

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Commerce Committee
 2 Representative Rayner-Goolsby offered the following:

Amendment (with title amendment)

Remove lines 2424-2696 and insert:

6 ~~(4) In a suit arising under a residential or commercial~~
 7 ~~property insurance policy, the right to attorney fees under this~~
 8 ~~section may not be transferred to, assigned to, or acquired in~~
 9 ~~any other manner by anyone other than a named or omnibus insured~~
 10 ~~or a named beneficiary.~~

11 Section 14. Paragraph (b) of subsection (4) of section
 12 627.7011, Florida Statutes, is amended to read:

13 627.7011 Homeowners' policies; offer of replacement cost
 14 coverage and law and ordinance coverage.-

15 (4)

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16 (b) An insurer that issues a homeowner's insurance policy
17 that does not provide flood insurance coverage must include on
18 the policy declarations page ~~with the policy documents~~ at
19 initial issuance and every renewal, in bold type no smaller than
20 18 points, the following statement:

21
22 "FLOOD INSURANCE: YOU SHOULD ~~MAY ALSO NEED TO~~ CONSIDER
23 THE PURCHASE OF FLOOD INSURANCE. YOUR HOMEOWNER'S
24 INSURANCE POLICY DOES NOT INCLUDE COVERAGE FOR DAMAGE
25 RESULTING FROM FLOOD EVEN IF HURRICANE WINDS AND RAIN
26 CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD
27 INSURANCE COVERAGE, YOUR ~~YOU MAY HAVE~~ UNCOVERED LOSSES
28 CAUSED BY FLOOD ARE NOT COVERED. PLEASE DISCUSS THE
29 NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE
30 WITH YOUR INSURANCE AGENT."
31

32 Section 15. Effective March 1, 2023, present subsection
33 (8) of section 627.70131, Florida Statutes, is redesignated as
34 subsection (9), a new subsection (8) is added to that section,
35 and paragraph (a) of subsection (1), subsections (3), (4), and
36 (5), and paragraph (a) of subsection (7) of that section are
37 amended, to read:

38 627.70131 Insurer's duty to acknowledge communications
39 regarding claims; investigation.-

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40 (1) (a) Upon an insurer's receiving a communication with
41 respect to a claim, the insurer shall, within 7 ~~14~~ calendar
42 days, review and acknowledge receipt of such communication
43 unless payment is made within that period of time or unless the
44 failure to acknowledge is caused by factors beyond the control
45 of the insurer ~~which reasonably prevent such acknowledgment~~. If
46 the acknowledgment is not in writing, a notification indicating
47 acknowledgment shall be made in the insurer's claim file and
48 dated. A communication made to or by a representative of an
49 insurer with respect to a claim shall constitute communication
50 to or by the insurer.

51 (3) (a) Unless otherwise provided by the policy of
52 insurance or by law, within 7 ~~14~~ days after an insurer receives
53 proof-of-loss statements, the insurer shall begin such
54 investigation as is reasonably necessary unless the failure to
55 begin such investigation is caused by factors beyond the control
56 of the insurer ~~which reasonably prevent the commencement of such~~
57 ~~investigation~~.

58 (b) If such investigation involves a physical inspection
59 of the property, the licensed adjuster assigned by the insurer
60 must provide the policyholder with a printed or electronic
61 document containing his or her name and state adjuster license
62 number. ~~For claims other than those subject to a hurricane~~
63 ~~deductible~~, An insurer must conduct any such physical inspection

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64 within 30 ~~45~~ days after its receipt of the proof-of-loss
65 statements.

66 (c) Any subsequent communication with the policyholder
67 regarding the claim must also include the name and license
68 number of the adjuster communicating about the claim.
69 Communication of the adjuster's name and license number may be
70 included with other information provided to the policyholder.

71 (d) An insurer may use electronic methods to investigate
72 the loss. Such electronic methods may include any method that
73 provides the insurer with clear, color pictures or video
74 documenting the loss, including, but not limited to, electronic
75 photographs or video recordings of the loss, video conferencing
76 between the adjuster and the policyholder which includes video
77 recording of the loss, and video recordings or photographs of
78 the loss using a drone, driverless vehicle, or other machine
79 that can move independently or through remote control. The
80 insurer also may allow the policyholder to use such methods to
81 assist in the investigation of the loss. An insurer may void the
82 insurance policy if the policyholder or any other person at the
83 direction of the policyholder, with intent to injure, defraud,
84 or deceive any insurer, commits insurance fraud by providing
85 false, incomplete, or misleading information concerning any fact
86 or thing material to a claim using electronic methods. The use
87 of electronic methods to investigate the loss does not prohibit

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88 an insurer from assigning a licensed adjuster to physically
89 inspect the property.

