

1                   A bill to be entitled  
2           An act relating to insurance assignment agreements;  
3           creating s. 627.7152, F.S.; providing definitions;  
4           providing requirements and limitations for property  
5           insurance assignment agreements; providing a burden of  
6           proof; providing that an assignment agreement does not  
7           affect managed repair arrangements under a property  
8           insurance policy; providing that an assignment  
9           agreement does not confer or create authority to  
10          adjust, negotiate, or settle a claim without  
11          authorization under part VI of chapter 626; providing  
12          that an acceptance by an assignee of an assignment  
13          agreement is a waiver by the assignee and its  
14          subcontractors of certain claims against an insured;  
15          specifying an insured's payment obligations under an  
16          assignment agreement; requiring notice of intent to  
17          initiate litigation; specifying requirements for such  
18          notice; requiring a written response to the notice of  
19          intent to initiate litigation; specifying requirements  
20          for such response; providing for an award of  
21          reasonable attorney fees for certain claims arising  
22          under an assignment agreement; providing for an award  
23          of reasonable attorney fees following a voluntary  
24          dismissal under certain circumstances; requiring the  
25          court to stay proceedings under certain circumstances;

26 directing the Office of Insurance Regulation to  
27 require insurers to report specified data; requiring  
28 the Financial Services Commission to adopt rules;  
29 providing applicability; creating s. 627.7153, F.S.;  
30 defining the term "assignment agreement"; authorizing  
31 insurers to make available property insurance policies  
32 restricting the assignment of post-loss benefits under  
33 certain conditions; requiring annual notice of  
34 coverage options; requiring a written or electronic  
35 waiver under certain circumstances; requiring the  
36 office to approve a waiver form; providing  
37 applicability; amending s. 627.422, F.S.; providing  
38 that residential or commercial property insurance  
39 policies may not prohibit the assignment of post-lost  
40 benefits; providing an exception; prohibiting Citizens  
41 Property Insurance Corporation from implementing rate  
42 changes for certain policies; providing an exception;  
43 requiring certain rate filings to include specified  
44 information; requiring the corporation to inform  
45 policyholders of certain information; providing  
46 severability; providing an effective date.

47  
48 Be It Enacted by the Legislature of the State of Florida:

49  
50 Section 1. Section 627.7152, Florida Statutes, is created

51 to read:

52 627.7152 Assignment agreements.-

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

54 (a) "Assignee" means a person who is assigned post-loss  
55 benefits through an assignment agreement.

56 (b) "Assignment agreement" means any instrument by which  
57 post-loss benefits under a residential property insurance policy  
58 or commercial property insurance policy, as that term is defined  
59 in s. 627.0625(1), are assigned or transferred, or acquired in  
60 any manner, in whole or in part, to or from a person providing  
61 services to protect, repair, restore, or replace property or to  
62 mitigate against further damage to the property.

63 (c) "Assignor" means a person who assigns post-loss  
64 benefits under a residential property insurance policy or  
65 commercial property insurance policy to another person through  
66 an assignment agreement.

67 (d) "Disputed amount" means the difference between the  
68 assignee's presuit settlement demand and the insurer's presuit  
69 settlement offer.

70 (e) "Judgment obtained" means damages recovered, if any,  
71 but does not include any amount awarded for attorney fees,  
72 costs, or interest.

73 (f) "Presuit settlement demand" means the demand made by  
74 the assignee in the written notice of intent to initiate  
75 litigation as required by paragraph (9) (a).

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

79 (2) (a) An assignment agreement must:

80 1. Be in writing and executed by and between the assignor  
81 and the assignee.

82 2. Contain a provision that allows the assignor to rescind  
83 the assignment agreement without a penalty or fee by submitting  
84 a written notice of rescission signed by the assignor to the  
85 assignee within 14 days after the execution of the agreement, at  
86 least 30 days after the date work on the property is scheduled  
87 to commence if the assignee has not substantially performed, or  
88 at least 30 days after the execution of the agreement if the  
89 agreement does not contain a commencement date and the assignee  
90 has not begun substantial work on the property.

91 3. Contain a provision requiring the assignee to provide a  
92 copy of the executed assignment agreement to the insurer within  
93 3 business days after the date on which the assignment agreement  
94 is executed or the date on which work begins, whichever is  
95 earlier. Delivery of the copy of the assignment agreement to the  
96 insurer may be made:

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

100 b. To the location designated for receipt of such

101 agreements as specified in the policy.

102 4. Contain a written, itemized, per-unit cost estimate of  
103 the services to be performed by the assignee.

104 5. Relate only to work to be performed by the assignee for  
105 services to protect, repair, restore, or replace a dwelling or  
106 structure or to mitigate against further damage to such  
107 property.

