

Understanding the 2019 Florida Assignment of Benefits (AOB) Reform Legislation



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Introduction





- Several years of unsuccessful attempts to pass AOB reform in Florida Legislature
- Discussion of factors which led to success in 2019



Overview of Legislation

CS/CS/HB 7065 would:



- Place substantial new requirements on assignment agreements under residential and commercial property insurance policies;
- Require assignees of post-loss benefits to serve insurers with detailed notices at least 10 business days prior to filing lawsuits;
- Require insurers to respond within 10 business days after receiving such presuit notices from assignees;
- Replace one-way attorneys' fees for assignees with a prevailing party formula;
- Require insurers to begin reporting AOB claims data as of January 30, 2022;
- Allow insurers to offer optional policy forms that eliminate or restrict the use of AOBs; and
- Require Citizens Property Insurance Corp. to include projected rate savings in its 2019 DP-3 and HO-3 policy rate filings.



Procedural History of the Legislation

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- Passed the House Floor on Thursday, April 11, 2019 with 96 Yeas and 20 Nays, with support from the republicans and opposition from the democrats.
- Passed the Senate Floor on Wednesday, April 24, 2019 with 25 Yeas and 14 Nays.



Next Steps for the Legislation to become a Law



The bill will be enrolled and sent to the Governor who can sign, veto, or allow it to become law without his signature.



Statement from the Governor

Statement from Governor DeSantis



“The exponential growth in AOB abuse has contributed to mounting insurance costs for Floridians for far too long,” said Governor DeSantis. “In recent years, there have been calls for reform and today, the Legislature took action. I thank them for their efforts in getting this done and I look forward to signing this meaningful legislation into law.”





Section-by-Section Analysis of AOB Reform Legislation



Section 1: Assignment Agreements – Section 627.7152



- Subsection (1) defines the following:
 - “Assignee”
 - “Assignment agreement”
 - “Assignor”
 - “Disputed amount”
 - “Judgment obtained”
 - “Presuit settlement demand”
 - “Presuit settlement offer”

Subsection (2) governs content of assignment agreements



- An assignment agreement must:
 - Be in writing executed by the assignor and assignee.
 - Allow rescission without penalty within 14 days after execution of 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 agreement is executed if agreement doesn't have a commencement date and assignee has not begun substantial work.
 - Provide the assignment agreement to the insurer within 3 business days after agreement is executed or the date work begins (whichever is earlier).
 - Acknowledgement by insurer that the agreement has been received
 - Or location designated for receipt specified in policy

Subsection (2) continued



- An assignment agreement must:
 - Contain itemized, per-unit cost estimate of services to be performed
 - Relate only to work to be performed by the assignee for services to protect, repair, restore, or replace a dwelling or structure or to mitigate against further damage to such property.
 - Contain notice in 18-point uppercase & boldface font.
 - Hold assignee harmless from all liabilities from the assignor.

Subsection (2) continued



- An assignment agreement may not contain:
 - A penalty or fee for rescission.
 - A check or mortgage processing fee.
 - A penalty or fee for cancellation.
 - An administrative fee.
- If an assignor acts under urgent or emergency circumstances to protect property from damage, an assignee may not receive an assignment of post-loss benefits in excess of the greater of \$3,000 or 1% of the Coverage A limit. “Urgent or emergency circumstance” defined to mean situation in which a loss to property, if not addressed immediately, will result in additional damage until measures are completed to prevent such damage.
- An assignment agreement that does not comply with subsection (2) of 627.7152 is invalid and unenforceable.

Section 627.7152 (3)



- Subsection (3) provides presumption of prejudice to insurer – Assignee has the burden to demonstrate that the insurer is not prejudiced by the assignee's failure to:
 - Maintain records of all services provided under the assignment agreement.
 - Cooperate with the insurer in the claim investigation.
 - Provide the insurer with requested records and documents relating to service provided and permit insurer to make copies.
 - Deliver a copy of executed assignment agreement to the insurer within 3 business days after executing it or work has begun, whichever is earlier.

Section 627.7152 (4)



- Subsection (4) imposes standards and requirements on assignees. An assignee:
 - 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.
 - Must perform work in accordance with accepted industry standards.
 - May not seek payment from the assignor exceeding the deductible unless the assignor has chosen to have additional work performed at the assignor's expense.
 - As a condition to filing suit, must submit to examinations under oath and recorded statements, but limited to matters related to services provided, cost of services, and the assignment agreement.
 - As a condition to filing suit, must participate in appraisal or other dispute resolution provided in policy.

Section 627.7152 (5)



- Subsection (5) expressly provides that an assignment agreement and section 627.7152 do not modify or eliminate any term, condition, or defense relating to any managed repair arrangement provided in the policy.

Section 627.7152 (6)



- Subsection (6) clarifies that an assignment agreement does not transfer or create authority to adjust, negotiate or settle any portion of the claim to a person or entity not authorized to adjust, negotiate or settle a claim under adjuster licensing provisions of the Insurance Code.

Section 627.7152 (7)



- Subsection (7) limits assignee recourse against the assignor:
 - The assignee and its subcontractors waive any claim against the assignor by entering into an assignment agreement except as provided in (b). Applies even if assignment is rescinded or invalid.
 - A named insured is responsible for the payment of all of the following:
 - Deductible amount due under policy
 - Any betterment ordered and performed that is approved by named insured
 - Any contracted work performed before the assignment agreement is rescinded

Section 627.7152 (8)



- Subsection (8) provides that the assignee shall indemnify and hold harmless the assignor from all liabilities if the policy prohibits or limits assignment of benefits. This relates to newly created Section 627.7153 (see Section 2 of the legislation) which will allow insurers to offer policies that limit or prohibit use of AOB, subject to certain conditions.

