Filing # 150537881 E-Filed 05/31/2022 11:21:57 AM

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

RESTORATION ASSOCIATION OF FLORIDA, INC., and AIR QUALITY ASSESSORS, LLC

Plaintiffs,

v.

MELANIE S. GRIFFIN, in her official capacity as Secretary of the Florida Department of Business and Professional Regulation, and DONALD SHAW, in his official capacity as Executive Director of the Construction Industry Licensing Board,

Defendants.
_____/

CASE NO.: 2022 CA 000903

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Restoration Association of Florida, Inc. ("RAF") and Air Quality Assessors, LLC ("AQA" and together with "RAF", "Plaintiffs"), by their undersigned counsel, sue Defendants, Melanie S. Griffin, in her official capacity as Secretary of the Florida Department of Business and Professional Regulation, ("Secretary Griffin"), and Donald Shaw, in his official capacity as Executive Director of the Construction Industry Licensing Board, ("Executive Director Shaw," and, together with Secretary Griffin, "Defendants"), and allege:

INTRODUCTION

1. In a just-completed special session, the Florida Legislature approved legislation that unconstitutionally targets assignment of benefits (AOB) contracts executed between a homeowner and his or her contractor of choice. Rather than address factors within the property insurance industry that has led to its problematic volatility, the Florida Legislature chose to violate the constitutional rights of contractors – the individuals and businesses that repair the homes and

commercial buildings owned by Floridians damaged by extreme weather events such as hurricanes.

2. SB 2-D prevents contractors, as holders of AOBs, from recovering their attorneys' fees in the event they prevail against insurers in litigation – otherwise known as prevailing party fees. The deprivation of this right is significant because SB 2-D wrongfully treats contractors, as assignees, disparately from homeowners and insurers.

3. Critically, SB 2-D leaves intact (i) the right of a homeowner to recover prevailing party fees against an insurer in a lawsuit not commenced by an assignee; (ii) the right of the insurer to recover prevailing party fees in a lawsuit *regardless of whether it is commenced by the homeowner or an assignee*; (iii) the assignee's obligation to indemnify and hold a homeowner harmless for all losses; and (iv) the requirement that the contractor waive all rights of recourse against the homeowner when the insurer does not pay all outstanding amounts owed. Such disparate treatment of contractors performing work under an AOB is unconstitutional under the equal protection clause of the Florida Constitution.

4. SB 2-D also has the effect of denying these contractors due process and access to the courts, a fundamental right under the Florida Constitution. Claims submitted to insurers for work performed by contractors under an AOB are generally not large in monetary amount. When the insurer delays, underpays, or does not pay a claim at all, contractors are forced to commence an action against the insurer to recover the full amount due for the work performed.

5. Without the corresponding right to recover prevailing party fees, SB 2-D makes it economically unfeasible for the contractor to pursue its lawful rights and remedies in court. Invoices for work performed by contractors under AOBs are generally not significant enough for

a lawyer to agree to represent the contractor on a contingency fee basis and it is not economically reasonable for the contractor to a pay a lawyer on an hourly basis to recover the amount(s) owed.

6. Additionally, contractors that perform emergency services under an AOB typically are capped at $3,000 for services rendered. In this instance, stripping away the rights of emergency services contractors to recover prevailing party fees will virtually guarantee this sector of the industry is put out of business. Denying contractors access to the courts and to due process violates the Florida Constitution.

7. Lastly, a detailed review of SB 2-D reveals it contains voluminous distinct subjects within the law, which violates the single-subject rule of the Florida Constitution. SB 2-D is unconstitutional for this reason alone.

8. To permit SB 2-D to remain the law in this State unduly burdens the rights of the backbone of Florida – the contractors that repair homes after problems occur, and certainly after disasters strike. The law should be declared unconstitutional, void, and of no effect.

NATURE OF THE ACTION

9. This is an action for a declaratory judgment pursuant to Ch. 86 of the Florida Statutes, requesting a declaration Secretary Griffin and Executive Director Shaw, and their agencies, are without authority to sanction or otherwise penalize Plaintiffs for any efforts to secure compensation for work performed (i) through liens and/or (ii) lawsuits that also request the Court to award prevailing party attorneys' fees. SB 2-D is unconstitutional and, thus, noncompliance with the law should not be a basis to discipline Plaintiffs or other similarly situated contractors.

10. This action also seeks preliminary and permanent injunctive relief against not only the effectiveness of SB 2-D, but also any reliance on the law as a basis to sanction, penalize, or otherwise interfere with contractors' licenses to repair and remediate homes under a valid AOB.

11. As more specifically set out below, each Plaintiff is affected by the subject legislation and has standing to bring this action.

JURISDICTION, PARTIES, AND VENUE

12. This Court has jurisdiction over this lawsuit pursuant to Art. V, §20(c)(3) of the Florida Constitution, as well as § 86.011 and §26.012(2)(a), (3), of the Florida Statutes.

13. **Restoration Association of Florida, Inc.** RAF is a Florida not-for-profit corporation with its principal place of business in Seminole County, Florida, and is a restoration contractors association whose mission is to serve as an advocate for independent contractors who specialize in water, fire, and mold restoration. Its primary mission is to advocate for these professionals throughout Florida and to protect the right to use AOB contracts as a means to be paid for work performed on behalf of homeowners. Many of RAF members are contractors who regularly use AOBs as a payment tool.

14. RAF's members would otherwise have standing to sue in their own right in this case, but the cost of maintaining the above-captioned case would be prohibitive for any particular RAF member. A number of RAF's members are substantially affected by the legislation that could form the basis of discipline against them, and this legal challenge is within RAF's general scope of interest and activity.

15. The declaratory and injunctive relief requested in this case is of the type appropriate for RAF to receive on behalf of its members. This proceeding does not involve any claims for money damages by RAF or on behalf of its members. Moreover, protecting the rights to use AOBs as a statutory right in Florida is germane to RAF's mission and purpose. Significantly, the claims asserted in this case by RAF does not require the participation of its individual members.

16. Based on the experience of RAF members, legitimate claims are often delayed, underpaid or not paid by insurance companies at all, which requires these members to pursue their lawful rights and remedies in court. The amount of money at issue in lawsuits brought by RAF members pursuant to AOBs can frequently be small, but cumulatively substantial for their businesses. The denial of prevailing party attorneys' fees in SB 2-D will have the effect of denying RAF members of any means to secure just compensation for work performed.

17. RAF members believe Defendants, and the agencies they control, will accept complaints, seek responses, and sanction or otherwise penalize contractors for seeking full compensation either through liens and/or motions for attorneys' fees as prevailing parties in litigation against insurance companies.

18. SB 2-D is unconstitutional on its face and as applied to RAF members because the new law deprives RAF members of rights that exist under the Florida Constitution and Florida law. Since RAF members frequently file lawsuits against insurance companies arising under residential and/or commercial property insurance policies and resulting from the unwarranted delay, underpayment, or denial of claims, RAF, on behalf of its members, requests a declaration of their rights.

19. **Air Quality Assessors, LLC**. AQA is a Florida limited liability company with its principal place of business in Orange County, Florida. AQA is a statewide indoor air quality testing and consultation service provider, as well as a Florida licensed engineering firm. The company began in 2010. AQA is a member of RAF.

20. AQA is frequently an assignee under validly executed AOBs and will continue to be an assignee in the future. AQA strives to continuously grow within a developing field and aims

to be a pioneer in the industry. Strict adherence to industry guidelines and regulations are focal points of AQA's business, which enables it to complete jobs for clients timely and efficiently.

21. The air quality industry, like many others, functions almost exclusively by obtaining referrals from other professionals, such as general contractors and companies that reconstruct and restore homes and commercial buildings that are damaged by mold, fires, water leaks, and by other natural elements.

22. The services AQA performs include mold testing, moisture evaluations, leak detection, allergen testing, water testing, third-party building damages assessments, formaldehyde testing, point of origin testing, homeowner's insurance claims, volatile organic compound (VOC) testing, forensic engineering, and COVID-19 surface testing.

23. The company utilizes some of the most high-tech equipment available to address building damage issues. And, it provides lab sample testing, pre-remediation assessments, pre-remediation protocol reports, and verifies whether the property concerns were resolved through the issuance of clearance certificates.

24. Based on AQA's experience, legitimate claims are often delayed, underpaid, or not paid by insurance companies at all, which requires AQA to pursue its lawful rights and remedies in court. The amount of money at issue in lawsuits brought by AQA pursuant to AOBs can frequently be small, but cumulatively substantial for its business. The denial of attorneys' fees in SB 2-D will have the effect of denying AQA of any means to secure just compensation for work performed.

25. AQA believes Defendants, and the agencies they control, will accept complaints, seek responses, and sanction or otherwise penalize contractors like AQA for seeking full compensation either through liens and/or motions for attorneys' fees as prevailing parties in litigation against insurance companies.

26. SB 2-D is unconstitutional on its face and as applied to AQA because the new law deprives AQA of rights that exist under the Florida Constitution and Florida law. Since AQA frequently files lawsuits against insurance companies arising under residential and/or commercial property insurance policies and resulting from the unwarranted delay, underpayment, or denial of claims, AQA requests a declaration of its rights.

27. **Secretary Griffin.** Secretary Griffin is sued in her official capacity as Secretary of the Florida Department of Business and Professional Regulation (the "DBPR"), which is located in Tallahassee, Florida.

28. Pursuant to state law, Secretary Griffin oversees the Department of Business and Professional Regulation, which is responsible for licensing and regulating more than 1.4 million businesses and professionals in the State of Florida, including contractors covered by SB 2-D.

29. The DBPR, under Secretary Griffin's direction, accepts and investigates complaints about violations of the law and/or alleged licensee misconduct reported by consumers, including, upon information and belief, those that are the result of SB 2-D's new enactments. *See* https://www.myfloridalicense.com/entercomplaint.asp?SID.

30. RAF's members and AQA are licensees subject to the regulations and disciplinary actions of Secretary Griffin's department.

31. **Executive Director Shaw**. Executive Director Shaw is sued in his official capacity as Executive Director of the Construction Industry Licensing Board (CILB), which is located in Tallahassee, Florida.

32. Pursuant to state law, Executive Director Shaw oversees the CILB, which has rulemaking authority to implement laws that affect the construction industry's licensees, including provisions added by SB 2-D.

33. The CILB, a part of the Department of Business and Professional Regulation, also has the authority to conduct disciplinary proceedings against licensed contractors such as RAF members and AQA for violations of Florida law. Significantly, the CILB implements those disciplinary actions through Executive Director Shaw and his staff. *See* FLA. STAT. §489.129.

34. Venue is proper pursuant to Section 47.011 and 47.041 of the Florida Statutes. The events giving rise to this action arose and occurred in Leon County, Florida, the causes of action alleged herein all accrued in Leon County, Florida, all of the Defendants conduct substantial business in Leon County, Florida, any enforcement of Defendants' authority against Plaintiffs would take place in Leon County, Florida, and Leon County is the principal situs of the government of the State of Florida.

35. All applicable conditions precedent to the filing of this lawsuit have been performed, waived, excused, or satisfied.

36. Plaintiffs retained the undersigned counsel to represent their interests in connection with the above-captioned case and are obligated to pay undersigned counsel reasonable attorneys' fees and costs for services rendered.

GENERAL ALLEGATIONS

A. PROPERTY LOSS IS A FREQUENT OCCURRENCE IN FLORIDA.

37. It is not a secret that property damage insurance claims are prevalent in Florida due to the occurrence of hurricanes, floods, and other storm-related events. Homeowners rely on their insurance companies and the policies purchased as life preservers after problems occur, and certainly after disasters strike.

