A bill to be entitled
An act relating to property insurance assignment
agreements; creating s. 627.7152, F.S.; providing
definitions; providing requirements and limitations of
assignment agreements; providing a burden of proof;
providing an assignment agreement does not affect
managed repair arrangements under an insurance policy;
providing an insured's payment obligations under an
assignment agreement; requiring notice of intent to
initiate litigation; specifying requirements for such
notice; providing for an award of reasonable attorney
fees for certain claims arising under an assignment
agreement; requiring the Office of Insurance
Regulation to require insurers to report specified
data; providing applicability; amending s. 627.422,
F.S.; specifying certain residential property
insurance policies may not prohibit assignment of
post-loss benefits; providing an effective date.

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

Section 1. Section 627.7152, Florida Statutes, is created
to read:

627.7152 Assignment agreements.—
(1) As used in this section, the term:
(a) "Assignment agreement" means a written instrument by which post-loss benefits under a residential property insurance policy are assigned to a person providing services to protect, repair, restore, or replace such property or to mitigate against further damage to such property.

(b) "Disputed amount" means the difference between the presuit settlement demand and the presuit settlement offer.

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

(d) "Presuit settlement demand" means the presuit settlement demand made by the assignee in the written notice of intent to initiate litigation as required by paragraph (7)(a).

(e) "Presuit settlement offer" means the presuit settlement offer made by the insurer in its written response to the notice of intent to initiate litigation as required by paragraph (7)(b).

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

(a) An assignment agreement must:

1. Be in writing and executed concurrently by and between a named insured and the assignee.

2. Contain a provision that allows the assignor to rescind the assignment agreement, without a penalty or fee, by having the assignor sign a notice within 7 business days after the
execution date of the assignment agreement and by notifying the
assignee of the rescission. The assignor may rescind the
assignment agreement for any reason during the 7-day period. The
assignor is responsible for payment for contracted work
performed before the agreement is rescinded.

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

a. 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
b. To the location designated for receipt of such
agreements as specified in the policy.

4. Contain a written, itemized, per-unit cost estimate of
the services to be performed by the assignee. If the estimate of
services includes a claim for water restoration services, the
estimate must also include proof that the assignee or
subcontractor of the assignee possesses a valid certification
from an entity that requires water remediation to be performed
according to a standard that is approved by the American
National Standards Institute.

5. Relate only to work to be performed by the assignee for
services to protect, repair, restore, or replace dwellings or
structures or to mitigate against further damage to such property.

6. Contain the following notice in uppercase 14-point type:

YOU ARE AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY TO A THIRD PARTY WHICH MAY RESULT IN LITIGATION AGAINST YOUR INSURER. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING IT. YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT WITHOUT PENALTY WITHIN 7 BUSINESS DAYS AFTER THE DATE THIS AGREEMENT IS EXECUTED. HOWEVER, YOU ARE OBLIGATED FOR PAYMENT OF ANY CONTRACTED WORK PERFORMED BEFORE THE AGREEMENT IS RESCINDED. THIS AGREEMENT DOES NOT CHANGE YOUR OBLIGATION TO PERFORM THE DUTIES REQUIRED UNDER YOUR PROPERTY INSURANCE POLICY.

(b) An assignment agreement may not contain:

1. A penalty or fee for rescission of the assignment agreement pursuant to subparagraph (a)2.;
2. A check or mortgage processing fee;
3. A penalty or fee for cancellation of the assignment agreement; or
4. An administrative fee.

(3) In a claim arising under an assignment agreement, an assignee has the burden to demonstrate that the insurer is not prejudiced by the failure of the assignee to:
(a) Maintain records of all services provided under an assignment agreement.

(b) Cooperate with the insurer in the investigation of a claim.

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

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

(4) An assignee:

(a) Must 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.

(b) Must perform the work to conform with current and accepted industry standards.

