

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:

95
 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."

103
 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.

109
 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 ~~ease 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.