38. In recent years, Florida has experienced an increase in extreme weather events that damage residential[1] and commercial properties. Studies suggest the types of storms Florida has experienced will become "more frequent and intense."[2]

39. Homeowners usually purchase and pay premiums for insurance that is designed to "provide[] financial protection against loss due to disasters, theft and accidents" and that "pays to repair or rebuild your home if it is damaged or destroyed by fire, hurricane, hail, lightning or other disasters listed in your policy."[3]

40. Homeowners are advised by both insurers and by the State to "[p]urchase enough coverage to rebuild your home."[4] Home repair after a storm is a high priority. A home may be a resident's largest lifetime investment. Damage to a home can grow worse with neglect, which affects the building's structural integrity, and permits the development and growth of dangerous,

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[1] The Climate Reality Project, "Climate Change and Florida: What You Need to Know" (Oct. 16, 2018), *available at* https://www.climaterealityproject.org/blog/how-climate-change-affecting-florida.

[2] Environmental Protection Agency, "Climate Change Indicators: Weather and Climate," *available at* https://www.epa.gov/climate-indicators/weather-climate.

[3] Insurance Information Institute, "What is covered by standard homeowners insurance?," *available at* https://www.iii.org/article/what-covered-standard-homeowners-policy.

[4] *Id. See also* Florida Dep't of Financial Services, "Homeowners' Insurance: A Toolkit for Consumers," at 3 (*available at* https://www.myfloridacfo.com/division/consumers/understandingcoverage/guides/documents/homeownerstoolkit.pdf).

health-threatening mold, carcinogens, or spores. Such damage also increases the vulnerability of the structure to milder weather events.

41. Storms can remove shingles from roofs, damage walls or siding, and break windows. After a home is damaged, homeowners are often advised to document the damage as soon as possible, which is especially important if a homeowner's insurance policy only covers certain types of damage.

42. To do so, the Florida Department of Financial Services advises consumers to first "obtain[] a repair estimate from a licensed contractor" to determine if "the damage exceeds your deductible by an amount that you believe to be sufficient to justify filing a claim with your insurance company, [and] then do so as soon as possible."[5]

B. HOMEOWNERS' RIGHTS AND THE USE OF ASSIGNMENT OF BENEFITS CONTRACTS ARE STATUTORILY PROTECTED RIGHTS IN FLORIDA.

43. The Florida Legislature believes homeowners' rights are so critical that it codified a Homeowner Claims Bill of Rights (the "Homeowner Bill of Rights) into law, which is set forth in Section 627.7142 of the Florida Statutes.

44. While the Homeowner Bill of Rights is not intended to list every right recognized under Florida law, it does state homeowners generally have the statutory right to choose the contractors that repair damage to a home with respect to an insurance claim.

45. In this connection, AOBs are frequently used in the property damage industry to make the claims process more efficient for the homeowner and the contractor. Fundamentally, an AOB is a written agreement that permits an insured to voluntarily assign his or her rights and insurance benefits to a third-party contractor.

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[5] *Id.* at 29.

46. Once signed, the contractor "steps into the shoes" of the policyholder and allows the contractor (i) to discuss the insurance claim with the carrier; (ii) to bill the insurer directly for work performed and materials furnished for the benefit of the insured; (iii) to be paid directly by the carrier; and (iv) if necessary, commence an action against the insurance company to collect amounts due and owing to the contractor.

47. AOBs are not new and have been used for a long time, especially during emergency weather situations. In Florida, AOBs are prevalent in the residential property context when homeowners suffer damage to their home and need to hire contractors to repair the issues.

48. When damage does occur, immediate remediation is often required to protect against further storms, water leakage, or other types of damage and allows a homeowner to continue to reside on the property while preventing further serious damage to the home.

49. Here, AOBs are regulated in Florida pursuant to Section 627.7152 and 627.7153 of the Florida Statutes. These laws became effective in 2019 and were a direct legislative response to Office of Insurance Regulation (OIR) reports concerning litigation trends related to AOBs for property insurance claims, the alleged increases in costs related to such litigation, and the corresponding purported surges in annual policy premiums.

50. The Florida legislative staff analysis explained the statutes claimed to accomplish the following, which is not intended to be exhaustive:

a. Established requirements for the execution, validity, effect, and rescission of an AOB;

b. Capped the amount an assignee can receive under an AOB for a residential property insurance claim executed in an emergency;

c. Allowed a policy prohibiting an AOB, in whole or in part, but only under extremely limited and well-defined circumstances;

d. Transferred certain pre-lawsuit duties pursuant to the insurance contract to the assignee;

e. Set the formula that determines which party receives an award of attorneys' fees should litigation related to an AOB result in a judgment; and

f. Required insurers to report specified data on claims paid under an AOB.

51. Section 627.7152 works in tandem with Section 627.428 and 627.70152 of the Florida Statutes because the right to recover attorneys' fees in actions against insurers has been adopted as the legislative preference in Florida for more than sixty (60) years.

52. Homeowners typically exercise their AOB rights under their insurance contracts so the contractors making the repairs can handle the claim without the need for a homeowner's constant involvement with the insurance company, an approach that many homeowners find preferable.

53. Many homeowners lack extensive familiarity or experience with the claims process, which can be daunting and stressful. AOBs also allow repairs to be made without the homeowner fronting the cost of the remediation and then seeking reimbursement from insurers.

C. SB 2-D DEPRIVES CONTRACTORS OF THEIR ABILITY TO RECEIVE FULL COMPENSATION FOR WORK PERFORMED.

54. When an insurance company delays, underpays, or denies a valid claim made by an assignee, the new law assures the contractor cannot receive the full amount due for the work performed. This result is antithetical to the manner in which Florida has operated for more than a century.

55. Instead, the law creates a perverse incentive for an insurance company to continue practices that wrongfully delay, underpay, or deny claims and then force the contractor to file a lawsuit rendering collection of the claim economically detrimental altogether.

56. The result is to place such substantial burdens on AOBs that homeowners are more likely to be saddled with the costs of repair and battling with insurance companies to receive the benefits of the policies for which they have paid premiums.

57. Such conflicts will undoubtedly favor insurance companies as repeat players in these controversies, while homeowners, who are not usually frequent litigants, are in a weak position to vindicate their interests.

58. In contrast to longstanding Florida public policy, the new legislation undermines what the Florida Supreme Court as far back as 1917 called the "well-settled rule" that an insured could assign benefits of a policy after a loss, even without the insurer's consent and regardless of the language of the insurance contract. *W. Fla. Grocery Co. v. Teutonia Fire Ins. Co.*, 77 So. 209, 210 (1917).

59. Additionally, SB 2-D stands in stark contrast to longstanding Florida public policy, which is aimed to assure payment to those who repair our homes and afford them the "greatest protection compatible with justice and equity." *Hendry Lumber Co. v. Bryant*, 138 Fla. 485, 490-91, 189 So. 710, 712 (1939).

60. Reflecting on these well-established public policies, the Supreme Court explained that depriving the contractor of payment for:

> [f]urnishing labor and material not only results in unjust enrichment of the lands but it is the very source of the laborer and materialman's bread and butter . . . . . No Legislative body in this country would deign to enact a law to separate the laboring man from his bread. Man's necessity for bread preceded his necessity for law. It is the staff of his life, the basis of his health, his culture, his religion, and every impulse, good or bad, that colors his thinking.

United States v. Griffin-Moore Lumber Co., 62 So. 2d 589, 590 (Fla. 1953).

61. The 1953 Florida Supreme Court, however, had not met nor could it have imagined the 2022 Florida Legislature would be so determined to separate the laboring man from his bread.

(i) SD 2-D is the byproduct of misleading information supplied by insurance companies and others.

62. The challenged act is a product of a special session called to allegedly address:

(a) "frivolous lawsuits" affecting the property insurance industry;

(b) two straight years of property insurance underwriting losses exceeding $1 billion;

(c) the insolvency or midterm cancellation of policies by several insurers; and

(d) the increased utilization of Citizens Property Insurance, the State of Florida's public insurer of last resort.

Gov. DeSantis Proclamation (Apr. 26, 2022), *available at* https://www.flgov.com/wp content/uploads/2022/04/SKM_C750i22042614070.pdf.

63. Upon information and belief, Governor DeSantis' Proclamation was based, in part, on information supplied to him by the insurance industry indicating the purported homeowner insurance crisis was created by contractors and their attorneys.

64. Plaintiffs assert the insurance companies' financial losses, beyond the increase in extreme weather events, were self-inflicted, and a byproduct of a claims administration process that routinely involved delaying payment of claims, underpaying claims, and/or denying valid claims completely. Lawsuits are filed as an inevitable result.

65. In fact, depositions in these lawsuits revealed insurance companies systematically:

a. directed their personnel not to perform tests that would otherwise substantiate a valid claim;

b. removed damage estimates in reports;

c. included items in reports field adjusters did not believe to be true;

d. instructed its personnel not to write the word damage in any report, say the word damage, or write any damage estimates;

e. concluded the origin and cause of the property loss were due to reasons not covered in a homeowner's policy when field adjusters knew such statements were false;

f. concluded in reports that the property damage can be repaired instead of replacing items, effectively underpaying on a claim; and

g. denied valid Hurricane Irma claims without justification and regardless of whether a field adjuster observed damage.

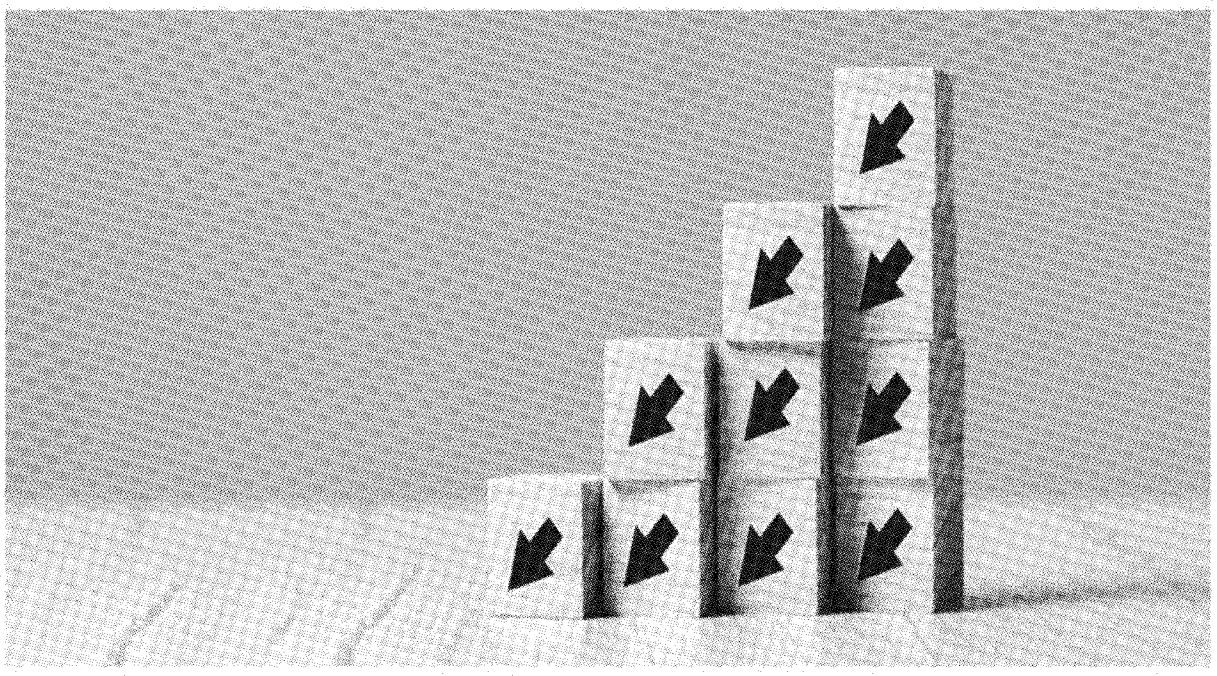
66. Plaintiffs believe these types of practices are the tip of the iceberg, which resulted in widespread delay, underpayment, or complete denial of valid claims. In these circumstances, Plaintiffs assert the alleged "insurance crisis" was self-inflicted by the insurance companies themselves.

67. Creating a massive backlog of claims that are delayed, underpaid, or completely denied had the inevitable result of homeowners and their assignees filing lawsuits on a grand scale to receive just compensation for their losses.

