

HB 7065 - Assignment of Benefits

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House Bill 7065, relating to insurance assignment agreements, passed the Florida Legislature on April 24, 2019 and was signed into law by Governor Ron DeSantis on May 23, 2019.

The bill is effective July 1, 2019 – except for ss. 627.7152(10), F. S. which became effective on May 24, 2019 with the signing of HB 337.

- The bill requires that assignment agreements:
 - Contain a provision allowing the assignor to rescind the agreement without penalty or fee within 14 business days.
 - Contain a provision requiring that the assignee provide the insurer with a copy of the executed agreement within 3 business days after the execution of the agreement or work has begun, whichever is earlier.
 - Include a written, itemized, per-unit cost estimate of services to be performed.
 - Limit the use assignment agreements to \$3,000 or 1% of Coverage A under urgent or emergency circumstances.
 - Prohibits assignee from charging fees or penalties for mortgage processing, rescission or cancellation of the agreement, or administrative fees to insureds.

- The bill requires that an assignee has the burden to demonstrate that the insurer is not prejudiced if the assignee fails to:
 - Maintain records of all services provided under the agreement.
 - Cooperate with the insurer in the claim investigation.
 - Provide the insurer with requested records and documents.
 - Deliver a copy of the executed agreement within 3 business days or work has begun, whichever is earlier.
- The bill requires, as a condition precedent to filing suit, that assignees must submit to Examinations Under Oath, participate in appraisal or other alternative dispute resolution methods.

The bill states that attorney fees may only be recovered by an assignee under s. 57.1045, F.S. or under the provisions outlines below:

- An assignee must give notice prior to filing a lawsuit and make a pre-suit demand.
- The insurer must respond in writing to the notice with a pre-suit settlement offer within 10 business days of receipt of the demand.
- Fees shall be awarded as follows if the different between the judgement obtained by the assignee and the pre-suit settlement offer is:
 - Less than 25 percent of the disputed amount, the insurer is entitled to an award of reasonable attorney fees.
 - At least 25 percent but less than 50 percent of the disputed amount, no party is entitled to an award of attorney fees.
 - At least 50 percent of the disputed amount, the assignee is entitled to an award of reasonable attorney fees.
- If the insurer fails to inspect or provide authorization for repairs within 7 calendar days after the first notice of loss, the insurer waives its right to an award of attorney fees.

- Insurers may make available a policy that restricts in whole or in part an insured's right to execute an assignment agreement if the following conditions are met:
 - Must make available a policy that does not restrict post-loss assignment agreements.
 - Restricted policies are available at a lower cost.
 - The insurer notifies the insured annually of the coverage options available for post-loss assignment agreements.
 - The insured must reject a fully assignable policy in writing or electronically.

- HB 7065 provides that Citizens may not implement a rate change in 2019 for HO-3 and DP-3 policies unless the rate filing reflects projected savings from the bill.
- The bill requires that the rate filing include an exhibit demonstrating the impact of the bill on the indicated rates for HO-3 and DP-3 policies.
- The bill also requires that Citizens provide policyholders with details on the projected rate savings from the bill.

CS/CS/HB 7065 - Insurance Assignment Agreements			
Section	Title	Lines	Requirements
Section 1	Assignment Agreements - Definitions	50-55	Creates 627.7152, F.S. related to assignment agreements. The term "Assignee" means a person who is assigned post-loss benefits through an assignment agreement.
Section 1	Assignment Agreements - Definitions	56-62	The term "Assignment agreement" means any instrument by which post-loss benefits under a residential property insurance policy or commercial property insurance policy, as that term is defined in s. 627.0625(1), are assigned or transferred, or acquired in any manner, in whole or in part, to or from a person providing services to protect, repair, restore, or replace property or to mitigate against further damage to the property.
Section 1	Assignment Agreements - Definitions	63-66	The term "Assignor" means a person who assigns post-loss benefits under a residential property insurance policy or commercial property insurance policy to another person through an assignment agreement.
Section 1	Assignment Agreements - Definitions	67-69	The term "Disputed amount" means the difference between the assignee's presuit settlement demand and the insurer's presuit settlement offer.
Section 1	Assignment Agreements - Definitions	70-72	The term "Judgment obtained" means damages recovered, if any, but does not include any amount awarded for attorney fees, costs, or interest.
Section 1	Assignment Agreements - Definitions	73-75	The term "Presuit settlement demand" means the demand made by the assignee in the written notice of intent to initiate litigation as required by paragraph (9)(a).
Section 1	Assignment agreement - Definitions	76-78	The term "Presuit settlement offer" means the offer made by the 76 insurer in its written response to the notice of intent to 77 initiate litigation as required by paragraph (9)(b).
Section 1	Assignment Agreements	79-81	Requires that assignment agreements be in writing and executed by and between the assignor and assignee.