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

(d) Must, as a condition precedent to filing suit under the policy, and if required by the insurer, submit to examinations under oath and recorded statements conducted by the insurer or the insurer's representative that are reasonably necessary, based on the scope of the work and the complexity of
the claim, which examinations and recorded statements must be limited to matters related to the services provided, the cost of the services, and the assignment.

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

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

(6) Notwithstanding any other provision of law, the acceptance by an assignee of an assignment agreement is a waiver by the assignee and subcontractors of the assignee, of claims against named insureds for payments arising from the assignment agreement. The assignee and subcontractors may not collect or attempt to collect money from, maintain any action at law against, or claim a lien on the real property of an insured or report an insured to a credit agency for payments arising from the assignment agreement. However, named insureds remain responsible for the payment of any deductible amount under an insurance policy, any contracted work performed before the assignor rescinded the assignment agreement, and any betterment ordered and approved by the assignor. Such waiver remains in effect after rescission of the assignment agreement by the assignor.
assignor or after a determination that the assignment agreement is invalid.

(7)(a) An assignee must provide the insurer and the assignor with a written notice of intent to initiate litigation before filing suit under the policy. Such notice must be served at least 10 business days before filing suit, but may not be served before the insurer has made a determination of coverage pursuant to s. 627.70131. The notice must specify the damages in dispute, the amount claimed, and any presuit settlement demand. Concurrent with the notice, and as a precondition to filing suit, the assignee must provide the insurer and the assignor a detailed written invoice or estimate of services, including itemized information on equipment, materials, and supplies; the number of labor hours; and, in the case of work performed, proof the work has been performed in accordance with current industry standards. If the invoice or estimate includes a claim for water restoration services, the assignee must provide proof of the certification required by subparagraph (2)(a)4.

(b) An insurer must respond in writing to the notice within the 10-day period specified in paragraph (a) by making a presuit settlement offer or requiring appraisal or other method of alternative dispute resolution as may be provided in the policy. An insurer must have a procedure for the prompt investigation, review, and evaluation of the dispute stated in such notice and must investigate the claims contained in the
(8) Notwithstanding any other law to the contrary, in a proceeding related to an assignment agreement for post-loss claims arising under a residential property insurance policy, attorney fees and costs may only be recovered by an assignee under s. 57.105 and this subsection.

(a) If the difference between the judgment obtained by the assignee and the presuit settlement offer is less than 25 percent of the disputed amount, the insurer is entitled to an award of reasonable attorney fees. If the difference between the judgment obtained by the assignee and the presuit settlement offer is at least 25 percent but less than 50 percent of the disputed amount, no party is entitled to an award of attorney fees. If the difference between the judgment obtained by the assignee and the presuit settlement offer is at least 50 percent of the disputed amount, the assignee is entitled to an award of reasonable attorney fees.

(b) If the insurer fails either to inspect the property or to provide written or verbal authorization for repairs within 7 calendar days after the first notice of loss, the insurer waives its right to an award of attorney fees under this subsection. If the failure to inspect the property or to provide written or verbal authorization for repairs is the result of an event for which the Governor had declared a state of emergency pursuant to s. 252.36, factors beyond the control of the insurer which
reasonably prevented an inspection or written or verbal authorization for repairs, or the named insureds' failure or inability to allow an inspection of the property after a request by the insurer, the insurer does not waive its right to an award of attorney fees under this subsection.

(9) This section does not apply to:

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

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

(c) Liability coverage under a property insurance policy.

(10) The office shall require each insurer to report by January 30, 2021, and each year thereafter, data on each residential property insurance claim paid in the prior calendar year pursuant to an assignment agreement. Such data must include, but are not limited to, specific data about claims adjustment and settlement timeframes and trends, grouped by whether litigated or not litigated; by loss adjustment expenses; and by the amount and type of attorney fees incurred or paid.

(11) This section applies to assignment agreements executed after July 1, 2018.
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 or a commercial residential property insurance policy may not prohibit the assignment of post-loss benefits.

Section 3. This act shall take effect July 1, 2018.