68. Litigation trends neither support the insurance companies' narrative for an overhaul of Florida law or SB 2-D. Data published by reputable litigation management software providers such as CaseGlide reinforces the premise that contractors working under an AOB are not the root cause of Florida's alleged litigation crisis.

69. CaseGlide is routinely used by insurance company professionals and their defense counsel to manage litigation.

70. A recent CaseGlide article discussed litigation trends and stated the following:



New Litigated Claims Drop 35% in August for Florida's Largest P&C Insurers

Florida Litigation Management Data Trends, August 2021

As the industry's leading claims litigation management software provider, CaseGlide compiles a broad swath of claims data that represent a variety of segments and geographies. One of the most interesting data sets that we regularly gather and analyze are litigated claims specific to the majority of Florida's largest P&C insurance organizations.

New litigated claims dropped sharply in August for Florida's largest P&C insurers. We recorded a decrease of 35% to 4,313 new litigated claims, down from July's figure of 6,663. The August drop is the second-largest month-over-month percentage decline in new litigated claims experienced in the past five years. The largest decline, occurring September 2017, was a 51% month-over-month drop, and coincided with Hurricane Irma's landfall in Florida.

Of the 17 largest Florida insurers we regularly monitor, all experienced a month-over-month decline in litigated claims in August. Seven insurers experienced a greater than 40% drop, and an additional seven saw between a 20 and 39% drop.

> "Although we typically see a drop off from summer highs in August or September, this year's sharp decline is certainly worth monitoring closely,"
>
> **Wesley Todd, CEO of CaseGlide**

"Although we typically see a drop off from summer highs in August or September, this year's sharp decline is certainly worth monitoring closely," said Wesley Todd, CEO of CaseGlide. "Florida Senate Bill 76 has undoubtedly contributed to some confusion in the marketplace and going forward we will be tracking Intent to Initiate Litigation Notices to better understand their effect on litigated cases in Florida. It's too early to judge the bill's impact yet, but we hope to share some findings in the near future."

AOB cases as a percentage of total new litigated cases in August were at 24%. The percentage of AOB cases hasn't varied much over the past 12 months, with the running average being 19.5%.

For 2021, the top 10 AOB contractors in the state represent 25% of all AOB-related new litigated claims, with the top contractor representing 6%.

Geographic distribution of new litigated claims continues to be dominated by the state's southern counties, with Miami-Dade accounting for 27% of claims, followed by Broward at 18% and Palm Beach at 7%. Those county percentages have stayed mostly consistent over the course of 2021.

CaseGlide remains committed to observing this data closely, monitoring to see if these patterns persist, and how the trends will impact insurers across Florida.

71. Most importantly, the Florida Senate's Bill Analysis and Fiscal Impact Statement (the "SB 2-D Bill Analysis") was prepared by the Professional Staff of the Committee on Appropriations and represents the best available information upon which legislators understand what SB 2-D sought to do and its effect on the state budget.

72. The SB 2-D Bill Analysis does not even mention the use of AOBs and suits by assignees as the impetus of the alleged insurance crisis purportedly created by increase property damage litigation. *See* SB 2-D Bill Analysis, *available at* https://www.flsenate.gov/Session/Bill/2022-D/2-D/Analyses/2022s00002-D.ap.PDF.

D. SB 2-D UNCONSTITUTIONALLY BURDENS CONTRACTORS WORKING UNDER AN AOB OF THEIR RIGHTS TO BE FULLY PAID FOR HARD WORK PERFORMED.

73. On May 26, 2022, Governor DeSantis signed SB 2-D into law, rendering it effective immediately. A copy of SB 2-D is attached hereto as **Exhibit A**.

74. Among other things, SB 2-D, amends last year's enactment of S. 76, § 1, codified at § 489.147(1)(a), to require that roofing contractors' advertising material, such as "door hangers, business cards, magnets, flyers, pamphlets, and e-mails" include a new disclaimer that states:

- "The consumer is responsible for payment of any insurance deductible."
- "It is insurance fraud punishable as a felony of the third degree for a contractor to knowingly or willfully, and with intent to injure, defraud, or deceive, pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to a property covered by a property insurance policy."
- "It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete, or misleading information."

SB 2-D, § 5, amending FLA. STAT. §489.147(1)(a).

75. These new provisions add further constitutionally problematic requirements to a statute that a Court has already separately enjoined in *Gale Force Roofing & Restoration, LLC v. Brown*, No. 4:21-cv-00246, Doc. No. 28 (Jul. 11, 2021).

76. The above disclaimers are likely to be unconstitutional for this reason, and independently unconstitutional because disclaimer provisions such as these may not be "unduly burdensome" when measured against their effect on protected commercial speech. *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 626 (1985).

77. Including this disclaimer language on "door hangers, business cards, magnets, flyers, pamphlets, and e-mails" is unduly burdensome. SB 2-D does not attempt to conform to existing constitutional law and fails to recognize a Court is unlikely to uphold these provisions – dooming at least some of what SB 2-D seeks to do from the start.

78. SB 2-D also amends certain Florida Statutes and creates new laws that are likely unconstitutional. The statutory scheme can be summarized as follows:

(a) **Section 11, amending §626.9373** – assignees are not entitled to prevailing party fees. Section 57.105 (the unsupported claims/defenses statute) is the only way to recover fees. An award of attorneys' fees under §57.105 during litigation is extraordinarily rare because "Section 57.105 must be applied with restraint to ensure that it serves its intended purpose of discouraging baseless claims without casting 'a chilling effect on use of the courts.'" *MacAlister v. Bevis Const., Inc.*, 164 So. 3d 773, 776 (Fla. 2d DCA 2015).

(b) **Section 12, amending §627.428** – lawsuits commenced by assignees are not entitled to prevailing party fees and the homeowner cannot transfer the right to fees to an assignee. The only way an assignee can recover attorneys' fees against an insurer is pursuant to §57.105.

(c) **Section 16, amending §627.70152** – insurers are now entitled to reasonable attorneys' fees against an insured when a case is dismissed.

(d) **Section 18, amending §627.7152** – assignment agreements include those between a homeowner and a person providing services, "including, but not limited to, inspecting, protecting, repairing, restoring, or replacing the property or mitigating against further damage to the property." The law leaves intact the assignee's obligation to indemnify and hold a homeowner harmless for all losses and the requirement that the contractor waive all rights of recourse against the homeowner when the insurer does not pay all outstanding amounts owed.

Likewise, the assignee continues to be exposed for the insurer's attorneys' fees if the assignee dismisses a lawsuit, and the lawsuit is stayed until the assignee pays such fees to the insurer if ordered by the Court. This exposure includes the failure to send a notice of intent to initiate litigation. The law specifically states assignees can only recover attorneys' fees under §57.105. SB 2-D removes the language previously enacted in 2019 that provided a framework for assignees to recover attorneys' fees.

79. The law is unconstitutional on its face and as applied to Plaintiffs.

(i) SB 2-D violates the single-subject rule.

80. Article III, § 6 of the Florida Constitution requires that "[e]very law shall embrace but one subject and matter properly connected therewith."

81. Plaintiffs assert the sweeping and omnibus nature of SB 2-D violates the single-subject rule and deprives even the most diligent of responsible citizens from discovering the type of legislative mischief the rule was intended to prevent. *See e.g., State v. Paulus*, 688 P.2d 1303, 1309 (Or. 1984) (stating that "one subject rule aims to enhance the likelihood that distinct policies will be judged rationally on their individual merits rather than being packaged to attract support from legislators or constituencies with special interest in one provision and no worse than indifference toward other unrelated ones").

82. The single-subject rule prevents bills from being "designed to accomplish separate and disassociated objects of legislative effort." *State v. Thompson,* 163 So. 270, 283 (Fla. 1935).

It requires there be a "cogent relationship" between the provisions for the bill to pass constitutional muster. *Bunnell v. State,* 453 So. 2d 808, 809 (Fla. 1984).

83. SB 2-D not only contains the challenged litigation amendments, but Plaintiffs assert the law also amends and creates other statutes that lack any cogent connection between the various provisions. The nearly six-page title used to signal each subject the bill addresses demonstrates this inescapable conclusion.

84. Without replicating the numerous pages of bill text here, some of the additional voluminous subjects include: reinsurance; the hurricane catastrophe fund; Department of Financial Services appropriations; roofing advertisements; OIR reporting requirements; OIR review of insurance "forms"; insurer insolvency proceedings; and roof deductibles.

85. By way of example, but not limitation, the establishment of a new state program on reinsurance to assist policyholders, SB 2-D § 1, lacks any cogent connection to regulating the commercial free-speech rights of roofing contractors. The new law adds burdensome disclaimers that violate the First Amendment. SB 2-D now requires contractors, in their advertising materials, to inform homeowners that intentionally filing a false, incomplete, or misleading insurance claim is criminal insurance fraud. SB 2-D, § 5.

86. Similarly, there is no cogent connection between the OIR's responsibilities regarding the initiation and commencement of insurer insolvency proceedings, SB 2-D § 20, and the denial of attorneys' fees to assignees who meritoriously and successfully sue an insurer for delaying, underpaying, or denying a legitimate claim. SB 2-D §§ 11 & 12, and *supra*.

87. Compliance with the single-subject requirement is mandatory, and laws that embraces more than one subject must be declared unconstitutional. *See State v. Johnson*, 616 So. 2d 1 (Fla. 1993). SB 2-D violates the rule.

(ii) SB 2-D violates access to the courts.

88. In 2019, the Florida Legislature passed a statute that prohibited assignees of post-loss benefits from obtaining a lien on the real property of an insured. FLA. STAT. § 627.7152(7)(a).

89. Previously, liens provided security to assure a contractor he or she would receive full compensation for the repair and remediation of the property.

90. Florida law, however, provided an alternative means for the contractor to collect the just payment they deserved by allowing contractors who worked under an AOB to sue the insurer for delaying, underpaying, or denying a valid claim. If successful, the contractor would receive, as part of the judgment, reasonable attorneys' fees and costs.

91. The purpose of permitting prevailing plaintiffs to recover their attorneys' fees in property insurance disputes was not to punish insurers for delaying, underpaying, or denying claims, but to encourage the prompt payment of valid claims.

92. SB 2-D ends the availability of prevailing party attorneys' fees to assignees. SB 2-D, §§ 11 & 12 (amending § 626.9373 and § 627.428 with new subsections 3 and 4, respectively).

93. For contractors like AQA and many of RAF's other members, invoices typically total between $2,500 and $3,500. Plaintiffs rely heavily on AOBs to submit claims for work performed. The inability to recover prevailing party attorneys' fees will effectively shut the courthouse door to Plaintiffs because it will be cost-prohibitive to pay an attorney for these types of small claims.

94. At the same time, AQA and RAF members will suffer from having no guarantee of payment either through a lien or from being able to pursue their lawful rights and remedies in court.

95. Article I, Section 21 of the Florida Constitution establishes a fundamental right of access to courts, proclaiming that "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay." ART. I, § 21, FLA. CONST.

96. The seminal case construing the right held that:

> where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. s 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.

Kluger v. White, 281 So. 2d 1, 4 (Fla. 1973) (emphasis added).

97. A contractor's right to a lien as security for work done on a property predates the Florida Constitution's Declaration of Rights.

98. A contractor's right to rely upon an AOB to obtain payment from an insurer predates the Florida Constitution's Declaration of Rights.

99. A contractor's right to receive attorneys' fees and costs in order to be made whole for a wrongfully denied claim, in whole or in part, predates the Florida Constitution's Declaration of Rights.

100. The State has not provided a reasonable alternative to protect the rights it has impaired through SB 2-D.

101. Because the provision divesting contractors of their rights to recover prevailing party attorneys' fees takes away what might otherwise have served as a commensurate benefit for the absence of having a lien, SB 2-D also renders the anti-lien provision in § 627.7152(7)(a) a violation of the constitutional right of access to the courts.

102. For that reason, both the anti-lien provision and the provisions in SB 2-D stripping the rights of assignees to recover prevailing party attorneys' fees from insurers are unconstitutional and should have no force and effect.

