

**By** 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 cash value coverage for roofs  
17                  under certain circumstances; amending s. 627.70132,  
18                  F.S.; revising property insurance coverages for which  
19                  a notice of claim must be given to the insurer within  
20                  a specified timeframe; revising the timeframe for  
21                  providing notices of property insurance claims;  
22                  revising the definitions of the terms "supplemental  
23                  claim" and "reopened claim"; amending s. 627.7015,  
24                  F.S.; conforming a provision to changes made by the  
25                  act; creating s. 627.70152, F.S.; providing  
26                  applicability; defining terms; requiring notice of  
27                  intent to initiate litigation; specifying requirements  
28                  for such notice; specifying an assignee's presuit  
29                  obligations; specifying the timeframe within which a

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30 notice of intent to initiate litigation must be  
31 served; requiring dismissal of certain actions under  
32 specified circumstances; specifying the admissibility  
33 of certain evidence; providing construction;  
34 authorizing an insurer to request to inspect,  
35 photograph, or evaluate certain property; specifying  
36 requirements for such inspections, photographs, and  
37 evaluations; authorizing motions to abate suits under  
38 property insurance policies; specifying conditions for  
39 abatement; providing for an award of attorney fees for  
40 certain claims under specified circumstances;  
41 providing for an award of attorney fees following a  
42 voluntary dismissal under certain circumstances;  
43 requiring the court to stay proceedings under certain  
44 circumstances; amending s. 627.7152, F.S.; deleting  
45 definitions; deleting a requirement for a notice of  
46 intent to initiate litigation; deleting requirements  
47 for such notice; deleting a requirement for a written  
48 response to the notice of intent to initiate  
49 litigation; deleting requirements for such response;  
50 deleting a provision related to an award of reasonable  
51 attorney fees and costs for certain claims arising  
52 under an assignment agreement; deleting a provision  
53 related to an award of reasonable attorney fees and  
54 costs following a voluntary dismissal under certain  
55 circumstances; deleting a requirement for the court to  
56 stay proceedings under certain circumstances;  
57 providing an effective date.  
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59 Be It Enacted by the Legislature of the State of Florida:

60  
61       Section 1. Subsection (4) is added to section 627.428,  
62 Florida Statutes, to read:

63       627.428 Attorney fees.—

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

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

72       627.7011 Homeowners' policies; offer of replacement cost  
73 coverage and law and ordinance coverage.—

74       (5) This section does not:

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

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

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

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

87       a. Seventy percent for a metal roof type.

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88       b. Forty percent for a concrete tile and clay tile roof  
89       type.

90       c. Forty percent for a wood shake and wood shingle roof  
91       type.

92       d. Twenty-five percent for all other roof types.

93       4. Include at the top of the schedule, in bold type no  
94       smaller than 12 points, the following statement:

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

102       PLEASE DISCUSS WITH YOUR INSURANCE AGENT."

104       5. Allow for all actuarially sound methods of s. 627.062 to  
105       apply.

106       6. Be approved by the office.

107       7. Be provided to the insured with the policy documents at  
108       issuance and renewal.

110       Cash value coverage may not apply to a roof if there is a total  
111       loss to a primary structure in accordance with the valued policy  
112       law under s. 627.702 which is caused by a covered peril.

113       Section 3. Section 627.70132, Florida Statutes, is amended  
114       to read:

115       627.70132 Notice of property insurance windstorm or  
116       hurricane claim.—A claim, supplemental claim, or reopened claim

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

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

134       627.7015 Alternative procedure for resolution of disputed  
135 property insurance claims.—

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

139           (a) With respect to which the insurer has a reasonable  
140 basis to suspect fraud;

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

143           (c) With respect to which the insurer has a reasonable  
144 basis to believe that the policyholder has intentionally made a  
145 material misrepresentation of fact which is relevant to the

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146 claim, and the entire request for payment of a loss has been  
147 denied on the basis of the material misrepresentation;

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

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

153 Section 5. Section 627.70152, Florida Statutes, is created  
154 to read:

155 627.70152 Suits arising under a property insurance policy.—

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

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

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

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

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

166 (d) "Demand-judgment quotient" means the quotient obtained  
167 by dividing the judgment by the demand.