90 ~~(e) Within 7 days after the insurer's assignment of an~~
91 ~~adjuster to the claim, The insurer must send notify the~~
92 ~~policyholder that he or she may request a copy of any detailed~~
93 ~~estimate of the amount of the loss within 7 days after the~~
94 ~~estimate is generated by an insurer's adjuster. ~~After receiving~~~~
95 ~~such a request from the policyholder, the insurer must send any~~
96 ~~such detailed estimate to the policyholder within the later of 7~~
97 ~~days after the insurer received the request or 7 days after the~~
98 ~~detailed estimate of the amount of the loss is completed. This~~
99 ~~paragraph does not require that an insurer create a detailed~~
100 ~~estimate of the amount of the loss if such estimate is not~~
101 ~~reasonably necessary as part of the claim investigation.~~

102 (4) An insurer shall maintain:

103 (a) A record or log of each adjuster who communicates with
104 the policyholder as provided in paragraphs (3)(b) and (c) and
105 provide a list of such adjusters to the insured, office, or
106 department upon request.

107 (b) Claim records, including dates, of:

108 1. Any claim-related communication made between the
109 insurer and the policyholder or the policyholder's
110 representative;

111 2. The insurer's receipt of the policyholder's proof of
112 loss statement;

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113 3. Any claim-related request for information made by the
114 insurer to the policyholder or the policyholder's
115 representative;

116 4. Any claim-related inspections of the property made by
117 the insurer, including physical inspections and inspections made
118 by electronic means;

119 5. Any detailed estimate of the amount of the loss
120 generated by the insurer's adjuster;

121 6. The beginning and end of any tolling period provided
122 for in subsection (8); and

123 7. The insurer's payment or denial of the claim.

124 (5) For purposes of this section, the term:

125 (a) "Factors beyond the control of the insurer" means:

126 1. Any of the following events that is the basis for the
127 office issuing an order finding that such event renders all or
128 specified residential property insurers reasonably unable to
129 meet the requirements of this section in specified locations and
130 ordering that such insurer or insurers may have additional time
131 as specified by the office to comply with the requirements of
132 this section: a state of emergency declared by the Governor
133 under s. 252.36, a breach of security that must be reported
134 under s. 501.171(3), or an information technology issue. The
135 office may not extend the period for payment or denial of a
136 claim for more than 30 additional days.

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137 2. Actions by the policyholder or the policyholder's
138 representative which constitute fraud, lack of cooperation, or
139 intentional misrepresentation regarding the claim for which
140 benefits are owed when such actions reasonably prevent the
141 insurer from complying with any requirement of this section.

142 (b) "Insurer" means any residential property insurer.

143 (7)(a) Within 60 ~~90~~ days after an insurer receives notice
144 of an initial, reopened, or supplemental property insurance
145 claim from a policyholder, the insurer shall pay or deny such
146 claim or a portion of the claim unless the failure to pay is
147 caused by factors beyond the control of the insurer ~~which~~
148 ~~reasonably prevent such payment.~~ The insurer shall provide a
149 reasonable explanation in writing to the policyholder of the
150 basis in the insurance policy, in relation to the facts or
151 applicable law, for the payment, denial, or partial denial of a
152 claim. If the insurer's claim payment is less than specified in
153 any insurer's detailed estimate of the amount of the loss, the
154 insurer must provide a reasonable explanation in writing of the
155 difference to the policyholder. Any payment of an initial or
156 supplemental claim or portion of such claim made 60 ~~90~~ days
157 after the insurer receives notice of the claim, or made ~~more~~
158 ~~than 15 days~~ after the expiration of any additional timeframe
159 provided to pay or deny a claim or a portion of a claim made
160 pursuant to an order of the office finding there are no longer
161 factors beyond the control of the insurer ~~which reasonably~~

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162 ~~prevented such payment~~, whichever is later, bears interest at
163 the rate set forth in s. 55.03. Interest begins to accrue from
164 the date the insurer receives notice of the claim. The
165 provisions of this subsection may not be waived, voided, or
166 nullified by the terms of the insurance policy. If there is a
167 right to prejudgment interest, the insured must select whether
168 to receive prejudgment interest or interest under this
169 subsection. Interest is payable when the claim or portion of the
170 claim is paid. Failure to comply with this subsection
171 constitutes a violation of this code. However, failure to comply
172 with this subsection does not form the sole basis for a private
173 cause of action.

174 (8) The requirements of this section are tolled:

175 (a) During the pendency of any mediation proceeding under
176 s. 627.7015 or any alternative dispute resolution proceeding
177 provided for in the insurance contract. The tolling period ends
178 upon the end of the mediation or alternative dispute resolution
179 proceeding.

180 (b) Upon the failure of a policyholder or a representative
181 of the policyholder to provide material claims information
182 requested by the insurer within 10 days after the request was
183 received. The tolling period ends upon the insurer's receipt of
184 the requested information. Tolling under this paragraph applies
185 only to requests sent by the insurer to the policyholder or a
186 representative of the policyholder at least 15 days before the

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187 insurer is required to pay or deny the claim or a portion of the
188 claim under subsection (7).