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Section 1	Assignment Agreements	82-90	Contain a provision allowing the assignor to rescind the agreement in writing (signed) without penalty or fee within: <ul style="list-style-type: none"> • Fourteen business days of execution of the agreement; • At least 30 days after the date work on the property is scheduled to commence if the assignee has not substantially performed; or • At least 30 days after the execution of the agreement if the agreement does not contain a commencement date and the assignee has not begun substantial work on the property.
Section 1	Assignment Agreements	91-96	Contain a provision requiring the assignee to provide the insurer with a copy of the assignment agreement within three business days after the agreement is executed or work has begun, whichever is earlier.
Section 1	Assignment Agreements	97-101	Requires that agreements be delivered by personal service, overnight delivery, or electronic transmission, with evidence of delivery in the form of a receipt or other paper or electronic acknowledgement by the insurer or to the location designated for receipt of such agreements as specified in the policy.
Section 1	Assignment Agreements	102-107	Requires that agreements include a written, itemized, per-unit cost estimate of services; Relate only to the work to be performed by the assignee (as defined in the definition of "assignment agreement")
Section 1	Assignment Agreements	108-124	Contain a statutorily-prescribed (substance and form) notice to the assignor of the right to rescind the agreement and that, by executing the assignment agreement, the assignor is giving up certain rights that could result in litigation by the assignee against the insurer.
Section 1	Assignment Agreements	126-130	Contain a provision requiring the assignee to indemnify and hold harmless the assignor from all liabilities, damages, losses, and costs (including attorney fees) should the insurance policy subject to the assignment agreement prohibit such assignment, in whole or in part.

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Section 1	Assignment Agreements	131-136	The bill prohibits an assignment agreement from containing any fee related to administering or rescinding the agreement, such as a rescission penalty fee, a mortgage-processing fee, a cancellation fee, or an administrative fee.
Section 1	Assignment Agreements	137-148	If an assignor acts under an "urgent or emergency circumstance" to protect property from damage and executes an assignment agreement to protect, repair, restore, or replace property or to mitigate against further damage to the property, an assignee may not receive an assignment of post-loss benefits under a residential property insurance policy in excess of <u>the greater of \$3,000 or 1% of the Coverage A limit</u> under such policy. The term "urgent or emergency circumstance" is defined as "a situation in which a loss to property, if not addressed immediately, will result in additional damage until measures are completed to prevent such damage."
Section 1	Assignment Agreements	149-150	An assignment agreement that does not comply with the above the provisions outlined in lines 79-148 is invalid and unenforceable
Section 1	Assignment Agreements	151-162	The bill transfers certain duties under the insurance contract to the assignee which, if not carried out, shift the burden to the assignee to prove why such a failure did not limit the insurer's ability to perform under the contract. The duties are to: <ul style="list-style-type: none"> • Maintain and provide requested service and service-related records for copying; • Cooperate in the investigation of a claim; and • Deliver the assignment agreement to the insurer as required.
Section 1	Assignment Agreements	163-172	Assignees are also required to: <ul style="list-style-type: none"> • Provide the assignor with accurate and up-to-date revised estimates of the scope of work to be performed as supplemental or additional repairs are required; • Perform the work in accordance with accepted industry standard; and • Not seek payment from the assignor exceeding the applicable policy deductible unless the assignor has chosen to have additional work performed at their own expense.
Section 1	Assignment Agreements	173-184	The bill also transfers duties to the assignee which must be performed before the assignee may file suit against the insurer. If required by the insurer, as a condition precedent to filing the assignee must participate in: <ul style="list-style-type: none"> • Examinations under oath and recorded statements that are reasonably necessary, based on the scope of work and complexity of the claim, and limited to matters related to the services provided, the cost of the services, and the assignment; and • Appraisal or other alternative dispute resolution process under the terms of the policy.