108 6. Contain the following notice in 18-point uppercase and  
109 boldfaced type:

110  
111 YOU ARE AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR  
112 INSURANCE POLICY TO A THIRD PARTY, WHICH MAY RESULT IN  
113 LITIGATION AGAINST YOUR INSURER. PLEASE READ AND UNDERSTAND THIS  
114 DOCUMENT BEFORE SIGNING IT. YOU HAVE THE RIGHT TO CANCEL THIS  
115 AGREEMENT WITHOUT PENALTY WITHIN 14 DAYS AFTER THE DATE THIS  
116 AGREEMENT IS EXECUTED, AT LEAST 30 DAYS AFTER THE DATE WORK ON  
117 THE PROPERTY IS SCHEDULED TO COMMENCE IF THE ASSIGNEE HAS NOT  
118 SUBSTANTIALLY PERFORMED, OR AT LEAST 30 DAYS AFTER THE EXECUTION  
119 OF THE AGREEMENT IF THE AGREEMENT DOES NOT CONTAIN A  
120 COMMENCEMENT DATE AND THE ASSIGNEE HAS NOT BEGUN SUBSTANTIAL  
121 WORK ON THE PROPERTY. HOWEVER, YOU ARE OBLIGATED FOR PAYMENT OF  
122 ANY CONTRACTED WORK PERFORMED BEFORE THE AGREEMENT IS RESCINDED.  
123 THIS AGREEMENT DOES NOT CHANGE YOUR OBLIGATION TO PERFORM THE  
124 DUTIES REQUIRED UNDER YOUR PROPERTY INSURANCE POLICY.

125

126        7. Contain a provision requiring the assignee to indemnify  
127 and hold harmless the assignor from all liabilities, damages,  
128 losses, and costs, including, but not limited to, attorney fees,  
129 should the policy subject to the assignment agreement prohibit,  
130 in whole or in part, the assignment of benefits.

131        (b) An assignment agreement may not contain:

132        1. A penalty or fee for rescission under subparagraph

133 (a)2.;

134        2. A check or mortgage processing fee;

135        3. A penalty or fee for cancellation of the agreement; or

136        4. An administrative fee.

137        (c) If an assignor acts under an urgent or emergency  
138 circumstance to protect property from damage and executes an  
139 assignment agreement to protect, repair, restore, or replace  
140 property or to mitigate against further damage to the property,  
141 an assignee may not receive an assignment of post-loss benefits  
142 under a residential property insurance policy in excess of the  
143 greater of \$3,000 or 1 percent of the Coverage A limit under  
144 such policy. For purposes of this paragraph, the term "urgent or  
145 emergency circumstance" means a situation in which a loss to  
146 property, if not addressed immediately, will result in  
147 additional damage until measures are completed to prevent such  
148 damage.

149        (d) An assignment agreement that does not comply with this  
150 subsection is invalid and unenforceable.

151 (3) In a claim arising under an assignment agreement, an  
152 assignee has the burden to demonstrate that the insurer is not  
153 prejudiced by the assignee's failure to:

154 (a) Maintain records of all services provided under the  
155 assignment agreement.

156 (b) Cooperate with the insurer in the claim investigation.

157 (c) Provide the insurer with requested records and  
158 documents related to the services provided, and permit the  
159 insurer to make copies of such records and documents.

160 (d) Deliver a copy of the executed assignment agreement to  
161 the insurer within 3 business days after executing the  
162 assignment agreement or work has begun, whichever is earlier.

163 (4) An assignee:

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

167 (b) Must perform the work in accordance with accepted  
168 industry standards.

169 (c) May not seek payment from the assignor exceeding the  
170 applicable deductible under the policy unless the assignor has  
171 chosen to have additional work performed at the assignor's own  
172 expense.

173 (d) Must, as a condition precedent to filing suit under  
174 the policy, and, if required by the insurer, submit to  
175 examinations under oath and recorded statements conducted by the

176 insurer or the insurer's representative that are reasonably  
177 necessary, based on the scope of the work and the complexity of  
178 the claim, which examinations and recorded statements must be  
179 limited to matters related to the services provided, the cost of  
180 the services, and the assignment agreement.

181 (e) Must, as a condition precedent to filing suit under  
182 the policy, and, if required by the insurer, participate in  
183 appraisal or other alternative dispute resolution methods in  
184 accordance with the terms of the policy.

185 (5) An assignment agreement and this section do not modify  
186 or eliminate any term, condition, or defense relating to any  
187 managed repair arrangement provided in the policy.

188 (6) An assignment agreement does not transfer or create  
189 any authority to adjust, negotiate, or settle any portion of a  
190 claim to a person or entity not authorized to adjust, negotiate,  
191 or settle a claim on behalf of an assignor or a claimant under  
192 part VI of chapter 626.