103. Even though SB 2-D references the assignee's right to recover attorneys' fees under Section 57.105 of the Florida Statutes, this statute was neither designed nor has it been applied to assure insurers meet their obligations to pay legitimate claims.

104. Section 57.105 only applies to unsupported claims and defenses to deter frivolous litigation, which is wholly separate and distinct from the right to prevailing party attorneys' fees at issue here. Merely including it in the SB 2-D statutory scheme does not provide any real or reasonable alternative for the deprivation of Plaintiffs' rights to recover attorneys' fees when insurers delay, underpay, or deny valid claims.

105. In fact, the SB 2-D Bill Analysis fails to even mention *Kluger* or discuss its application to SB 2-D. The reference of the right to recover attorneys' fees pursuant to Section 57.105 does not provide a reasonable alternative to the previously existing statutory right and no basis to conclude the deprivation of Plaintiffs' rights are constitutional.

106. SB 2-D violates Plaintiffs' fundamental right to access to the courts. Consequently, Defendants cannot investigate, sanction, or otherwise penalize the licenses of AQA and RAF's members for violations of unconstitutional laws.

(iii) SB 2-D violates the equal protection and due process clauses of the Florida Constitution.

107. The Florida Constitution guarantees equal protection. Art. I, § 2, FLA. CONST.

108. The Florida Constitution likewise guarantees due process of law. Art. 1 § 9, FLA. CONST.

109. Both constitutional protections employ essentially similar tests for violations. *Warren v. State Farm Mut. Auto. Ins. Co.*, 899 So. 2d 1090, 1096 (Fla. 2005).

110. At their most fundamental level, the two constitutional protections prevent arbitrary or capricious state action so that the state's actions must further its purposes.

111. Where, as here, the State's actions implicate the fundamental right of access to the courts, heightened scrutiny is warranted.

112. Yet, even if a rational relationship test is utilized, SB 2-D violates equal protection and due process by taking away an assignee's right to recover prevailing party attorneys' fees in litigation against an insurer after it delays, underpays, or denies a legitimate claim.

113. The assignee, by virtue of the assignment, steps into the shoes of the insured.

114. As a result, an assignee who must sue to have the insurance policy honored is similarly situated to an insured in these circumstances.

115. There is no rational basis, let alone compelling government interest, to justify denying the assignee a right to prevailing party attorneys' fees.

116. Doing so will only encourage insurers to continue delaying, underpaying, and denying legitimate assignee claims, resulting in an unfair and improper windfall for recalcitrant and fraudulent insurance practices.

117. A further equal protection violation occurs because SB 2-D's withdrawal of an assignee's right to prevailing party attorneys' fees treats an assignee differently from an insurer and an insured.

118. Under the new statutory framework, insurers and insureds are entitled to recover their reasonable attorneys' fees, but contractors working under an AOB do not have this commensurate right. SB 2-D unduly deprives assignees of this pre-existing right, while leaving

all of the burdens of the former statutory framework intact. *See* SB 2-D, § 18, amending § 627.7152(10); ¶81, *supra*.

119. Even though SB 2-D references the assignee's right to recover attorneys' fees under Section 57.105 of the Florida Statutes, this statute was neither designed nor has it been applied to assure insurers meet their obligations to pay legitimate claims.

120. Section 57.105 only applies to unsupported claims and defenses to deter frivolous litigation, which is wholly separate and distinct from the right to prevailing party attorneys' fees at issue here. Merely including it in the SB 2-D statutory scheme does not provide any real or reasonable alternative for the deprivation of Plaintiffs' rights to recover attorneys' fees when insurers delay, underpay, or deny valid claims.

121. In fact, the SB 2-D Bill Analysis fails to even mention *Kluger* or discuss its application to SB 2-D. The reference of the right to recover attorneys' fees pursuant to Section 57.105 does not provide a reasonable alternative to the previously existing statutory right and no basis to conclude the deprivation of Plaintiffs' rights are constitutional.

122. The new one-way availability of prevailing party attorneys' fees is not justified by Florida public policy. SB 2-D contravenes longstanding and still valid Florida public policy recognizing homeowners and insurance companies would receive an improper windfall from contractors' inability to seek compulsory process to vindicate their rights to be paid for work performed.

123. SB 2-D violates Plaintiffs' rights to equal protection and due process. Consequently, Defendants cannot investigate, sanction, or otherwise penalize the licenses of AQA and RAF's members for violations of unconstitutional laws.

COUNT I – DECLARATORY RELIEF

124. Plaintiffs reallege Paragraphs 1 through 123 above as if set forth fully herein.

125. This is an action for declaratory relief against Secretary Griffin and Executive Director Shaw. Plaintiffs seek declaratory relief based on the specific and live controversy alleged – namely, the likelihood of investigations, sanctions, and other penalties implemented by Defendants based on the unconstitutional deprivation rights set forth in SB 2-D.

126. Plaintiffs believe that the provisions described herein violate the Florida Constitution. SB 2-D cannot serve as a basis for Defendants' investigatory and disciplinary authority, nor as the basis for any regulations Defendants may seek to implement based on SB 2-D's provisions, which were discussed in great detail above.

127. Plaintiffs seek a determination from this Court that the approved SD 2-D is unconstitutional on its face and as applied to Plaintiffs, in whole or in part, is void, and of no force or effect.

128. There is a bone fide, actual, present, and practical need for the declaration.

129. The declaration deals with a present, ascertained, or ascertainable state of facts or present controversy as to a state of facts.

130. There is some immunity, power, privilege, or right of Plaintiffs that is dependent upon the facts or the law applicable to the facts.

131. There are entities and individuals who have, or reasonably may have an actual, present, adverse, and antagonistic interest in the subject matter of this dispute, either in fact or law.

132. The antagonistic and adverse interests are all before the court by proper process.

133. The relief sought herein is not a request for the Court to give legal advice or to answer questions propounded from curiosity.

COUNT II – INJUNCTIVE RELIEF

134. Plaintiffs reallege Paragraphs 1 through 123 above as if set forth fully herein.

135. This is an action for injunctive relief against Secretary Griffin and Executive Director Shaw.

136. Plaintiffs would like to continue to engage in their licensed professions and businesses with the assurance their constitutional rights will not be violated.

137. Additionally, Plaintiffs should not be subject to sanctions or penalties by Defendants due to Plaintiffs pursuing their lawful rights and remedies in court to receive full compensation for work performed, which includes reasonable attorneys' fees.

138. The burdens created by SB 2-D are unconstitutional.

139. Plaintiffs have a substantial likelihood of success on the merits and have a clear legal right to relief.

140. Plaintiffs lack an adequate remedy at law for the deprivation of their rights.

141. Absent the entry of a preliminary and a permanent injunction, Plaintiffs will suffer irreparable harm to their constitutional and statutory rights and remedies, as well as to their rights under common law.

142. Injunctive relief will serve the public interest by assuring that Defendants will not rely on unconstitutional laws to discipline Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, RAF, on behalf of its members, and AQA, respectfully request, as set forth in Counts I-II, that this Court enter a judgment in their favor and against Defendants, as follows:

1. Declare SB 2-D violates the single-subject rule of the Florida Constitution and is null and void;

2. Declare that SB 2-D violates Plaintiffs' rights to access to the courts, equal protection, and due process as set forth in the Florida Constitution. The withdrawal of an assignee's right to prevailing party attorneys' fees against insurers in litigation arising under commercial or residential insurance policies should be void and without effect;

3. Declare that Defendants cannot rely on the unconstitutional provisions of SB 2-D to investigate, sanction, or otherwise penalize Plaintiffs;

4. Issue an Order preliminarily and permanently enjoining the effectiveness of SB 2-D, as well as Defendants from investigating, sanctioning, or otherwise penalizing Plaintiffs based on the challenged provisions;

5. Award Plaintiffs all costs incurred in bringing this action; and

6. Award all other relief that this Honorable Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs, RAF and AQA demand a trial by jury on all Counts so triable.

Dated: May 31, 2022

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An act relating to property insurance; creating s. 215.5551, F.S.; creating the Reinsurance to Assist Policyholders program to be administered by the State Board of Administration; defining terms; requiring certain property insurers to obtain coverage under the program; requiring the board to provide reimbursement to property insurers under the program; requiring the board and property insurers to enter into contracts to provide certain insurance reimbursement; providing requirements for the contracts; providing construction; providing calculations for specified amounts of losses to determine reimbursement under the program; authorizing the board to inspect, examine, and verify insurer records; providing insurer eligibility qualifications for the program; providing for disqualification; requiring certain insurers to notify the board under a specified circumstance; providing for deferral of coverage under the program; prohibiting premiums from being charged for participation in the program; providing that the program does not affect the claims-paying capacity of the Florida Hurricane Catastrophe Fund; requiring the program to pay reimbursements directly to the applicable state guaranty fund in the event of insolvency; specifying requirements for the Florida Hurricane Catastrophe Fund if an insurer or the Citizens Property Insurance Corporation accept assignments of unsound insurers; providing that

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certain violations are violations of the insurance code; authorizing the board to enforce certain requirements; authorizing the board to adopt nonemergency rules and emergency rules; providing legislative findings; specifying conditions and limitations for any emergency rules adopted; providing legislative intent; requiring the board to submit a written notice within a certain timeframe to the Executive Office of the Governor relating to the program funds, under certain circumstances; providing a requirement for the notice and subsequent requests; requiring the Executive Office of the Governor to instruct the Chief Financial Officer to draw a warrant for a transfer to the board for the program under certain circumstances and to provide notification to specified persons within a certain timeframe; prohibiting cumulative transfers from exceeding a specified amount; providing reporting requirements; providing for expiration and transfer of unencumbered funds; requiring certain property insurers to reduce rates to reflect certain cost savings through rate filings by a specified date; prohibiting such insurers from making other rate changes; requiring the Office of Insurance Regulation to expedite the review of certain filings; amending s. 215.5586, F.S.; revising homeowner eligibility criteria for mitigation grants; specifying matching requirements for grants; revising reporting requirements; providing an appropriation; requiring the Department of Financial Services to

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submit budget amendments; specifying requirements for budget amendments; providing for reversion and appropriation of any unexpended balance; authorizing the Department of Financial Services to adopt emergency rules; providing legislative findings; providing that such rules remain in effect until replaced by rules adopted using nonemergency rulemaking procedures; providing for expiration; amending s. 489.147, F.S.; revising the definition of the term "prohibited advertisement"; creating s. 624.1551, F.S.; requiring claimants to establish that property insurers have breached the insurance contract to prevail in certain claims for damages; amending s. 624.307, F.S.; requiring the office to publish certain information on its website; amending s. 624.313, F.S.; revising the information the office must include in a certain annual report; amending s. 624.315, F.S.; revising the information the office must include in certain reports; amending s. 624.424, F.S.; requiring the Office of Insurance Regulation to aggregate on a statewide basis and make publicly available certain data submitted by insurers and insurer groups; specifying requirements for publishing such data; providing that such information is not a trade secret and is not subject to a certain public records exemption; amending s. 626.9373, F.S.; revising conditions for the award of reasonable attorney fees to apply to all suits brought under residential or commercial property insurance policies, rather than

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those not brought by assignees; limiting the transfer, assignment, or acquisition of rights to attorney fees in certain property insurance suits; amending s. 627.428, F.S.; revising conditions for the award of reasonable attorney fees to apply to all suits brought under residential or commercial property insurance policies, rather than those not brought by assignees; limiting the transfer, assignment, or acquisition of rights to attorney fees in certain property insurance suits; amending s. 627.701, F.S.; revising a prohibition against the issuance of insurance policies containing certain deductible provisions; revising the conditions a personal lines residential property insurance policy covering certain risks must meet under certain circumstances; requiring personal lines residential property insurance policies containing separate roof deductibles to include specified information; authorizing property insurers to include separate roof deductibles if certain requirements are met; providing requirements for policyholders in rejecting such deductibles under certain circumstances; requiring the office to expedite the review of filing of certain forms; authorizing the commission to adopt certain model forms or guidelines; requiring the office to review certain filings within a specified timeframe; providing that roof deductible portions of the filing are not subject to a specified extension for review; amending s. 627.7011, F.S.; authorizing property insurers to limit certain roof