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Section 1	Assignment Agreements	193-204	The bill also provides that, by entering into an assignment agreement, the assignee and its subcontractors waive any claim against a named insured, including the right to claim a lien against the assignor's property, for payment related to the services performed. As such, the assignee and its subcontractors may not report a named insured to a credit agency for payments arising from the agreement. The waiver does not include a claim for payment of applicable deductibles, work performed before the agreement was rescinded or determined to be invalid, or betterment ordered and approved by the assignor.
Section 1	Assignment Agreements	205-211	States that the named insured is responsible for the payment of all of the following: <ul style="list-style-type: none"> • Any deductible amount due under the policy. • Any betterment ordered and performed that is approved by the named insured. • Any contracted work performed before the assignment agreement is rescinded.
Section 1	Assignment Agreements	212-216	Requires the assignee to indemnify and hold harmless the assignor from all liabilities, damages, losses, and costs, including, but not limited to, attorneys fees, should the policy subject to the assignment agreement prohibit, in whole or in part, the assignment of benefits.
Section 1	Assignment Agreements	217-232	The bill requires an assignee to give the named insured, an insurer, and the assignor (if not the named insured) prior written notice of at least 10 business days before filing suit on a claim. The notice must be sent by certified mail, return receipt requested, or by electronic delivery, and may not be served before the insurer has made a determination of coverage according to the timeframes and requirements of current law (s. 627.70131). The notice must specify the damages in dispute, the amount claimed, and a pre-suit settlement demand, and must include an itemized, detailed written invoice or estimate of the work performed (in accordance with accepted industry standards) or to be performed.
Section 1	Assignment Agreements	233-237	Requires that the insurer respond to the notice (Lines 217-232) in writing within 10v business days of receipt of the notice by making a pre-suit settlement offer or requiring the assignee to participate in appraisal or other alternative dispute resolution method under the policy.
Section 1	Assignment Agreements	237-241	Requires that the insurer have a procedure for the prompt investigation, review, and evaluation of the dispute stated in the notice and must investigate each claim contained in the notice in accordance with the Florida Insurance Code.

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Section	Title	Lines	Requirements
Section 1	Assignment Agreements - Attorney Fees	242-246	States that in a suit related to an assignment agreement for post-loss claims arising under a residential or commercial property insurance policy, attorney fees and costs may only be recovered by an assignee under 57.105 and this subsection (specifically lines 247-253)
Section 1	Assignment Agreements - Attorney Fees	247-255	<p>The bill allows an award of attorney fees based on a percentage relationship between the "judgment obtained" (Lines 70-72), and amounts demanded or offered during settlement negotiations. Lines 67-69 defines the difference between the assignee's pre-suit demand and the insurer's pre-suit offer as "the disputed amount." Fees are awarded as follows:</p> <p>If the difference between the judgment obtained by the assignee and the presuit settlement offer is:</p> <ul style="list-style-type: none"> • Less than 25 percent of the disputed amount, the insurer is entitled to an award of reasonable attorney fees. • At least 25 percent but less than 50 percent of the disputed amount, no party is entitled to an award of attorney fees. • At least 50 percent of the disputed amount, the assignee is entitled to an award of reasonable attorney fees.
Section 1	Assignment Agreements - Attorney Fees	256-268	<p>If the insurer fails to inspect the property or provide written or oral authorization for repairs within 7 calendar days after the first notice of loss, the insurer waives its right to attorney fees outlined in Lines 247-255. Provides that if the failure to respond within 7 days (as stated above) is the result of the following, the insurer does not waive its right to fees:</p> <ul style="list-style-type: none"> • An event for which the Governor had declared a state of emergency under 252.36; • Factors beyond the control of the insurer which reasonably prevented an inspection or written or oral authorization for repairs; or • The named insured's failure or inability to allow an inspection of the property after a request by the insurer.
Section 1	Assignment Agreements - Venue Shopping	269-276	If an assignee commences an action in any court of this state based upon or including the same claim against the same adverse party that such assignee has previously voluntarily dismissed in a court of this state, the court may order the assignee to pay the attorney fees and costs of the adverse party resulting from the action previously voluntarily dismissed. States that the court shall stay the proceedings in the subsequent action until the assignee has complied with the order.
Section 1	Assignment Agreements - Applicability	278-285	<p>This section does not apply to:</p> <ul style="list-style-type: none"> • An assignment, transfer, or conveyance granted to a subsequent purchaser of the property with a post-loss insurable interest; • A power of attorney under F.S. Ch. 709 granting a management company, family member, guardian, or similarly situated person of an insured the authority to act on behalf of an insured relating to a property claim; or • Liability coverage under a property insurance policy.