Section 627.7152 (9)



- Subsection (9) creates presuit notice and response requirements
 - An assignee must provide written notice of intent to initiate litigation to named insured, insurer and assignor (if not named insured) at least 10 business days before filing suit under the policy. Notice served by certified mail, return receipt requested, or electronic delivery, but may not be served before the insurer has made a determination of coverage under 627.70131. Notice must specify damages in dispute, amount claimed, and presuit settlement demand. Detailed written invoices and proof work performed (if applicable) must be included as well.
 - Insurer must respond in writing to presuit notice within 10 business days after receiving notice by making a presuit settlement offer or requiring appraisal or other method of dispute resolution. Insurer must have procedure for prompt investigation, review and evaluation of the dispute and must investigate in accordance with Insurance Code.

Section 627.7152 (10)



- Subsection (10) states assignees may only recover attorney fees under 57.105 and this subsection (effectively removing assignees from scope of 627.428, the one-way attorney fee statute):
 - If the difference between the judgment obtained by the assignee and the presuit settlement offer is:
 - Less than 25% of the disputed amount, the insurer is entitled to an award of reasonable attorney fees.
 - At least 25% but less than 50% of the disputed amount, no party is entitled to attorney fees.
 - At least 50% of the disputed amount, the assignee is entitled to an award of reasonable attorney fees.
 - The insurer waives its right to attorney fees if it fails to inspect the property within 7 calendar days after FNOL, unless there are factors beyond the control of the insurer, or prevention of inspection.
 - Authorizes a court to award attorney fees to a respondent in a voluntarily dismissed action when an assignee brings an identical claim against the same respondent in another court.

Section 627.7152 (11)



- Subsection (11) provides exceptions to scope of Section 627.7152, which will not apply to:
 - An assignment, transfer or conveyance granted to a subsequent purchaser of the property with an insurable interest in the property following a loss;
 - A power of attorney under chapter 709 that 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.
 - Liability coverage under a property insurance policy.

Section 627.7152 (12) & (13)



- Subsection (12) requires insurers to report AOB claims data to OIR by January 30, 2022 and each year after. The Financial Services Commission/OIR must adopt a rule to specify the data required, which must include specific data about claims adjustment and settlement timeframes and trends, grouped by whether litigated or not litigated and by loss adjustment expenses.
- Subsection (13) provides that section 627.7152 applies to an assignment agreement executed on or after July 1, 2019.



Section 2: Policies Restricting Assignment of Post-Loss Benefits Under Property Insurance Policy – Section 627.7153

Section 627.7153



- Subsection (1) cross-references definition of “assignment agreement” in 627.7152.
- Subsection (2) provides that an insurer **may** make available a policy that restricts in whole or in part an insured’s right to execute an assignment agreement only if all of the following conditions are met:
 - Insurer must make available to the insured or potential insured at the same time the same coverage under a policy that does not restrict right to execute assignment agreement
 - Insurer must offer each restricted policy at a lower cost than the unrestricted policy
 - Policy prohibiting assignment in whole is available at lower cost than any policy prohibiting assignment in part
 - Include specified notice language in 18-point uppercase and boldface type

Section 627.7152



- Subsection (3) requires an Insurer to notify the insured at least annually of the coverage options available under this section. Such notice must be part of and attached to the notice of premium.
- Subsection (4) provides that a named insured must reject a fully assignable policy in writing or electronically via a form approved by the office. Certain notice language specified in this subsection.
- Subsection (5) provides that Section 627.7153 applies to a policy issued or renewed on or after July 1, 2019.



Section 3: Assignment of Policies or Post- Loss Benefits – Section 627.422

Section 627.422



- Amends Section 627.422 by moving some language from subsection (1) to the lead-in paragraph, providing that any assignment of a policy 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 from some other person claiming interest in the policy in conflict with the assignment. This language was previously in subsection (1) related to life or health insurance policies, but under this change would apply to all assignments.
- Specifies that a residential or commercial property insurance policy may not prohibit the assignment of post-loss benefits unless it complies with s. 627.7153.



Section 4: Citizens Property Insurance Corporation Rate Filings

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- Citizens may not implement rate changes in 2019 for DP-3, HO-3 policies unless the rate filing reflects projected rate savings.
- On April 24, 2019, in a statement praising passage of HB 7065, Citizens wrote:
 - “Citizens’ actuaries have estimated the reforms would reduce the statewide average rate need from 25.2 percent to 10.1 percent for homeowners policyholders. In South Florida, the epicenter of the AOB abuse, the average rate need would drop from 30.4 percent to 12.8 percent. These figures will change slightly as policy information and data are updated.”



Section 5: Severability

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- 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 effect without the invalid provision or application, and to this end the provisions of this act are severable.



Section 6: Effective Date

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- If it becomes law, the act will become effective as of July 1, 2019. This means insurers and their service providers should begin working immediately on implementation plans. In this regard, note:
- The presuit notice required of assignees and mandatory presuit settlement offer by the insurer will become effective for assignments executed on and after July 1, 2019. Forms and manuals should be reviewed and updated to incorporate procedures that comply with these new requirements.
- The insurer AOB reporting requirement will not be effective until January 30, 2022, so there is some time to prepare and provide input via rulemaking.
- The option to offer restricted policies under 627.7153 is not mandatory, so insurers are not required to make those policy filings by July 1.



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