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claim payments under certain circumstances; defining the term "authorized inspector"; prohibiting insurers from refusing to issue or renew homeowners' policies insuring certain structures; requiring insurers to allow homeowners to have roof inspections performed before requiring roof replacement; specifying the manner of calculating the age of certain roofs; providing applicability; amending s. 627.70131, F.S.; requiring insurers to conduct physical inspections for certain claims within a specified timeframe; requiring property insurers to notify and provide certain detailed estimates to policyholders; providing construction; requiring property insurers to provide reasonable explanations related to claims under certain circumstances; amending s. 627.70152, F.S.; making a technical change; authorizing property insurers to be awarded attorney fees in certain suit dismissals; providing that a strong presumption is created that a lodestar fee is sufficient and reasonable; providing that such presumption may be rebutted only under certain circumstances; amending s. 627.7142, F.S.; conforming a cross-reference; amending s. 627.7152, F.S.; revising the definition of the term "assignment agreement"; deleting the definitions of the terms "disputed amount" and "judgment obtained"; revising a requirement for assignment agreements; revising the requirement for assignees to indemnify and hold harmless assignors; specifying a timeframe during which and the addresses to which a notice of

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intent must be served; deleting certain limitations on the recovery and award of attorney fees in suits related to assignment agreements; creating s. 627.7154, F.S.; creating a property insurer stability unit within the office for a specified purpose; specifying the duties of the unit; requiring the unit to provide a specified report biannually; specifying requirements for such report; specifying events that trigger referrals to the unit; requiring the unit's supervisors to review such referrals for a certain determination; requiring unit expenses be paid from a specified fund; requiring costs of examinations to be paid by examined persons in a specified circumstance; amending s. 631.031, F.S.; requiring certain notifications by the office to the department of grounds for delinquency proceedings to include an affidavit; specifying contents of such affidavit; amending s. 631.398, F.S.; specifying duties of the department for insurer insolvency proceedings; providing for construction of the act in pari materia with laws enacted during the 2022 Regular Session of the Legislature; providing effective dates.

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

Section 1. Section 215.5551, Florida Statutes, is created to read:

215.5551 Reinsurance to Assist Policyholders program.—

(1) CREATION OF THE REINSURANCE TO ASSIST POLICYHOLDERS

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PROGRAM.—There is created the Reinsurance to Assist Policyholders program to be administered by the State Board of Administration.

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

(a) "Board" means the State Board of Administration.

(b) "Contract year" means the period beginning on June 1 of a specified calendar year and ending on May 31 of the following calendar year.

(c) "Covered event" means any one storm declared to be a hurricane by the National Hurricane Center, which storm causes insured losses in this state.

(d) "Covered policy" has the same meaning as in s. 215.555(2)(c).

(e) "FHCF" means the Florida Hurricane Catastrophe Fund created under s. 215.555.

(f) "Losses" has the same meaning as in s. 215.555(2)(d).

(g) "RAP" means the Reinsurance to Assist Policyholders program created by this section.

(h) "RAP insurer" means an insurer that is a participating insurer in the FHCF on June 1, 2022, which must obtain coverage under the RAP program and qualifies under subsection (5). However, any joint underwriting association, risk apportionment plan, or other entity created under s. 627.351 is not considered a RAP insurer and is prohibited from obtaining coverage under the RAP program.

(i) "RAP limit" means, for the 2022-2023 contract year, the RAP insurer's maximum payout, which is its share of the $2 billion RAP layer aggregate limit. For the 2023-2024 contract year, for RAP insurers that are subject to participation

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deferral under subsection (6) and participate during the 2023-2024 contract year, the RAP limit means the RAP insurer's maximum payout, which is its share of the total amount of the RAP program layer aggregate limit deferred from 2022-2023.

(j) "RAP qualification ratio" means:

1. For the 2022-2023 contract year, the ratio of FHCF mandatory premium adjusted to 90 percent for RAP insurers divided by the FHCF mandatory premium adjusted to 90 percent for all insurers. The preliminary RAP qualification ratio shall be based on the 2021-2022 contract year's company premiums, as of December 31, 2021, adjusted to 90 percent based on the 2022-2023 contract year coverage selections. The RAP qualification ratio shall be based on the reported 2022-2023 contract year company premiums, as of December 31, 2022, adjusted to 90 percent.

2. For the 2023-2024 contract year, the ratio of FHCF mandatory premium adjusted to 90 percent for the qualified RAP insurers that have deferred RAP coverage to 2023-2024 divided by the FHCF mandatory premium adjusted to 90 percent for all insurers. The preliminary RAP qualification ratio shall be based on the 2022-2023 contract year's company premiums as of December 31, 2022, adjusted to 90 percent based on the 2023-2024 contract year coverage selections. The RAP qualification ratio shall be based on the reported 2023-2024 contract year company premiums as of December 31, 2023, adjusted to 90 percent.

(k) "RAP reimbursement contract" means the reimbursement contract reflecting the obligations of the RAP program to insurers.

(l) "RAP retention" means the amount of losses below which a RAP insurer is not entitled to reimbursement under the RAP

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program.

(m) "Unsound insurer" means a RAP insurer determined by the Office of Insurance Regulation to be in unsound condition as defined in s. 624.80(2) or a RAP insurer placed in receivership under chapter 631.

(3) COVERAGE.—

(a) As a condition of doing business in this state, each RAP insurer shall obtain coverage under the RAP program.

(b) The board shall provide a reimbursement layer of $2 billion below the FHCF retention prior to the third event dropdown of the FHCF retention set forth in s. 215.555(2)(e). Subject to the mandatory notice provisions in subsection (5), the board shall enter into a RAP reimbursement contract with each eligible RAP insurer writing covered policies in this state to provide to the insurer the reimbursement described in this section.

(4) RAP REIMBURSEMENT CONTRACTS.—

(a)1. The board shall issue a RAP reimbursement contract to each eligible RAP insurer which is effective:

a. June 1, 2022, for RAP insurers that participate in the RAP program during the 2022-2023 contract year; or

b. June 1, 2023, for RAP insurers that are subject to participation deferral under subsection (6) and participate in the RAP program during the 2023-2024 contract year.

2. The reimbursement contract shall be executed no later than:

a. July 15, 2022, for RAP insurers that participate in the RAP program during the 2022-2023 contract year; or

b. March 1, 2023, for RAP insurers that are subject to

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participation deferral under subsection (6) and participate in the RAP program during the 2023-2024 contract year.

3. If a RAP insurer fails to execute the RAP reimbursement contract by the dates required in this paragraph, the RAP insurance contract is deemed to have been executed by the RAP insurer.

(b) For the two covered events with the largest losses, the RAP reimbursement contract must contain a promise by the board to reimburse the RAP insurer for 90 percent of its losses from each covered event in excess of the insurer's RAP retention, plus 10 percent of the reimbursed losses to cover loss adjustment expenses. The sum of the losses and 10 percent loss adjustment expense allocation from the RAP layer may not exceed the RAP limit. Recoveries on losses in the FHCF mandatory layer shall inure to the benefit of the RAP contract layer.

(c) The RAP reimbursement contract must provide that reimbursement amounts are not reduced by reinsurance paid or payable to the insurer from other sources excluding the FHCF.

(d) The board shall calculate and report to each RAP insurer the RAP payout multiples as the ratio of the RAP industry limit of $2 billion for the 2022-2023 contract year, or the deferred limit for the 2022-2023 contract year, to the mandatory FHCF retention multiplied by the mandatory FHCF retention multiples divided by the RAP qualification ratio. The RAP payout multiple for an insurer is multiplied by the RAP insurer's FHCF premium to calculate its RAP maximum payout. RAP payout multiples are calculated for 45 percent, 75 percent, and 90 percent FHCF mandatory coverage selections.

(e) A RAP insurer's RAP retention is calculated as follows:

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1. The board shall calculate and report to each RAP insurer the RAP retention multiples for each FHCF coverage selection as the FHCF retention multiple minus the RAP payout multiple. The RAP retention multiple for an insurer is multiplied by the RAP insurer's FHCF premium to calculate its RAP retention. RAP retention multiples are calculated for 45 percent, 75 percent, and 90 percent FHCF mandatory coverage selections.

2. The RAP industry retention for the 2022-2023 contract year is the FHCF's industry retention minus $2 billion, prior to allocation to qualifying RAP insurers. The RAP industry retention for the 2023-2024 contract year is the FHCF's industry retention for the 2023-2024 contract year minus the total deferred RAP limit, prior to allocation to qualifying RAP insurers.

3. A RAP insurer determines its actual RAP retention by multiplying its actual mandatory reimbursement FHCF premium by the RAP retention multiple.

(f) To ensure that insurers have properly reported the losses for which RAP reimbursements have been made, the board may inspect, examine, and verify the records of each RAP insurer's covered policies at such times as the board deems appropriate for the specific purpose of validating the accuracy of losses required to be reported under the terms and conditions of the RAP reimbursement contract.

(5) INSURER QUALIFICATION.—

(a) An insurer is not eligible to participate in the RAP program if the board receives a notice from the Commissioner of Insurance Regulation which certifies that the insurer is in an unsound financial condition no later than:

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1. June 15, 2022, for RAP insurers that participate during the 2022-2023 contract year; or

2. February 1, 2023, for RAP insurers subject to participation deferral under subsection (6) and participate during the 2023-2024 contract year.

(b) The office must make this determination based on the following factors:

1. The insurer's compliance with the requirements to qualify for and hold a certificate of authority under s. 624.404;

2. The insurer's compliance with the applicable surplus requirements of s. 624.408;

3. The insurer's compliance with the applicable risk-based capital requirements under s. 624.4085;

4. The insurer's compliance with the applicable premium to surplus requirements under s. 624.4095; and

5. An analysis of quarterly and annual statements, including an actuarial opinion summary, and other information submitted to the office pursuant to s. 624.424.

(c) If the board receives timely notice pursuant to paragraph (a) regarding an insurer, such insurer is disqualified from participating in the RAP program.

(6) PARTICIPATION DEFERRAL.—

(a) A RAP insurer that has any private reinsurance that duplicates RAP coverage that such insurer would receive for the 2022-2023 contract year shall notify the board in writing of such duplicative coverage no later than June 30, 2022. Participation in the RAP program for such RAP insurers shall be deferred until the 2023-2024 contract year.

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(b) A new participating insurer that begins writing covered policies in this state after June 1, 2022, is deemed to defer its RAP coverage to the 2023-2024 contract year.

(7) RAP PREMIUMS.—Premiums may not be charged for participation in the RAP program.

(8) CLAIMS-PAYING CAPACITY.—The RAP program shall not affect the claims-paying capacity of the FHCF as provided in s. 215.555(4)(c)1.

(9) INSOLVENCY OF RAP INSURER.—

(a) The RAP reimbursement contract shall provide that in the event of an insolvency of a RAP insurer, the RAP program shall pay reimbursements directly to the applicable state guaranty fund for the benefit of policyholders in this state of the RAP insurer.

(b) If an authorized insurer or the Citizens Property Insurance Corporation accepts an assignment of an unsound RAP insurer's RAP contract, the FHCF shall apply the unsound RAP insurer's RAP contract to such policies and treat the authorized insurer or the Citizens Property Insurance Corporation as if it were the unsound RAP insurer for the remaining term of the RAP contract, with all rights and duties of the unsound RAP insurer beginning on the date it provides coverage for such policies.

(10) VIOLATIONS.—Any violation of this section or of rules adopted under this section constitutes a violation of the insurance code.

(11) LEGAL PROCEEDINGS.—The board is authorized to take any action necessary to enforce the rules, provisions, and requirements of the RAP reimbursement contract, required by and adopted pursuant to this section.