193 (7) (a) Notwithstanding any other provision of law, and  
194 except as provided in paragraph (b), acceptance by an assignee  
195 of an assignment agreement is a waiver by the assignee and its  
196 subcontractors of claims against a named insured for payments  
197 arising from the assignment agreement. The assignee and its  
198 subcontractors may not collect or attempt to collect money from  
199 an insured, maintain any action at law against an insured, claim  
200 a lien on the real property of an insured, or report an insured

201 to a credit agency for payments arising from the assignment  
202 agreement. Such waiver remains in effect after the assignment  
203 agreement is rescinded by the assignor or after a determination  
204 that the assignment agreement is invalid.

205 (b) A named insured is responsible for the payment of all  
206 of the following:

207 1. Any deductible amount due under the policy.

208 2. Any betterment ordered and performed that is approved  
209 by the named insured.

210 3. Any contracted work performed before the assignment  
211 agreement is rescinded.

212 (8) The assignee shall indemnify and hold harmless the  
213 assignor from all liabilities, damages, losses, and costs,  
214 including, but not limited to, attorney fees, should the policy  
215 subject to the assignment agreement prohibit, in whole or in  
216 part, the assignment of benefits.

217 (9) (a) An assignee must provide the named insured,  
218 insurer, and the assignor, if not the named insured, with a  
219 written notice of intent to initiate litigation before filing  
220 suit under the policy. Such notice must be served by certified  
221 mail, return receipt requested, or electronic delivery at least  
222 10 business days before filing suit, but may not be served  
223 before the insurer has made a determination of coverage under s.  
224 627.70131. The notice must specify the damages in dispute, the  
225 amount claimed, and a presuit settlement demand. Concurrent with

226 the notice, and as a precondition to filing suit, the assignee  
227 must provide the named insured, insurer, and the assignor, if  
228 not the named insured, a detailed written invoice or estimate of  
229 services, including itemized information on equipment,  
230 materials, and supplies; the number of labor hours; and, in the  
231 case of work performed, proof that the work has been performed  
232 in accordance with accepted industry standards.

233 (b) An insurer must respond in writing to the notice  
234 within 10 business days after receiving the notice specified in  
235 paragraph (a) by making a presuit settlement offer or requiring  
236 the assignee to participate in appraisal or other method of  
237 alternative dispute resolution under the policy. An insurer must  
238 have a procedure for the prompt investigation, review, and  
239 evaluation of the dispute stated in the notice and must  
240 investigate each claim contained in the notice in accordance  
241 with the Florida Insurance Code.

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

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

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

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

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

256 (b) If the insurer fails to inspect the property or  
257 provide written or oral authorization for repairs within 7  
258 calendar days after the first notice of loss, the insurer waives  
259 its right to an award of attorney fees under this subsection. If  
260 the failure to inspect the property or provide written or oral  
261 authorization for repairs is the result of an event for which  
262 the Governor had declared a state of emergency under s. 252.36,  
263 factors beyond the control of the insurer which reasonably  
264 prevented an inspection or written or oral authorization for  
265 repairs, or the named insured's failure or inability to allow an  
266 inspection of the property after a request by the insurer, the  
267 insurer does not waive its right to an award of attorney fees  
268 under this subsection.

269 (c) If an assignee commences an action in any court of  
270 this state based upon or including the same claim against the  
271 same adverse party that such assignee has previously voluntarily  
272 dismissed in a court of this state, the court may order the  
273 assignee to pay the attorney fees and costs of the adverse party  
274 resulting from the action previously voluntarily dismissed. The  
275 court shall stay the proceedings in the subsequent action until

276 | the assignee has complied with the order.

277 | (11) This section does not apply to:

278 | (a) An assignment, transfer, or conveyance granted to a  
279 | subsequent purchaser of the property with an insurable interest  
280 | in the property following a loss;

281 | (b) A power of attorney under chapter 709 that grants to a  
282 | management company, family member, guardian, or similarly  
283 | situated person of an insured the authority to act on behalf of  
284 | an insured as it relates to a property insurance claim; or

285 | (c) Liability coverage under a property insurance policy.

286 | (12) The office shall require each insurer to report by  
287 | January 30, 2022, and each year thereafter data on each  
288 | residential and commercial property insurance claim paid in the  
289 | prior calendar year under an assignment agreement. The Financial  
290 | Services Commission shall adopt by rule a list of the data  
291 | required, which must include specific data about claims  
292 | adjustment and settlement timeframes and trends, grouped by  
293 | whether litigated or not litigated and by loss adjustment  
294 | expenses.

295 | (13) This section applies to an assignment agreement  
296 | executed on or after July 1, 2019.

297 | Section 2. Section 627.7153, Florida Statutes, is created  
298 | to read:

299 | 627.7153 Policies restricting assignment of post-loss  
300 | benefits under a property insurance policy.-

301 (1) As used in this section, the term "assignment  
302 agreement" has the same meaning as provided in s. 627.7152.

