in accordance with the terms of the policy within 2
124 years ~~3~~ years after the date of loss ~~hurricane first made~~
125 ~~landfall or the windstorm caused the covered damage.~~ For
126 purposes of this section, the term "supplemental claim" or
127 "reopened claim" means any additional claim for recovery from
128 the insurer for losses ~~from the same hurricane or windstorm~~
129 ~~which~~ the insurer has previously adjusted pursuant to the
130 initial claim. This section does not affect any applicable
131 limitation on civil actions provided in s. 95.11 for claims,
132 supplemental claims, or reopened claims timely filed under this
133 section.

134 Section 4. Subsection (9) of section 627.7015, Florida
135 Statutes, is amended to read:

136 627.7015 Alternative procedure for resolution of disputed
137 property insurance claims.—

138 (9) For purposes of this section, the term "claim" refers
139 to any dispute between an insurer and a policyholder relating to
140 a material issue of fact other than a dispute:

141 (a) With respect to which the insurer has a reasonable
142 basis to suspect fraud;

143 (b) When, based on agreed-upon facts as to the cause of
144 loss, there is no coverage under the policy;

145 (c) With respect to which the insurer has a reasonable

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146 basis to believe that the policyholder has intentionally made a
147 material misrepresentation of fact which is relevant to the
148 claim, and the entire request for payment of a loss has been
149 denied on the basis of the material misrepresentation;

150 (d) With respect to which the amount in controversy is less
151 than \$500, unless the parties agree to mediate a dispute
152 involving a lesser amount; or

153 (e) With respect to a ~~windstorm or hurricane~~ loss that does
154 not comply with s. 627.70132.

155 Section 5. Section 627.70152, Florida Statutes, is created
156 to read:

157 627.70152 Suits arising under a property insurance policy.—

158 (1) APPLICATION.—This section applies to all suits under a
159 property insurance policy, including actions brought by an
160 assignee.

161 (2) DEFINITIONS.—As used in this section, the term:

162 (a) "Assignee" has the same meaning as in s. 627.7152.

163 (b) "Claimant" means an insured or assignee who is filing
164 suit under a property insurance policy.

165 (c) "Demand" means the specific amount alleged to be owed
166 by the insurer to the claimant under the property insurance
167 policy.

168 (d) "Demand-judgment quotient" means the quotient obtained
169 by dividing the judgment by the demand.

170 (e) "Incurred attorney fees" means the total amount of
171 attorney fees supported by sufficient evidence and determined by
172 the court to have been incurred by the claimant in bringing the
173 action.

174 (f) "Judgment" means damages recovered, if any, but does

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175 not include any amount awarded for attorney fees, costs, or
176 interest.

177 (3) NOTICE.—

178 (a) As a condition precedent to filing a suit under a
179 property insurance policy, a claimant must provide the insurer a
180 written notice of intent to initiate litigation in accordance
181 with this section. Such notice must be served by certified mail,
182 return receipt requested, or electronic delivery at least 60
183 days before filing suit. However, such notice may not be served
184 before the insurer has made a determination of coverage under s.
185 627.70131. An attorney or other representative of the claimant
186 who provides such notice must provide a copy of the notice to
187 the claimant. The notice and any copy must specify:

188 1. That the notice is being provided pursuant to this
189 section;
190 2. The alleged acts or omissions of the insurer giving rise
191 to the action;

192 3. The demand;
193 4. The amount of reasonable and necessary attorney fees
194 incurred by the claimant, to be calculated by multiplying the
195 number of hours actually worked on the claim as of the date of
196 the notice by the claimant's attorney by a reasonable hourly
197 rate; and

198 5. If provided by an attorney or other representative, that
199 a copy of the notice was provided to the claimant.

200 (b) As a precondition to filing suit, an assignee also
201 must:

202 1. Comply with s. 627.7152; and
203 2. Concurrent with the notice, provide the named insured,

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204 the insurer, and the assignor, if not the named insured, a
205 detailed written invoice or estimate of services, including
206 itemized information on equipment, materials, and supplies; the
207 number of labor hours; and, in the case of work performed, proof
208 that the work has been performed in accordance with accepted
209 industry standards.

210 (c) A notice of intent to initiate litigation must be
211 served within the time limits provided in s. 95.11 and is not
212 required if the action is a counterclaim. Service of a notice
213 tolls the time limits provided in s. 95.11 for 60 days if such
214 time limits will expire before the end of the 60-day notice
215 period.