189 Section 16. Subsection (2) of section 627.70132, Florida
190 Statutes, is amended to read:

191 627.70132 Notice of property insurance claim.—

192 (2) A claim or reopened claim, but not a supplemental
193 claim, under an insurance policy that provides property
194 insurance, as defined in s. 624.604, including a property
195 insurance policy issued by an eligible surplus lines insurer,
196 for loss or damage caused by any peril is barred unless notice
197 of the claim was given to the insurer in accordance with the
198 terms of the policy within 1 year ~~2 years~~ after the date of
199 loss. A supplemental claim is barred unless notice of the
200 supplemental claim was given to the insurer in accordance with
201 the terms of the policy within 18 months ~~3 years~~ after the date
202 of loss.

203 Section 17. Subsections (1), (2), (6), and (8) of section
204 627.70152, Florida Statutes, are amended to read:

205 627.70152 Suits arising under a property insurance
206 policy.—

207 (1) APPLICATION.—This section applies exclusively to all
208 suits ~~not brought by an assignee~~ arising under a residential or
209 commercial property insurance policy, including a residential or
210 commercial property insurance policy issued by an eligible
211 surplus lines insurer.

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212 (2) DEFINITIONS.—As used in this section, the term:

213 (a) ~~"Amount obtained" means damages recovered, if any, but~~
214 ~~the term does not include any amount awarded for attorney fees,~~
215 ~~costs, or interest.~~

216 ~~(b)~~ "Claimant" means an insured who is filing suit under a
217 residential or commercial property insurance policy.

218 (b)~~(e)~~ "Disputed amount" means the difference between the
219 claimant's presuit settlement demand, not including attorney
220 fees and costs listed in the demand, and the insurer's presuit
221 settlement offer, not including attorney fees and costs, if part
222 of the offer.

223 (c)~~(d)~~ "Presuit settlement demand" means the demand made
224 by the claimant in the written notice of intent to initiate
225 litigation as required by paragraph (3)(a). The demand must
226 include the amount of reasonable and necessary attorney fees and
227 costs incurred by the claimant, to be calculated by multiplying
228 the number of hours actually worked on the claim by the
229 claimant's attorney as of the date of the notice by a reasonable
230 hourly rate.

231 (d)~~(e)~~ "Presuit settlement offer" means the offer made by
232 the insurer in its written response to the notice as required by
233 subsection (3).

234 (6) ADMISSIBILITY OF NOTICE AND RESPONSE.—The notice
235 provided pursuant to subsection (3) and, if applicable, the
236 documentation to support the information provided in the notice:

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237 (a) Are not admissible as evidence ~~only~~ in any a
238 proceeding ~~regarding attorney fees.~~

239 (b) ~~Do not limit the evidence of attorney fees or costs,~~
240 ~~damages, or loss which may be offered at trial.~~

241 ~~(c)~~ Do not relieve any obligation that an insured or
242 assignee has to give notice under any other provision of law.

243 (8) ATTORNEY FEES.—

244 (a) In a suit arising under a residential or commercial
245 property insurance policy not brought by an assignee, the amount
246 of reasonable attorney fees and costs under s. 626.9373(1) or s.
247 627.428(1) shall be calculated and awarded as follows:

248 1. If the difference between the amount obtained by the
249 claimant and the presuit settlement offer, excluding reasonable
250 attorney fees and costs, is less than 20 percent of the disputed
251 amount, each party pays its own attorney fees and costs and a
252 claimant may not be awarded attorney fees under s. 626.9373(1)
253 or s. 627.428(1).

254 2. If the difference between the amount obtained by the
255 claimant and the presuit settlement offer, excluding reasonable
256 attorney fees and costs, is at least 20 percent but less than 50
257 percent of the disputed amount, the insurer pays the claimant's
258 attorney fees and costs under s. 626.9373(1) or s. 627.428(1)
259 equal to the percentage of the disputed amount obtained times
260 the total attorney fees and costs.

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261 3. If the difference between the amount obtained by the
262 claimant and the presuit settlement offer, excluding reasonable
263 attorney fees and costs, is at least 50 percent of the disputed
264 amount, the insurer pays the claimant's full attorney fees and
265 costs under s. 626.9373(1) or s. 627.428(1).

266 (b) In a suit arising under a residential or commercial
267 property insurance policy not brought by an assignee, if a court
268 dismisses a claimant's suit pursuant to subsection (5), the
269 court may not award to the claimant any incurred attorney fees
270 for services rendered before the dismissal of the suit. ~~When a~~
271 ~~claimant's suit is dismissed pursuant to subsection (5), the~~
272 ~~court may award to the insurer reasonable attorney fees and~~
273 ~~costs associated with securing the dismissal.~~

274 ~~(c) In awarding attorney fees under this subsection, a~~
275 ~~strong presumption is created that a lodestar fee is sufficient~~
276 ~~and reasonable. Such presumption may be rebutted only in a rare~~
277 ~~and exceptional circumstance with evidence that competent~~
278 ~~counsel could not be retained in a reasonable manner.~~

279
280 -----

T I T L E A M E N D M E N T

281 Remove line 102 and insert:
282 policies; deleting the prohibition on attorney fees
283 being transferred to, assigned to, or acquired under
284

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285 | certain conditions; amending s. 627.7011, F.S.;

286 | revising