

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 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 relating to certain claims arising under an
 13 assignment agreement; requiring the Office of
 14 Insurance Regulation to require insurers to report
 15 specified data; providing applicability; amending s.
 16 627.422, 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, rescission fee, or
 50 cancellation fee, by having the assignor sign a notice within 7

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 56 rescinded.

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

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

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

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

75 5. Relate only to work to be performed by the assignee for

76 services to protect, repair, restore, or replace dwellings or
 77 structures or to mitigate against further damage to such
 78 property.

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

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

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 statements 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 more than the
 118 applicable deductible under the policy unless the assignor chose
 119 to have additional work performed at the assignor's own expense.
- 120 (d) Must, as a condition precedent to filing suit under
 121 the policy, and if required by the insurer, submit to
 122 examinations under oath and recorded statements conducted by the
 123 insurer or the insurer's representative which are reasonably
 124 necessary, based on the scope of the work and the complexity of
 125 the claim, and limited to matters related to the services

126 provided, the cost of the services, and the assignment.

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

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

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

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

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

175 (8) Notwithstanding any other law to the contrary, in a

176 proceeding related to an assignment agreement for post-loss
177 claims arising under a residential property insurance policy,
178 attorney fees and costs may only be recovered by an assignee
179 under s. 57.105 and this subsection.

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

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

201 inability to allow an inspection of the property after a request
 202 by the insurer, the insurer does not waive its right to an award
 203 of attorney fees under this subsection.

204 (9) This section does not apply to:

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

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

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

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

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

224 Section 2. Section 627.422, Florida Statutes, is amended
 225 to read:

226 627.422 Assignment of policies or post-loss benefits.—A
 227 policy may be assignable, or not assignable, as provided by its
 228 terms.

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

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

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