216 (d) A court must dismiss without prejudice any action
217 relating to a claim for which a notice of intent to initiate
218 litigation is given as required by this subsection if such
219 action is commenced before the expiration of the 60-day notice
220 period, is brought by an insurer to whom notice was given, and
221 is against the claimant giving notice.

222 (4) ADMISSIBILITY OF NOTICE AND RESPONSE.—The notice
223 provided pursuant to subsection (3) and the submissions provided
224 pursuant to subparagraph (3)(b)2.:

225 (a) Are admissible as evidence in a civil action or an
226 alternative dispute resolution proceeding relating to the claim
227 for which the notice is given;

228 (b) Do not limit the evidence of attorney fees, damages, or
229 loss which may be offered at trial; and

230 (c) Do not relieve any obligation that an insured or
231 assignee has to give notice under any other provision of law.

232 (5) INSPECTION.—Within 30 days after an insurer receives

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233 notice pursuant to subsection (3), the insurer may send a
234 written request to the insured or assignee to inspect,
235 photograph, or evaluate, in a reasonable manner and at a
236 reasonable time, the property that is the subject of the claim.
237 If reasonably possible, the insurer must complete the
238 inspection, photography, and evaluation not later than 60 days
239 after the insurer receives the presuit notice. After completing
240 the inspection, the insurer must conduct an internal review by a
241 duly-qualified claims adjuster to fairly and promptly evaluate
242 the claim. This section does not limit any right provided in a
243 property insurance policy or contract to inspect property.

244 (6) ABATEMENT.—

245 (a) In addition to taking any other action allowed by an
246 insurance policy or a contract or by any other provision of law,
247 an insurer may file a motion to abate a suit under a property
248 insurance policy if the insurer:

249 1. Files the motion no later than the 30th day after the
250 insurer filed an original answer in the court in which the
251 action is pending; and

252 2. Did not receive notice required pursuant to subsection
253 (3) or requested an inspection pursuant to subsection (5) but
254 was not provided a reasonable opportunity to inspect,
255 photograph, or evaluate the property that is the subject of the
256 claim.

257 (b) The court shall abate the action if the court finds
258 that the insurer did not receive the notice required by
259 subsection (3) or requested an inspection pursuant to subsection
260 (5) but was not provided a reasonable opportunity to inspect,
261 photograph, or evaluate the property that is the subject of the

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262 claim.263 (c) The action is abated without a court order beginning on
264 the 11th day after the motion to abate is filed if the motion to
265 abate:266 1. Is verified and states that the insurer did not receive
267 the notice required by subsection (3) or requested an inspection
268 pursuant to subsection (5) but was not provided a reasonable
269 opportunity to inspect, photograph, or evaluate the property
270 that is the subject of the claim; and271 2. Is not controverted by an affidavit filed by the insured
272 or assignee within 10 days after the date the plea in abatement
273 is filed.274 (d) An affidavit filed pursuant to subparagraph (c)2. must
275 include as an attachment a copy of the written notice sent
276 pursuant to subsection (3) and state the date on which such
277 notice was given.278 (e) Abatement under this subsection continues until the
279 later of:280 1. Sixty days after the claimant provides notice to the
281 insurer in compliance with subsection (3); or282 2. Fifty days after the insurer completes the requested
283 inspection, photographing, or evaluating of the property
284 pursuant to subsection (5).285 (f) If an action is abated pursuant to this subsection, a
286 court may not compel during the abatement period participation
287 in mediation pursuant to s. 627.7015 or neutral evaluation
288 pursuant to s. 627.7074.

289 (7) ATTORNEY FEES.—

290 (a) Notwithstanding any other provision of law, in a suit

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291 arising under a residential or commercial property insurance
292 policy, attorney fees and costs may be recovered by a claimant
293 only pursuant to s. 57.105 and this subsection. Attorney fees
294 may be awarded to a claimant under this section as follows:

295 1. If the demand-judgment quotient is greater than or equal
296 to 0.8, the full amount of incurred attorney fees may be
297 awarded.

298 2. If the demand-judgment quotient is equal to or greater
299 than 0.2 but less than 0.8, the attorney fees must equal the
300 product of multiplying the incurred attorney fees by the demand-
301 judgment quotient.

302 3. If the demand-judgment quotient is less than 0.2,
303 attorney fees may not be awarded.

304 (b) If an insurer pleads and proves that it did not receive
305 notice that complies with subsection (3) and files such pleading
306 no later than the 30th day after the insurer files an original
307 answer in the court in which the action is pending, the court
308 may not award to the claimant any incurred attorney fees for
309 services rendered after the date on which the insurer files such
310 pleading with the court.