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

172 (f) "Judgment" means damages recovered, if any, but does  
173 not include any amount awarded for attorney fees, costs, or  
174 interest.

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175        (3) NOTICE.—

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

186        1. That the notice is being provided pursuant to this  
187 section;

188        2. The alleged acts or omissions of the insurer giving rise  
189 to the action;

190        3. The demand;

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

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

198        (b) As a precondition to filing suit, an assignee also  
199 must:

200        1. Comply with s. 627.7152; and

201        2. Concurrent with the notice, provide the named insured,  
202 the insurer, and the assignor, if not the named insured, a  
203 detailed written invoice or estimate of services, including

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204 itemized information on equipment, materials, and supplies; the  
205 number of labor hours; and, in the case of work performed, proof  
206 that the work has been performed in accordance with accepted  
207 industry standards.

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

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

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

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

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

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

230 (5) INSPECTION.—Within 30 days after an insurer receives  
231 notice pursuant to subsection (3), the insurer may send a  
232 written request to the insured or assignee to inspect,

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

242 (6) ABATEMENT.-

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

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

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

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

261 (c) The action is abated without a court order beginning on

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262 the 11th day after the motion to abate is filed if the motion to  
263 abate:

264 1. Is verified and states that the insurer did not receive  
265 the notice required by subsection (3) or requested an inspection  
266 pursuant to subsection (5) but was not provided a reasonable  
267 opportunity to inspect, photograph, or evaluate the property  
268 that is the subject of the claim; and

269 2. Is not controverted by an affidavit filed by the insured  
270 or assignee within 10 days after the date the plea in abatement  
271 is filed.

272 (d) An affidavit filed pursuant to subparagraph (c)2. must  
273 include as an attachment a copy of the written notice sent  
274 pursuant to subsection (3) and state the date on which such  
275 notice was given.

276 (e) Abatement under this subsection continues until the  
277 later of:

278 1. Sixty days after the claimant provides notice to the  
279 insurer in compliance with subsection (3); or

280 2. Fifty days after the insurer completes the requested  
281 inspection, photographing, or evaluating of the property  
282 pursuant to subsection (5).

283 (f) If an action is abated pursuant to this subsection, a  
284 court may not compel during the abatement period participation  
285 in mediation pursuant to s. 627.7015 or neutral evaluation  
286 pursuant to s. 627.7074.

287 (7) ATTORNEY FEES.—

288 (a) Notwithstanding any other provision of law, in a suit  
289 arising under a residential or commercial property insurance  
290 policy, attorney fees and costs may be recovered by a claimant

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291 only pursuant to s. 57.105 and this subsection. Attorney fees  
292 may be awarded to a claimant under this section as follows:

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

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

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

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

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

318 Section 6. Paragraphs (d) through (g) of subsection (1) and  
319 subsections (9) and (10) of section 627.7152, Florida Statutes,

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320 are amended to read:

321 627.7152 Assignment agreements.—

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

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

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

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

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

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

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349 ~~case of work performed, proof that the work has been performed  
350 in accordance with accepted industry standards.~~

351 (b) An insurer must respond in writing to the notice within  
352 10 business days after receiving the notice specified in  
353 paragraph (a) by making a presuit settlement offer or requiring  
354 the assignee to participate in appraisal or other method of  
355 alternative dispute resolution under the policy. An insurer must  
356 have a procedure for the prompt investigation, review, and  
357 evaluation of the dispute stated in the notice and must  
358 investigate each claim contained in the notice in accordance  
359 with the Florida Insurance Code.

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

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

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

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

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

374 (b) If the insurer fails to inspect the property or provide  
375 written or oral authorization for repairs within 7 calendar days  
376 after the first notice of loss, the insurer waives its right to  
377 an award of attorney fees under this subsection. If the failure

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

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

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