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(12) RULEMAKING.—The board may adopt rules to implement this section. In addition, the board may adopt emergency rules, pursuant to s. 120.54, at any time, as are necessary to implement this section for the 2022-2023 fiscal year. The Legislature finds that such emergency rulemaking power is necessary in order to address a critical need in the state's problematic property insurance market. The Legislature further finds that the uniquely short timeframe needed to effectively implement this section for the 2022-2023 fiscal year requires that the board adopt rules as quickly as practicable. Therefore, in adopting such emergency rules, the board need not make the findings required by s. 120.54(4)(a). Emergency rules adopted under this section are exempt from s. 120.54(4)(c) and shall remain in effect until replaced by rules adopted under the nonemergency rulemaking procedures of chapter 120, which must occur no later than July 1, 2023.

(13) APPROPRIATION.—

(a) Within 60 days after a covered event, the board shall submit written notice to the Executive Office of the Governor if the board determines that funds from the RAP program coverage established by this section will be necessary to reimburse RAP insurers for losses associated with the covered event. The initial notice, and any subsequent requests, must specify the amount necessary to provide RAP reimbursements. Upon receiving such notice, the Executive Office of the Governor shall instruct the Chief Financial Officer to draw a warrant from the General Revenue Fund for a transfer to the board for the RAP program in the amount requested. The Executive Office of the Governor shall provide written notification to the chair and vice chair of the

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Legislative Budget Commission at least 3 days before the effective date of the warrant. Cumulative transfers authorized under this paragraph may not exceed $2 billion.

(b) If General Revenue Funds are transferred to the board for the RAP program under paragraph (a), the board shall submit written notice to the Executive Office of the Governor that funds will be necessary for the administration of the RAP program and post-event examinations for covered events that require RAP coverage. The initial notice, and any subsequent requests, must specify the amount necessary for administration of the RAP program and post-event examinations. Upon receiving such notice, the Executive Office of the Governor shall instruct the Chief Financial Officer to draw a warrant from the General Revenue Fund for a transfer to the board for the RAP program in the amount requested. The Executive Office of the Governor shall provide written notification to the chair and vice chair of the Legislative Budget Commission at least 3 days before the effective date of the warrant. Cumulative transfers authorized under this paragraph may not exceed $5 million.

(c) No later than January 31, 2023, and quarterly thereafter, the board shall submit a report to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing any reimbursements of the RAP program, all loss development projections, the amount of RAP reimbursement coverage deferred until the 2023-2024 contract year, and detailed information about administrative and post-event examination expenditures.

(14) EXPIRATION DATE.—If no General Revenue Funds have been transferred to the board for the RAP program under subsection

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(13) by June 30, 2025, this section expires on July 1, 2025. If General Revenue Funds have been transferred to the board for the RAP program under subsection (13) by June 30, 2025, this section expires on July 1, 2029, and all unencumbered RAP program funds shall be transferred by the board back to the General Revenue Fund unallocated.

Section 2. (1) No later than June 30, 2022, each insurer that participates during the 2022-2023 contract year in the Reinsurance to Assist Policyholders program under s. 215.5551, Florida Statutes, shall reduce its rates to reflect the cost savings realized by participating in the program through a rate filing with the Office of Insurance Regulation or by amending a pending rate filing. The insurer shall make no other changes to its rates in the filing.

(2) No later than May 1, 2023, each insurer that defers participation in the Reinsurance to Assist Policyholders program until the 2023-2024 year under s. 215.5551, Florida Statutes, shall reduce its rates to reflect the cost savings realized by participating in the program through a rate filing with the Office of Insurance Regulation or by amending a pending rate filing. The insurer shall make no other changes to its rates in the filing.

(3) The Office of Insurance Regulation shall expedite the review of the filings made under this section.

Section 3. Effective July 1, 2022, paragraphs (a) and (b) of subsection (2) and subsection (10) of section 215.5586, Florida Statutes, are amended to read:

215.5586 My Safe Florida Home Program.—There is established within the Department of Financial Services the My Safe Florida

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Home Program. The department shall provide fiscal accountability, contract management, and strategic leadership for the program, consistent with this section. This section does not create an entitlement for property owners or obligate the state in any way to fund the inspection or retrofitting of residential property in this state. Implementation of this program is subject to annual legislative appropriations. It is the intent of the Legislature that the My Safe Florida Home Program provide trained and certified inspectors to perform inspections for owners of site-built, single-family, residential properties and grants to eligible applicants as funding allows. The program shall develop and implement a comprehensive and coordinated approach for hurricane damage mitigation that may include the following:

(2) MITIGATION GRANTS.—Financial grants shall be used to encourage single-family, site-built, owner-occupied, residential property owners to retrofit their properties to make them less vulnerable to hurricane damage.

(a) For a homeowner to be eligible for a grant, the following criteria must be met:

1. The homeowner must have been granted a homestead exemption on the home under chapter 196.

2. The home must be a dwelling with an insured value of $500,000 ~~$300,000~~ or less. Homeowners who are low-income persons, as defined in s. 420.0004(11), are exempt from this requirement.

3. The home must have undergone an acceptable hurricane mitigation inspection after July 1, 2008 ~~May 1, 2007~~.

4. The home must be located in the "wind-borne debris

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region" as that term is defined in the Florida Building Code ~~s. 1609.2, International Building Code (2006), or as subsequently amended~~.

5. The building permit application for initial construction of the home must have been made before January 1, 2008 ~~March 1, 2002~~.

6. The homeowner must agree to make his or her home available for inspection once a mitigation project is completed.

An application for a grant must contain a signed or electronically verified statement made under penalty of perjury that the applicant has submitted only a single application and must have attached documents demonstrating the applicant meets the requirements of this paragraph.

(b) All grants must be matched on the basis of $1 provided by the applicant for $2 provided by the state ~~a dollar-for-dollar basis~~ up to a maximum state contribution ~~total~~ of $10,000 toward ~~for~~ the actual cost of the mitigation project ~~with the state's contribution not to exceed $5,000~~.

(10) REPORTS.—The department shall make an annual report on the activities of the program that shall account for the use of state funds and indicate the number of inspections requested, the number of inspections performed, the number of grant applications received, ~~and~~ the number and value of grants approved, and the average annual amount of insurance premium discounts and total annual amount of insurance premium discounts homeowners received from insurers as a result of mitigation funded through the program. The report shall be delivered to the President of the Senate and the Speaker of the House of

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Representatives by February 1 of each year.

Section 4. (1) For the 2022-2023 fiscal year, the sum of $150 million in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Financial Services for the My Safe Florida Home Program. The funds shall be placed in reserve. The department shall submit budget amendments requesting release of the funds held in reserve pursuant to chapter 216, Florida Statutes. The budget amendments shall include a detailed spending plan.

(2) The funds shall be allocated as follows:

(a) Twenty-five million dollars for hurricane mitigation inspections.

(b) One hundred fifteen million dollars for mitigation grants.

(c) Four million dollars for education and consumer awareness.

(d) One million dollars for public outreach for contractors and real estate brokers and sales associates.

(e) Five million dollars for administrative costs.

(3) Any unexpended balance of funds from this appropriation remaining on June 30, 2023, shall revert and is appropriated to the Department of Financial Services for the 2023-2024 fiscal year for the same purpose.

(4) The department may adopt emergency rules pursuant to s. 120.54, Florida Statutes, at any time, as are necessary to implement this section and s. 215.5586, Florida Statutes, as amended by this act. The Legislature finds that such emergency rulemaking authority is necessary to address a critical need in the state's problematic property insurance market. The

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Legislature further finds that the uniquely short timeframe needed to effectively implement this section for the 2022-2023 fiscal year requires that the department adopt rules as quickly as practicable. Therefore, in adopting such emergency rules, the department need not make the findings required by s. 120.54(4)(a), Florida Statutes. Emergency rules adopted under this section are exempt from s. 120.54(4)(c), Florida Statutes, and shall remain in effect until replaced by rules adopted under the nonemergency rulemaking procedures of chapter 120, Florida Statutes, which must occur no later than July 1, 2023.

(5) This section shall expire on October 1, 2024.

Section 5. Paragraph (a) of subsection (1) of section 489.147, Florida Statutes, is amended to read:

489.147 Prohibited property insurance practices.—

(1) As used in this section, the term:

(a) "Prohibited advertisement" means any written or electronic communication by a contractor which ~~that~~ encourages, instructs, or induces a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage, if such communication does not state in a font size of at least 12 points and at least half as large as the largest font size used in the communication that:

1. The consumer is responsible for payment of any insurance deductible;

2. It is insurance fraud punishable as a felony of the third degree for a contractor to knowingly or willfully, and with intent to injure, defraud, or deceive, pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to a property covered by a

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property insurance policy; and

3. It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete, or misleading information.

The term includes, but is not limited to, door hangers, business cards, magnets, flyers, pamphlets, and e-mails.

Section 6. Section 624.1551, Florida Statutes, is created to read:

624.1551 Civil remedy actions against property insurers.—Notwithstanding any provision of s. 624.155, a claimant must establish that the property insurer breached the insurance contract to prevail in a claim for extracontractual damages under s. 624.155(1)(b).

Section 7. Subsection (4) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(4) The department and office may each collect, propose, publish, and disseminate information relating to the subject matter of any duties imposed upon it by law.

(a) Aggregate information may include information asserted as trade secret information unless the trade secret information can be individually extrapolated, in which case the trade secret information remains protected as provided under s. 624.4213.

(b) The office shall publish all orders, data required by s. 627.915(2), reports required by s. 627.7154(3), and all reports that are not confidential and exempt on its website in a timely fashion.

Section 8. Paragraph (j) of subsection (1) of section

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624.313, Florida Statutes, is amended to read:

624.313 Publications.—

(1) As early as reasonably possible, the office shall annually have printed and made available a statistical report which must include all of the following information on either a calendar year or fiscal year basis:

(j) An analysis of such lines or kinds of insurance for which the office determines that an availability problem exists in this state, and an analysis of the availability of reinsurance to domestic insurers selling homeowners' and condominium unit owners' insurance in this state.

Section 9. Paragraph (c) of subsection (1) and paragraph (n) of subsection (2) of section 624.315, Florida Statutes, are amended to read:

624.315 Department; annual report.—

(1) As early as reasonably possible, the office, with such assistance from the department as requested, shall annually prepare a report to the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, the chairs of the legislative committees with jurisdiction over matters of insurance, and the Governor showing, with respect to the preceding calendar year:

(c) Names of insurers against which delinquency or similar proceedings were instituted.~~,~~ For property insurers for which the delinquency or similar proceedings were instituted, the annual report must also include the date that each insurer was deemed impaired of capital or surplus, as the terms impairment of capital and impairment of surplus are defined in s. 631.011, or insolvent, as the term insolvency is defined in s. 631.011;

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~~and~~ a concise statement of the circumstances that led to each insurer's delinquency; a summary of the actions taken by the insurer and the office to avoid delinquency; and the results or status of each such proceeding.

(2) The office shall maintain the following information and make such information available upon request:

(n) Trends; emerging trends as exemplified by the percentage change in frequency and severity of both paid and incurred claims, and pure premium (Florida and countrywide). Reports relating to the health of the homeowners' and condominium unit owners' insurance market must include the percentage of policies written by voluntary carriers, the percentage of policies written by the Citizens Property Insurance Corporation, and any trends related to the relative shares of the voluntary and residual markets.

Section 10. Subsection (10) of section 624.424, Florida Statutes, is amended to read:

624.424 Annual statement and other information.—

(10)(a) Each insurer or insurer group doing business in this state shall file on a quarterly basis in conjunction with financial reports required by paragraph (1)(a) a supplemental report on an individual and group basis on a form prescribed by the commission with information on personal lines and commercial lines residential property insurance policies in this state. The supplemental report shall include separate information for personal lines property policies and for commercial lines property policies and totals for each item specified, including premiums written for each of the property lines of business as described in ss. 215.555(2)(c) and 627.351(6)(a). The report

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shall include the following information for each county on a monthly basis:

1.~~(a)~~ Total number of policies in force at the end of each month.

2.~~(b)~~ Total number of policies canceled.

