

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1191 Assignment of Benefits for Surplus Lines Insurers

SPONSOR(S): Insurance & Banking Subcommittee, Fabricio

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	17 Y, 0 N, As CS	Fortenberry	Lloyd
2) Civil Justice Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

An assignment is the voluntary transfer of the rights of one party under a contract to another party. An AOB is an instrument that assigns or transfers post-loss benefits under a residential or commercial property insurance policy to or from a person who protects, repairs, restores, or replaces property or mitigates against further property damage. Once an AOB is executed, the assignee can take any action the policyholder could take to enforce the insurance policy. Accordingly, if an insurer refuses to pay an assignee for a claim submitted under the policy, the assignee may file a lawsuit against the insurer.

During Special Session 2022A, the Legislature prohibited policyholders from assigning, in whole or in part, any post-loss insurance benefit under a residential or commercial insurance policy issued by an authorized insurer on or after January 1, 2023. Any attempt to assign post-loss benefits under such a policy is void, invalid, and unenforceable.

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage. Surplus lines insurers are not “authorized” insurers as defined in the Florida Insurance Code. Rather, surplus lines insurers are “unauthorized” insurers, but may transact surplus lines insurance if they are made eligible by OIR. Unless specifically stated, the provisions of the Code, including those regarding AOBs, do not apply to surplus lines policies.

The bill applies the existing prohibition on AOBs for residential and commercial property insurance policies to policies issued by surplus lines insurers on or after July 1, 2024, in addition to policies issued by authorized insurers.

The bill has no impact on local or state government revenues or expenditures. It has an indeterminate direct economic impact on the private sector.

The bill is effective on July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Assignment of Benefits (AOB)

An assignment is the voluntary transfer of the rights of one party under a contract to another party. An AOB is an instrument that assigns or transfers post-loss benefits under a residential or commercial property insurance policy to or from a person who protects, repairs, restores, or replaces property or mitigates against further property damage.¹

Once an AOB is executed, the assignee can take any action the policyholder could take to enforce the insurance policy. Accordingly, if an insurer refuses to pay an assignee² for a claim submitted under the policy, the assignee may file a lawsuit against the insurer. An assignee must give an insurer and the assignor³ prior written notice of at least 10 business days before filing suit on a claim (pre-suit notice).⁴ The pre-suit notice may not be served before the insurer has made a determination of coverage.⁵ It must specify the damages in dispute, the amount claimed, and a pre-suit settlement demand, and must include an itemized, detailed, written invoice or estimate of the work performed or to be performed.⁶

During Special Session 2022A, the Legislature prohibited policyholders from assigning, in whole or in part, any post-loss insurance benefit under a residential or commercial insurance policy issued by an authorized insurer on or after January 1, 2023.⁷ Any attempt to assign post-loss benefits under such a policy is void, invalid, and unenforceable.⁸ Any assignment agreement executed under a residential or commercial property insurance policy issued before January 1, 2023 is valid as long as it complies with the requirements of s. 627.7152, F.S.

Surplus Lines Insurers

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.⁹ Surplus lines insurers are not “authorized” insurers as defined in the Florida Insurance Code (Code),¹⁰ which means they do not obtain a certificate of authority from Office of Insurance Regulation (OIR) to transact insurance in Florida.¹¹ Rather, surplus lines insurers are “unauthorized” insurers,¹² but may transact surplus lines insurance if they are made eligible by OIR.

¹ S. 627.7152(1)(b), F.S.

² An assignee is the party that receives the right to pursue the assigned benefits.

³ An assignor is the party who legally transfers rights or benefits to another individual, the assignee.

⁴ S. 627.7152(9)(b), F.S.

⁵ *Id.*

⁶ *Id.*

⁷ Ch. 2022-271, Laws of Fla. The existing statutory carve-out for a seller-to-buyer assignment related to ongoing insurance claims was maintained by law. See s. 627.7152(11), F.S.

⁸ S. 627.7152(13)(a), F.S.

⁹ The admitted market is comprised of insurance companies licensed to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. S. 626.921, F.S.

¹⁰ The Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. S. 624.01, F.S.

¹¹ S. 624.09(1), F.S.

¹² S. 624.09(2), F.S.

The export of insurance policies, including property insurance policies, to the surplus lines market is regulated by the Florida Office of Insurance Regulation (OIR) under the Florida Surplus Lines Law.¹³ Pursuant to the Surplus Lines Law, unless specifically stated, the provisions of the Code, including those regarding AOBs, do not apply to surplus lines policies.

Effect of the Bill

The bill applies the existing prohibition on AOBs for residential and commercial property insurance policies to policies issued by surplus lines insurers on or after July 1, 2024, in addition to policies issued by authorized insurers.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.7152, F.S., relating to assignment agreements.

Section 2. Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

While the elimination of AOBs for surplus lines property insurance policies may appear to affect third-party providers, recent legislation regarding attorney fees for property insurance litigation may mitigate any financial impact of this bill.

D. FISCAL COMMENTS:

None.

¹³ Ss. 626.913–626.937, F.S., constitute the Florida Surplus Lines Law.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment clarifies that the prohibition on assignments of benefits applies to residential and commercial property insurance policies issued by:

- Both authorized insurers and surplus lines insurers; and
- Surplus lines insurers on or after July 1, 2024.

The analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.