

The following has special meaning:  
green underline denotes added text

**Florida Senate - 2018**  
**SB 256**  
**By Senator Farmer**

A bill to be entitled

An act relating to property insurance; amending s. 627.062, F.S.; prohibiting certain attorney fees and costs paid by a property insurer from being included in such insurer's rate base and from being used to justify a rate increase or rate change; amending s. 627.422, F.S.; prohibiting certain property insurance policies from prohibiting or limiting the post-loss assignment of benefits; providing that an assignment agreement is not valid unless it meets specified requirements; providing requirements and prohibitions for assignees of post-loss benefits; requiring insurers to provide specified contact information on their websites and in policies; requiring assignees to deliver executed assignment agreements to insurers within a specified timeframe; requiring insurers, upon receiving such agreements, to make any initial inspections of covered property within specified timeframes; requiring insureds or assignees to provide a certain prelitigation notice and invoice to insurers within a specified timeframe; providing construction; requiring certain settlement proposals to a plaintiff to be served no earlier than a specified time; requiring the Office of Insurance Regulation to require each insurer to report annually certain data relating to claims paid pursuant to assignment agreements; requiring insurers to report certain information to opposing counsel for verification or certification; requiring the opposing counsel to verify or certify such information to the office; providing applicability; amending s. 627.7011, F.S.; prohibiting specified acts of insurers relating to homeowners' insurance policies under certain circumstances; providing an effective date.

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

Section 1. Subsection (11) is added to section 627.062, Florida Statutes, to read:

627.062 Rate standards. --

(11) Attorney fees and costs paid by a property insurer pursuant to s. 627.428 may not be included in the property insurer's rate base and may not be used to justify a rate increase or rate change.

Section 2. Section 627.422, Florida Statutes, is amended to read:

627.422 Assignment of policies or post-loss benefits. --A policy may be assignable, or not assignable, as provided by its terms.

(1) LIFE OR HEALTH INSURANCE POLICIES. --Subject to its terms relating to assignability, any life or health insurance policy under the terms of which the beneficiary may be changed upon the sole request of the policyowner may be assigned either by pledge or transfer of title, by an assignment executed by the policyowner alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the 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.

(2) POST-LOSS BENEFITS UNDER CERTAIN PROPERTY INSURANCE POLICIES. --A personal lines residential property insurance policy, a commercial residential property insurance policy, or a

commercial property insurance policy may not prohibit or limit the post-loss assignment of benefits. This subsection does not affect the assignment of benefits in other insurance policies.

(a) An agreement to assign post-loss benefits under this subsection is not valid unless the agreement:

1. Is in writing between the policyholder and assignee and is delivered to the insurer as provided in paragraph (c);

2. Is limited to claims for work performed or to be performed by the assignee for damages claimed to be covered;

3. Allows the policyholder to unilaterally cancel the assignment of post-loss benefits without penalty or obligation within 7 days after the execution of the assignment by an insured; provided, however, that the policyholder or insurer may be responsible for payment for work already performed during such period;

4. Contains an accurate and up-to-date statement of the scope of work to be performed;

5. Includes proof that the assignee possesses a valid certification from an entity that requires water damage remediation to be performed according to a standard approved by the American National Standards Institute; and

6. Contains the following notice in at least 14-point, capitalized type: YOU ARE AUTHORIZING THE ASSIGNEE OF YOUR POLICY TO COMMUNICATE WITH YOUR INSURANCE COMPANY ON YOUR BEHALF. THIS ASSIGNMENT GIVES YOUR ASSIGNEE THE PRIMARY AUTHORITY TO NEGOTIATE WITH YOUR INSURANCE COMPANY ON YOUR BEHALF. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING IT. YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT WITHOUT PENALTY OR OBLIGATION WITHIN 7 DAYS AFTER THE DATE THIS AGREEMENT IS EXECUTED. SHOULD YOU CANCEL THIS AGREEMENT, YOU OR YOUR INSURER MAY BE RESPONSIBLE FOR ANY WORK THAT HAS ALREADY BEEN PERFORMED. THIS AGREEMENT DOES NOT CHANGE YOUR OBLIGATION TO PERFORM THE DUTIES UNDER YOUR PROPERTY INSURANCE POLICY.