3.~~(c)~~ Total number of policies nonrenewed.

4.~~(d)~~ Number of policies canceled due to hurricane risk.

5.~~(e)~~ Number of policies nonrenewed due to hurricane risk.

6.~~(f)~~ Number of new policies written.

7.~~(g)~~ Total dollar value of structure exposure under policies that include wind coverage.

8.~~(h)~~ Number of policies that exclude wind coverage.

(b) The office shall aggregate on a statewide basis the data submitted by each insurer or insurer group under paragraph (a) and make such data publicly available by publishing such data on the office's website within 1 month after each quarterly and annual filing. Such information, when aggregated on a statewide basis as to an individual insurer or insurer group, is not a trade secret as defined in s. 688.002(4) or s. 812.081 and is not subject to the public records exemption for trade secrets provided in s. 119.0715.

Section 11. Section 626.9373, Florida Statutes, is amended to read:

626.9373 Attorney fees.—

(1) Upon the rendition of a judgment or decree by any court of this state against a surplus lines insurer in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer on or after the effective date of this act, the trial court or, if the insured or

beneficiary prevails on appeal, the appellate court, shall adjudge or decree against the insurer in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured's or beneficiary's attorney prosecuting the lawsuit for which recovery is awarded. In a suit arising under a residential or commercial property insurance policy ~~not brought by an assignee~~, the amount of reasonable attorney fees shall be awarded only as provided in s. 57.105 or s. 627.70152, as applicable.

(2) If awarded, attorney fees or compensation shall be included in the judgment or decree rendered in the case.

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

Section 12. Section 627.428, Florida Statutes, is amended to read:

627.428 Attorney fees.—

(1) Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer, the trial court or, in the event of an appeal in which the insured or beneficiary prevails, the appellate court shall adjudge or decree against the insurer and in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured's or beneficiary's attorney prosecuting the suit in which the recovery is had. In a suit arising under a residential or commercial property insurance

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policy ~~not brought by an assignee~~, the amount of reasonable attorney fees shall be awarded only as provided in s. 57.105 or s. 627.70152, as applicable.

(2) As to suits based on claims arising under life insurance policies or annuity contracts, no such attorney fees shall be allowed if such suit was commenced prior to expiration of 60 days after proof of the claim was duly filed with the insurer.

(3) When so awarded, compensation or fees of the attorney shall be included in the judgment or decree rendered in the case.

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

Section 13. Paragraph (d) of subsection (4) of section 627.701, Florida Statutes, is amended, paragraph (c) of subsection (2), paragraph (e) of subsection (4), and subsection (10) are added to that section, and subsection (7) of that section is republished, to read:

627.701 Liability of insureds; coinsurance; deductibles.—

(2) Unless the office determines that the deductible provision is clear and unambiguous, a property insurer may not issue an insurance policy or contract covering real property in this state which contains a deductible provision that:

(c) Applies solely to a roof loss as provided in subsection (10).

(4)

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(d)1. A personal lines residential property insurance policy covering a risk valued at less than $500,000 may not have a hurricane deductible in excess of 10 percent of the policy dwelling limits, unless the following conditions are met:

a. The policyholder must personally write or type and provide to the insurer the following statement ~~in his or her own handwriting~~ and sign his or her name, which must also be signed by every other named insured on the policy, and dated: "I do not want the insurance on my home to pay for the first (specify dollar value) of damage from hurricanes. I will pay those costs. My insurance will not."

b. If the structure insured by the policy is subject to a mortgage or lien, the policyholder must provide the insurer with a written statement from the mortgageholder or lienholder indicating that the mortgageholder or lienholder approves the policyholder electing to have the specified deductible.

2. A deductible subject to the requirements of this paragraph applies for the term of the policy and for each renewal thereafter. Changes to the deductible percentage may be implemented only as of the date of renewal.

3. An insurer shall keep the original copy of the signed statement required by this paragraph, electronically or otherwise, and provide a copy to the policyholder providing the signed statement. A signed statement meeting the requirements of this paragraph creates a presumption that there was an informed, knowing election of coverage.

4. The commission shall adopt rules providing appropriate alternative methods for providing the statements required by this section for policyholders who have a handicapping or

disabling condition that prevents them from providing a handwritten statement.

(e)1. A personal lines residential property insurance policy that contains a separate roof deductible must include, on the page immediately behind the declarations page, with no other policy language on the page, in boldfaced type no smaller than 18 point, the following statement: "YOU ARE ELECTING TO PURCHASE COVERAGE ON YOUR HOME WHICH CONTAINS A SEPARATE DEDUCTIBLE FOR ROOF LOSSES. BE ADVISED THAT THIS MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU. PLEASE DISCUSS WITH YOUR INSURANCE AGENT."

2. For any personal lines residential property insurance policy containing a separate roof deductible, the insurer shall compute and prominently display on the declarations page of the policy or on the premium renewal notice the actual dollar value of the roof deductible of the policy at issuance and renewal.

(7) Prior to issuing a personal lines residential property insurance policy on or after April 1, 1997, or prior to the first renewal of a residential property insurance policy on or after April 1, 1997, the insurer must offer a deductible equal to $500 applicable to losses from perils other than hurricane. The insurer must provide the policyholder with notice of the availability of the deductible specified in this subsection in a form approved by the office at least once every 3 years. The failure to provide such notice constitutes a violation of this code but does not affect the coverage provided under the policy. An insurer may require a higher deductible only as part of a deductible program lawfully in effect on June 1, 1996, or as part of a similar deductible program.

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(10)(a) Notwithstanding any other provision of law, an insurer issuing a personal lines residential property insurance policy may include in such policy a separate roof deductible that meets all of the following requirements:

1. The insurer has complied with the offer requirements under subsection (7) regarding a deductible applicable to losses from perils other than a hurricane.

2. The roof deductible may not exceed the lesser of 2 percent of the coverage A limit of the policy or 50 percent of the cost to replace the roof.

3. The premium that a policyholder is charged for the policy includes an actuarially sound credit or premium discount for the roof deductible.

4. The roof deductible applies only to a claim adjusted on a replacement cost basis.

5. The roof deductible does not apply to any of the following events:

a. A total loss to a primary structure in accordance with the valued policy law under s. 627.702 which is caused by a covered peril.

b. A roof loss resulting from a hurricane as defined in s. 627.4025(2)(c).

c. A roof loss resulting from a tree fall or other hazard that damages the roof and punctures the roof deck.

d. A roof loss requiring the repair of less than 50 percent of the roof.

If a roof deductible is applied, no other deductible under the policy may be applied to the loss.

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(b) At the time of initial issuance of a personal lines residential property insurance policy, an insurer may offer the policyholder a separate roof deductible with the ability to opt-out and reject the separate roof deductible. To reject a separate roof deductible, the policyholder shall sign a form approved by the office.

(c) At the time of renewal, an insurer may add a separate roof deductible to a personal lines residential property insurance policy if the insurer provides a notice of change in policy terms pursuant to s. 627.43141. The insurer must also offer the policyholder the ability to opt-out and reject the separate roof deductible. To reject a separate roof deductible, the policyholder shall sign a form approved by the office.

(d) The office shall expedite the review of any filing of insurance forms that only contain a separate roof deductible pursuant to this subsection. The commission may adopt model forms or guidelines that provide options for roof deductible language which may be used for filing by insurers. If an insurer makes a filing pursuant to a model form or guideline issued by the office, the office must review the filing within the initial 30-day review period authorized by s. 627.410(2), and the roof deductible portion of the filing is not subject to the 15-day extension for review under that subsection.

Section 14. Present subsection (5) of section 627.7011, Florida Statutes, is redesignated as subsection (6), a new subsection (5) is added to that section, and paragraph (a) of subsection (3) of that section 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, 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. However, if a roof deductible under s. 627.701(10) is applied to the insured loss, the insurer may limit the claim payment as to the roof to the actual cash value of the loss to the roof until the insurer receives reasonable proof of payment by the policyholder of the roof deductible. Reasonable proof of payment includes a canceled check, money order receipt, credit card statement, or copy of an executed installment plan contract or other financing arrangement that requires full payment of the deductible over time. If a total loss of a dwelling occurs, the insurer must ~~shall~~ pay the replacement cost coverage without reservation or holdback of any depreciation in value, pursuant to s. 627.702.

(5)(a) As used in this subsection, the term "authorized inspector" means an inspector who is approved by the insurer and who is:

1. A home inspector licensed under s. 468.8314;

2. A building code inspector certified under s. 468.607;

3. A general, building, or residential contractor licensed under s. 489.111;

4. A professional engineer licensed under s. 471.015;

5. A professional architect licensed under s. 481.213; or

6. Any other individual or entity recognized by the insurer as possessing the necessary qualifications to properly complete

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a general inspection of a residential structure insured with a homeowner's insurance policy.

(b) An insurer may not refuse to issue or refuse to renew a homeowner's policy insuring a residential structure with a roof that is less than 15 years old solely because of the age of the roof.

(c) For a roof that is at least 15 years old, an insurer must allow a homeowner to have a roof inspection performed by an authorized inspector at the homeowner's expense before requiring the replacement of the roof of a residential structure as a condition of issuing or renewing a homeowner's insurance policy. The insurer may not refuse to issue or refuse to renew a homeowner's insurance policy solely because of roof age if an inspection of the roof of the residential structure performed by an authorized inspector indicates that the roof has 5 years or more of useful life remaining.

(d) For purposes of this subsection, a roof's age shall be calculated using the last date on which 100 percent of the roof's surface area was built or replaced in accordance with the building code in effect at that time or the initial date of a partial roof replacement when subsequent partial roof builds or replacements were completed that resulted in 100 percent of the roof's surface area being built or replaced.

(e) This subsection applies to homeowners' insurance policies issued or renewed on or after July 1, 2022.

Section 15. Effective January 1, 2023, subsection (3) and paragraph (a) of subsection (7) of section 627.70131, Florida Statutes, are amended to read:

627.70131 Insurer's duty to acknowledge communications

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regarding claims; investigation.—

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

(b) If such investigation involves a physical inspection of the property, the licensed adjuster assigned by the insurer must provide the policyholder with a printed or electronic document containing his or her name and state adjuster license number. For claims other than those subject to a hurricane deductible, an insurer must conduct any such physical inspection within 45 days after its receipt of the proof of loss statements.

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

(d) Within 7 days after the insurer's assignment of an adjuster to the claim, the insurer must notify the policyholder that he or she may request a copy of any detailed estimate of the amount of the loss generated by an insurer's adjuster. After receiving such a request from the policyholder, the insurer must send any such detailed estimate to the policyholder within the later of 7 days after the insurer received the request or 7 days after the detailed estimate of the amount of the loss is completed. This paragraph does not require that an insurer

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create a detailed estimate of the amount of the loss if such estimate is not reasonably necessary as part of the claim investigation.

(7)(a) Within 90 days after an insurer receives notice of an initial, reopened, or supplemental property insurance claim from a policyholder, the insurer shall pay or deny such claim or a portion of the claim unless the failure to pay is caused by factors beyond the control of the insurer which reasonably prevent such payment. The insurer shall provide a reasonable explanation in writing to the policyholder of the basis in the insurance policy, in relation to the facts or applicable law, for the payment, denial, or partial denial of a claim. If the insurer's claim payment is less than specified in any insurer's detailed estimate of the amount of the loss, the insurer must provide a reasonable explanation in writing of the difference to the policyholder. Any payment of an initial or supplemental claim or portion of such claim made 90 days after the insurer receives notice of the claim, or made more than 15 days after there are no longer factors beyond the control of the insurer which reasonably prevented such payment, whichever is later, bears interest at the rate set forth in s. 55.03. Interest begins to accrue from the date the insurer receives notice of the claim. The provisions of this subsection may not be waived, voided, or nullified by the terms of the insurance policy. If there is a right to prejudgment interest, the insured must ~~shall~~ select whether to receive prejudgment interest or interest under this subsection. Interest is payable when the claim or portion of the claim is paid. Failure to comply with this subsection constitutes a violation of this code. However, failure to comply

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with this subsection does not form the sole basis for a private cause of action.