CS/CS/HB 7065 - Insurance Assignment Agreements			
Section	Title	Lines	Requirements
Section 1	Assignment Agreements - Data	286-294	Requires OIR to require each insurer to report by January 30, 2022, and each year thereafter, data on each residential and commercial property insurance claim paid in the prior calendar year under an assignment agreement. Requires the Financial Services Commission to adopt by rule a list of data required, which must include specific data about: <ul style="list-style-type: none"> • Claims adjustment and settlement timeframes and trends, grouped by whether litigated or non-litigated and by LAE.
Section 1	Assignment Agreements - Effective Date	295-296	Section 1 of the bill applies to assignment agreements executed on or after July 1, 2019.
Section 2	Policies Restricting Assignments - Definitions	297-302	Creates 627.7153, F.S. - Policies restricting assignment of post-loss benefits under a property insurance policy. Defines "assignment agreement" as the same meaning as provided in 627.7153, F.S. (Section 1 of the bill)
Section 2	Policies Restricting Assignments	303-323	This section provides that an insurer <u>may</u> make available a policy that restricts <u>in whole or in part</u> an insured's right to execute an assignment agreement <u>only if all</u> of the following conditions are met: <ul style="list-style-type: none"> • The insurer makes available the same coverage to an insured or a potential insured at the same time under a policy that does not restrict the right to assignment; • The restricted policy is available at a lower cost than the unrestricted policy; • The policy prohibiting assignment in whole is available at a lower cost than the policy prohibiting assignment in part; and • The restricted residential or commercial property insurance policy include on its face the following notice in boldfaced type no smaller than 18 points: THIS POLICY DOES NOT ALLOW THE UNRESTRICTED ASSIGNMENT OF POST-LOSS INSURANCE BENEFITS. BY SELECTING THIS POLICY, YOU WAIVE YOUR RIGHT TO FREELY ASSIGN OR TRANSFER THE POST-LOSS PROPERTY INSURANCE BENEFITS AVAILABLE UNDER THIS POLICY TO A THIRD PARTY OR TO OTHERWISE FREELY ENTER INTO AN ASSIGNMENT AGREEMENT AS THE TERM IS DEFINED IN SECTION 627.7152 OF THE FLORIDA STATUTES.
Section 2	Policies Restricting Assignments - Notification	325-328	Requires an insrer to notify an insured at least annually of the coverage options the insurer makes available under this section. The notice must be part of and attached to the notice of premium.
Section 2	Policies Restricting Assignments - Rejecting a fully assignable policy	329-338	States that a named insured must reject a fully assignable policy in writing or electronically. The rejection of a fully assignable policy shall be made on a form provided by OIR. The form must state that the policy restricts the assignment of benefits. The heading of the form shall be in 18-point uppercase and boldfaced type and state: YOU ARE ELECTING TO PURCHASE AN INSURANCE POLICY THAT RESTRICTS THE ASSIGNMENT OF BENEFITS UNDER THE POLICY IN WHOLE OR IN PART. PLEASE READ CAREFULLY.
Section 2	Policies Restricting Assignments - Effective Date	340-341	Section 2 applies to a policy issued or renewed on or after July 1, 2019.

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Section	Title	Lines	Requirements
Section 3	Assignment of Policies or post-loss benefits	342-369	The bill amends s. 627.422 to prohibit a residential or commercial property insurance policy from prohibiting the assignment of post-loss benefits, unless such policy complies with s. 627.7153. It also provides that an assignment entitles the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment.
Section 4	Citizens Rates	370-375	Prohibits Citizens from implementing rate changes in 2019 for DP-3 and HO-3 policies unless the rate filing reflects projected rate savings from HB 7065. Requires that such filing must include an exhibit demonstrating the impact of this act on indicated rates for DP-3 and HO-3 policies.
Section 4	Citizens Rates - Policyholder Communication	375-377	Provides that Citizens shall provide policyholders with details on the projected rate savings from HB 7065.
Section 5	Severability Clause	378-383	States that if any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect the remaining provisions or applications of the act which can be given without the invalid provision or application, and to this end the provisions of this act are severable.
Section 6	Effective Date	384	This act shall take effect July 1, 2009.

Section 23 of CS/CS/HB 337			
Section	Title	Lines	Requirements
Section 23	HB 7065 - Effective Date change for 627.7152(10)	N/A	Notwithstanding subsection (13) of section 627.7152, as created by HB 7065, 2019 Regular Session, subsection (10) of that section is effective upon becoming a law.