(b) An assignee of post-loss benefits under this subsection:

1. Must provide the policyholder with accurate and up-to date revised statements of the scope of work to be performed as supplemental or additional repairs are required, and must provide to the policyholder and insurer a final invoice and bill for service rendered within 7 business days after the date on which the work was completed;

2. Must guarantee to the policyholder that the work performed conforms to current and accepted industry standards;

3. May not charge the policyholder more than the applicable deductible contained in the policy unless the policyholder opts for additional work or betterment of materials at the policyholder's own expense;

4. May not pay referral fees totaling more than \$750 in connection with the assignment; and

5. May not charge the policyholder directly, except for additional work not covered under the policy which includes:

a. Work performed that is rightfully denied as not covered; and

b. Betterments or additional work not part of the loss.

(c) An insurer shall provide on its website and in the policy its contact information for receiving the agreement that meets the requirements of paragraph (a). The contact information must include at least a dedicated facsimile number. After executing the assignment agreement, the assignee must deliver the agreement to the insurer within the later of:

1. If a state of emergency was declared under s. 252.36 for a hurricane or other natural disaster and the property covered under the policy was damaged as a result of the hurricane or natural disaster, 7 days after the state of emergency is terminated; or

2. Seven business days after execution of the agreement.

(d) Notwithstanding s. 627.70131, upon receiving the agreement in paragraph (a), the insurer must make any initial inspections of the covered property within the later of:

1. If a state of emergency was declared under s. 252.36 for a hurricane or other natural disaster and the property covered under the policy was damaged as a result of the hurricane or natural disaster, 7 days after the state of emergency is terminated; or

2. Seven business days after receiving the agreement.

(e) No later than 7 days before an insured or assignee initiates litigation against an insurer relating to a denied or limited claim, the insured or assignee must provide the insurer with notice of intent to initiate such litigation. The notice of intent must include a copy of the final invoice required under subparagraph (b)1. for the work that has been performed or an estimate of the work to be performed. This paragraph does not increase the time periods prescribed in s. 627.70131.

(f) Notwithstanding any other law, in a dispute relating to the assignment of benefits for a personal lines residential property insurance policy, commercial residential property insurance policy, or commercial property insurance policy in which an assignee but not the named insured is a party, for any proposal for settlement made to a plaintiff, such proposal shall be served no earlier than 10 days after the date of commencement of the action.

(g) This section does not apply to:

1. An assignment, transfer, or conveyance granted to a subsequent purchaser of the property with an insurable interest in the property following a loss;

2. A power of attorney under chapter 709 which grants to a management company, family member, guardian, or similarly situated person of an insured the authority to act on behalf of an insured as it relates to a property insurance claim; or

3. Liability coverage under a property insurance policy.

(3) ANNUAL REPORT. --The office shall require each insurer to report by March 31, 2020, and each year thereafter, data on each claim paid in the prior calendar year pursuant to an assignment agreement. Such data must include, but are not limited to:

(a) The number of days between the first notice of loss and the initial inspection.

(b) Loss severity.

(c) Allocated loss adjustment expense.

(d) For litigated claims:

1. Any amount paid before litigation, the amount in dispute, the amount of any proposal for settlement, and the settlement or judgment amount;

2. The amount of fees paid to the claimant's attorney; and

3. The amount and structure, whether fixed, hourly, or contingent, of fees paid to the insurer's attorney.

All information the insurer reports under this paragraph must first be reported to the opposing counsel on the litigated claim for verification or certification. The opposing counsel on the litigated claim shall report to the office its agreement or disagreement with the accuracy of the figures reported.

(e) For nonlitigated claims, the difference between the insurer's initial offer and the amount paid on the claim.

(f) The time from the first notice of loss until the claim was closed.

(g) For claims involving water damage, whether the adjuster possessed certification from an entity that requires water damage remediation to be performed according to a standard approved by the American National Standards Institute.

Section 3. The amendments made by this act to s. 627.422, Florida Statutes, apply to assignment agreements entered into on or after January 1, 2019.

Section 4. Paragraph (a) of subsection (3) of section 627.7011, Florida Statutes, is amended to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage. --

(3) In the event of a loss for which a dwelling or personal property is insured on the basis of replacement costs:

(a) For a dwelling:  $\bar{r}$

1. The insurer must initially pay at least the actual cash value of the insured loss, less any applicable deductible. The insurer shall pay any remaining amounts necessary to perform such repairs as work is performed and expenses are incurred. If a total loss of a dwelling occurs, the insurer shall pay the replacement cost coverage without reservation or holdback of any depreciation in value, pursuant to s. 627.702.

2. The insurer may not require that a particular vendor make repairs to such dwelling.

3. The insurer may not, unless expressly requested by the insured, recommend or suggest a particular vendor for repairs to be made to such dwelling.

Section 5. This act shall take effect January 1, 2019.