311 (c) If a claimant commences an action in any court of this
312 state based upon or including the same claim against the same
313 adverse party that such insured or assignee has previously
314 voluntarily dismissed in a court of this state, the court may
315 order the insured or assignee to pay the attorney fees and costs
316 of the adverse party resulting from the action previously
317 voluntarily dismissed. The court shall stay the proceedings in
318 the subsequent action until the insured or assignee has complied
319 with the order.

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320 Section 6. Paragraphs (d) through (g) of subsection (1) and
321 subsections (9) and (10) of section 627.7152, Florida Statutes,
322 are amended to read:

323 627.7152 Assignment agreements.—

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

325 ~~(d) "Disputed amount" means the difference between the
326 assignee's presuit settlement demand and the insurer's presuit
327 settlement offer.~~

328 ~~(e) "Judgment obtained" means damages recovered, if any,
329 but does not include any amount awarded for attorney fees,
330 costs, or interest.~~

331 ~~(f) "Presuit settlement demand" means the demand made by
332 the assignee in the written notice of intent to initiate
333 litigation as required by paragraph (9)(a).~~

334 ~~(g) "Presuit settlement offer" means the offer made by the
335 insurer in its written response to the notice of intent to
336 initiate litigation as required by paragraph (9)(b).~~

337 ~~(9)(a) An assignee must provide the named insured, insurer,
338 and the assignor, if not the named insured, with a written
339 notice of intent to initiate litigation before filing suit under
340 the policy. Such notice must be served by certified mail, return
341 receipt requested, or electronic delivery at least 10 business
342 days before filing suit, but may not be served before the
343 insurer has made a determination of coverage under s. 627.70131.
344 The notice must specify the damages in dispute, the amount
345 claimed, and a presuit settlement demand. Concurrent with the
346 notice, and as a precondition to filing suit, the assignee must
347 provide the named insured, insurer, and the assignor, if not the
348 named insured, a detailed written invoice or estimate of~~

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349 services, including itemized information on equipment,
350 materials, and supplies; the number of labor hours; and, in the
351 case of work performed, proof that the work has been performed
352 in accordance with accepted industry standards.

353 (b) An insurer must respond in writing to the notice within
354 10 business days after receiving the notice specified in
355 paragraph (a) by making a presuit settlement offer or requiring
356 the assignee to participate in appraisal or other method of
357 alternative dispute resolution under the policy. An insurer must
358 have a procedure for the prompt investigation, review, and
359 evaluation of the dispute stated in the notice and must
360 investigate each claim contained in the notice in accordance
361 with the Florida Insurance Code.

362 (10) Notwithstanding any other provision of law, in a suit
363 related to an assignment agreement for post-loss claims arising
364 under a residential or commercial property insurance policy,
365 attorney fees and costs may be recovered by an assignee only
366 under s. 57.105 and this subsection.

367 (a) If the difference between the judgment obtained by the
368 assignee and the presuit settlement offer is:

369 1. Less than 25 percent of the disputed amount, the insurer
370 is entitled to an award of reasonable attorney fees.

371 2. At least 25 percent but less than 50 percent of the
372 disputed amount, no party is entitled to an award of attorney
373 fees.

374 3. At least 50 percent of the disputed amount, the assignee
375 is entitled to an award of reasonable attorney fees.

376 (b) If the insurer fails to inspect the property or provide
377 written or oral authorization for repairs within 7 calendar days

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378 after the first notice of loss, the insurer waives its right to
379 an award of attorney fees under this subsection. If the failure
380 to inspect the property or provide written or oral authorization
381 for repairs is the result of an event for which the Governor had
382 declared a state of emergency under s. 252.36, factors beyond
383 the control of the insurer which reasonably prevented an
384 inspection or written or oral authorization for repairs, or the
385 named insured's failure or inability to allow an inspection of
386 the property after a request by the insurer, the insurer does
387 not waive its right to an award of attorney fees under this
388 subsection.

389 (e) If an assignee commences an action in any court of this
390 state based upon or including the same claim against the same
391 adverse party that such assignee has previously voluntarily
392 dismissed in a court of this state, the court may order the
393 assignee to pay the attorney fees and costs of the adverse party
394 resulting from the action previously voluntarily dismissed. The
395 court shall stay the proceedings in the subsequent action until
396 the assignee has complied with the order.

397 Section 7. This act shall take effect July 1, 2021.