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CS/CS/HB 7065, Engrossed 1

2019 Legislature

1
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;

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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

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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).

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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

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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.

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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.

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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

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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

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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

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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.

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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

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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.-

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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

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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

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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

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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.