303 (2) An insurer may make available a policy that restricts  
304 in whole or in part an insured's right to execute an assignment  
305 agreement only if all of the following conditions are met:

306 (a) The insurer makes available to the insured or  
307 potential insured at the same time the same coverage under a  
308 policy that does not restrict the right to execute an assignment  
309 agreement.

310 (b) Each restricted policy is available at a lower cost  
311 than the unrestricted policy.

312 (c) The policy prohibiting assignment in whole is  
313 available at a lower cost than any policy prohibiting assignment  
314 in part.

315 (d) Each restricted policy include on its face the  
316 following notice in 18-point uppercase and boldfaced type:

317  
318 THIS POLICY DOES NOT ALLOW THE UNRESTRICTED ASSIGNMENT OF POST-  
319 LOSS INSURANCE BENEFITS. BY SELECTING THIS POLICY, YOU WAIVE  
320 YOUR RIGHT TO FREELY ASSIGN OR TRANSFER THE POST-LOSS PROPERTY  
321 INSURANCE BENEFITS AVAILABLE UNDER THIS POLICY TO A THIRD PARTY  
322 OR TO OTHERWISE FREELY ENTER INTO AN ASSIGNMENT AGREEMENT AS THE  
323 TERM IS DEFINED IN SECTION 627.7152 OF THE FLORIDA STATUTES.

324  
325 (3) The insurer shall notify the insured at least annually

326 of the coverage options the insurer makes available under this  
 327 section. Such notice must be part of and attached to the notice  
 328 of premium.

329 (4) A named insured must reject a fully assignable policy  
 330 in writing or electronically. The rejection of a fully  
 331 assignable policy shall be made on a form approved by the  
 332 office. The form must state that the policy restricts the  
 333 assignment of benefits. The heading of the form shall be in 18-  
 334 point uppercase and boldfaced type and state:

335  
 336 YOU ARE ELECTING TO PURCHASE AN INSURANCE POLICY THAT RESTRICTS  
 337 THE ASSIGNMENT OF BENEFITS UNDER THE POLICY IN WHOLE OR IN PART.  
 338 PLEASE READ CAREFULLY.

339  
 340 (5) This section applies to a policy issued or renewed on  
 341 or after July 1, 2019.

342 Section 3. Section 627.422, Florida Statutes, is amended  
 343 to read:

344 627.422 Assignment of policies or post-loss benefits.—A  
 345 policy may be assignable, or not assignable, as provided by its  
 346 terms. Any such assignment shall entitle the insurer to deal  
 347 with the assignee as the owner or pledgee of the policy in  
 348 accordance with the terms of the assignment, until the insurer  
 349 has received at its home office written notice of termination of  
 350 the assignment or pledge or written notice by or on behalf of

351 some other person claiming some interest in the policy in  
352 conflict with the assignment.

353 (1) LIFE OR HEALTH INSURANCE POLICIES.—Subject to its  
354 terms relating to assignability, any life or health insurance  
355 policy under the terms of which the beneficiary may be changed  
356 upon the sole request of the policyowner may be assigned either  
357 by pledge or transfer of title, by an assignment executed by the  
358 policyowner alone and delivered to the insurer, whether or not  
359 the pledgee or assignee is the insurer. ~~Any such assignment~~  
360 ~~shall entitle the insurer to deal with the assignee as the owner~~  
361 ~~or pledgee of the policy in accordance with the terms of the~~  
362 ~~assignment, until the insurer has received at its home office~~  
363 ~~written notice of termination of the assignment or pledge or~~  
364 ~~written notice by or on behalf of some other person claiming~~  
365 ~~some interest in the policy in conflict with the assignment.~~

366 (2) POST-LOSS BENEFITS UNDER CERTAIN PROPERTY INSURANCE  
367 POLICIES.—A residential or commercial property insurance policy  
368 may not prohibit the assignment of post-loss benefits unless it  
369 complies with s. 627.7153.

370 Section 4. Citizens Property Insurance Corporation may not  
371 implement rate changes in 2019 for DP-3 and HO-3 policies unless  
372 the rate filing reflects projected rate savings from this act.  
373 Such rate filing must include an exhibit demonstrating the  
374 impact of this act on indicated rates for DP-3 and HO-3  
375 policies. Citizens Property Insurance Corporation shall provide

376 | policyholders with details on the projected rate savings from  
377 | this act.

378 |       Section 5. If any provision of this act or its application  
379 | to any person or circumstance is held invalid, the invalidity  
380 | does not affect the remaining provisions or applications of the  
381 | act which can be given effect without the invalid provision or  
382 | application, and to this end the provisions of this act are  
383 | severable.

384 |       Section 6. This act shall take effect July 1, 2019.