Section 16. Paragraph (d) of subsection (2) and subsection (8) of section 627.70152, Florida Statutes, are amended to read:

627.70152 Suits arising under a property insurance policy.—

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

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

(8) ATTORNEY FEES.—

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

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

2. If the difference between the amount obtained by the claimant and the presuit settlement offer, excluding reasonable attorney fees and costs, is at least 20 percent but less than 50 percent of the disputed amount, the insurer pays the claimant's

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attorney fees and costs under s. 626.9373(1) or s. 627.428(1) equal to the percentage of the disputed amount obtained times the total attorney fees and costs.

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

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

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

Section 17. Section 627.7142, Florida Statutes, is amended to read:

627.7142 Homeowner Claims Bill of Rights.—An insurer issuing a personal lines residential property insurance policy in this state must provide a Homeowner Claims Bill of Rights to a policyholder within 14 days after receiving an initial communication with respect to a claim. The purpose of the bill of rights is to summarize, in simple, nontechnical terms,

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existing Florida law regarding the rights of a personal lines residential property insurance policyholder who files a claim of loss. The Homeowner Claims Bill of Rights is specific to the claims process and does not represent all of a policyholder's rights under Florida law regarding the insurance policy. The Homeowner Claims Bill of Rights does not create a civil cause of action by any individual policyholder or class of policyholders against an insurer or insurers. The failure of an insurer to properly deliver the Homeowner Claims Bill of Rights is subject to administrative enforcement by the office but is not admissible as evidence in a civil action against an insurer. The Homeowner Claims Bill of Rights does not enlarge, modify, or contravene statutory requirements, including, but not limited to, ss. 626.854, 626.9541, 627.70131, 627.7015, and 627.7074, and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy or ss. 627.7011(6)(e) ~~627.7011(5)(e)~~ and 627.702(7). The Homeowner Claims Bill of Rights must state:

HOMEOWNER CLAIMS
BILL OF RIGHTS

This Bill of Rights is specific to the claims process and does not represent all of your rights under Florida law regarding your policy. There are also exceptions to the stated timelines when conditions are beyond your insurance company's control. This document does not create a civil cause of action by an individual policyholder, or a class of policyholders, against an insurer or insurers and does not prohibit

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an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy.

YOU HAVE THE RIGHT TO:

1. Receive from your insurance company an acknowledgment of your reported claim within 14 days after the time you communicated the claim.

2. Upon written request, receive from your insurance company within 30 days after you have submitted a complete proof-of-loss statement to your insurance company, confirmation that your claim is covered in full, partially covered, or denied, or receive a written statement that your claim is being investigated.

3. Within 90 days, subject to any dual interest noted in the policy, receive full settlement payment for your claim or payment of the undisputed portion of your claim, or your insurance company's denial of your claim.

4. Receive payment of interest, as provided in s. 627.70131, Florida Statutes, from your insurance company, which begins accruing from the date your claim is filed if your insurance company does not pay full settlement of your initial, reopened, or supplemental claim or the undisputed portion of your claim or does not deny your claim within 90 days after your claim is filed. The interest, if applicable, must be paid when your claim or the undisputed portion of

your claim is paid.

5. Free mediation of your disputed claim by the Florida Department of Financial Services, Division of Consumer Services, under most circumstances and subject to certain restrictions.

6. Neutral evaluation of your disputed claim, if your claim is for damage caused by a sinkhole and is covered by your policy.

7. Contact the Florida Department of Financial Services, Division of Consumer Services' toll-free helpline for assistance with any insurance claim or questions pertaining to the handling of your claim. You can reach the Helpline by phone at ...(toll-free phone number)..., or you can seek assistance online at the Florida Department of Financial Services, Division of Consumer Services' website at ...(website address)....

YOU ARE ADVISED TO:

1. File all claims directly with your insurance company.

2. Contact your insurance company before entering into any contract for repairs to confirm any managed repair policy provisions or optional preferred vendors.

3. Make and document emergency repairs that are necessary to prevent further damage. Keep the damaged property, if feasible, keep all receipts, and take photographs or video of damage before and after any

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repairs to provide to your insurer.

4. Carefully read any contract that requires you to pay out-of-pocket expenses or a fee that is based on a percentage of the insurance proceeds that you will receive for repairing or replacing your property.

5. Confirm that the contractor you choose is licensed to do business in Florida. You can verify a contractor's license and check to see if there are any complaints against him or her by calling the Florida Department of Business and Professional Regulation. You should also ask the contractor for references from previous work.

6. Require all contractors to provide proof of insurance before beginning repairs.

7. Take precautions if the damage requires you to leave your home, including securing your property and turning off your gas, water, and electricity, and contacting your insurance company and provide a phone number where you can be reached.

Section 18. Subsection (1), paragraph (a) of subsection (2), subsection (8), paragraph (a) of subsection (9), and subsection (10) of section 627.7152, Florida Statutes, are amended to read:

627.7152 Assignment agreements.—

(1) As used in this section, the term:

(a) "Assignee" means a person who is assigned post-loss benefits through an assignment agreement.

(b) "Assignment agreement" means any instrument by which post-loss benefits under a residential property insurance policy

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or commercial property insurance policy, as that term is defined in s. 627.0625(1), are assigned or transferred, or acquired in any manner, in whole or in part, to or from a person providing services, including, but not limited to, inspecting, protecting, repairing, restoring, or replacing the ~~to protect, repair, restore, or replace~~ property or mitigating ~~to mitigate~~ against further damage to the property. The term does not include fees collected by a public adjuster as defined in s. 626.854(1).

(c) "Assignor" means a person who assigns post-loss benefits under a residential property insurance policy or commercial property insurance policy to another person through an assignment agreement.

(d) ~~"Disputed amount" means the difference between the assignee's presuit settlement demand and the insurer's presuit settlement offer.~~

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

~~(f)~~ "Presuit settlement demand" means the demand made by the assignee in the written notice of intent to initiate litigation as required by paragraph (9)(a).

(e) ~~(g)~~ "Presuit settlement offer" means the offer made by the insurer in its written response to the notice of intent to initiate litigation as required by paragraph (9)(b).

(2)(a) An assignment agreement must:

1. Be in writing and executed by and between the assignor and the assignee.

2. Contain a provision that allows the assignor to rescind the assignment agreement without a penalty or fee by submitting

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a written notice of rescission signed by the assignor to the assignee within 14 days after the execution of the 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 the execution of the agreement if the agreement does not contain a commencement date and the assignee has not begun substantial work on the property.

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 on which the assignment agreement is executed or the date on which work begins, whichever is earlier. Delivery of the copy of the assignment agreement to the insurer 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 acknowledgment 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.

5. 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.

6. Contain the following notice in 18-point uppercase and boldfaced type:

YOU ARE AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY TO A THIRD PARTY, WHICH

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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 14 DAYS AFTER THE DATE THIS AGREEMENT IS EXECUTED, 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 THE EXECUTION OF THE AGREEMENT IF THE AGREEMENT DOES NOT CONTAIN A COMMENCEMENT DATE AND THE ASSIGNEE HAS NOT BEGUN SUBSTANTIAL WORK ON THE PROPERTY. 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.

7. Contain a provision requiring the assignee to indemnify and hold harmless the assignor from all liabilities, damages, losses, and costs, including, but not limited to, attorney fees~~, should the policy subject to the assignment agreement prohibit, in whole or in part, the assignment of benefits~~.

(8) The assignee shall indemnify and hold harmless the assignor from all liabilities, damages, losses, and costs, including, but not limited to, attorney fees~~, should the policy subject to the assignment agreement prohibit, in whole or in part, the assignment of benefits~~.

(9)(a) An assignee must provide the named insured, insurer, and the assignor, if not the named insured, with a written notice of intent to initiate litigation before filing suit under

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the policy. Such notice must be served at least 10 business days before filing suit, but not before the insurer has made a determination of coverage under s. 627.70131. The notice must be served by certified mail, return receipt requested, to the name and mailing address designated by the insurer in the policy forms or by electronic delivery to the e-mail address designated by the insurer in the policy forms ~~at least 10 business days before filing suit, but may not be served before the insurer has made a determination of coverage under s. 627.70131~~. The notice must specify the damages in dispute, the amount claimed, and a presuit settlement demand. Concurrent with the notice, and as a precondition to filing suit, the assignee must provide the named insured, insurer, and the assignor, if not the named insured, 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 that the work has been performed in accordance with accepted industry standards.

(10) Notwithstanding any other provision of law, in a suit related to an assignment agreement for post-loss claims arising under a residential or commercial property insurance policy, attorney fees and costs may be recovered by an assignee only under s. 57.105 ~~and this subsection~~.

~~(a) If the difference between the judgment obtained by the assignee and the presuit settlement offer is:~~

~~1. Less than 25 percent of the disputed amount, the insurer is entitled to an award of reasonable attorney fees.~~

~~2. At least 25 percent but less than 50 percent of the disputed amount, no party is entitled to an award of attorney~~

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~~fees.~~

~~3. At least 50 percent of the disputed amount, the assignee is entitled to an award of reasonable attorney fees.~~

~~(b) If the insurer fails to inspect the property or provide written or oral 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 provide written or oral authorization for repairs is the result of an event for which the Governor had declared a state of emergency under s. 252.36, factors beyond the control of the insurer which reasonably prevented an inspection or written or oral authorization for repairs, or the named insured's 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.~~

~~(c)~~ If an assignee commences an action in any court of this state based upon or including the same claim against the same adverse party that such assignee has previously voluntarily dismissed in a court of this state, the court may order the assignee to pay the attorney fees and costs of the adverse party resulting from the action previously voluntarily dismissed. The court shall stay the proceedings in the subsequent action until the assignee has complied with the order.

Section 19. Section 627.7154, Florida Statutes, is created to read:

627.7154 Property Insurer Stability Unit; duties and required reports.—

(1) A property insurer stability unit is created within the

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office to aid in the detection and prevention of insurer insolvencies in the homeowners' and condominium unit owners' insurance market. The following responsibilities are limited only to matters related to homeowners' and condominium unit owners' insurance.

(2) The insurer stability unit shall provide enhanced monitoring whenever the office identifies significant concerns about an insurer's solvency, rates, proposed contracts, underwriting rules, market practices, claims handling, consumer complaints, litigation practices and outcomes, and any other issue related to compliance with the insurance code.

(3) The insurer stability unit shall, at a minimum:

(a) Conduct a target market exam when there is reason to believe that an insurer's claims practices, rate requirements, investment activities, or financial statements suggest that the insurer may be in an unsound financial condition.

(b) Closely monitor all risk-based capital reports, own-risk solvency assessments, reinsurance agreements, and financial statements filed by insurers selling homeowners' and condominium unit owners' insurance policies in this state.

(c) Have primary responsibility to conduct annual catastrophe stress tests of all domestic insurers and insurers that are commercially domiciled in this state.

1. The insurer stability unit shall cooperate with the Florida Commission on Hurricane Loss Projection Methodology to select the hurricane scenarios that are used in the annual catastrophe stress test.

2. Catastrophe stress testing must determine:

a. Whether an individual insurer can survive a one in 130-

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year probable maximum loss (PML), and a second event 50-year return PML following a first event that exceeds a 100-year return PML; and

b. The impact of the selected hurricane scenarios on the Citizens Property Insurance Corporation, the Florida Hurricane Catastrophe Fund, the Florida Insurance Guaranty Association, and taxpayers.

(d) Update wind mitigation credits required by s. 627.711 and associated rules.

(e) Review the causes of insolvency and business practices of insurers that have been referred to the department's Division of Rehabilitation and Liquidation and make recommendations to prevent similar failures in the future.

(f) On January 1 and July 1 of each year, provide a report on the status of the homeowners' and condominium unit owners' insurance market to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, the Minority Leader of the House of Representatives, and the chairs of the legislative committees with jurisdiction over matters of insurance showing:

1. Litigation practices and outcomes of insurance companies.

2. Percentage of homeowners and condominium unit owners who obtain insurance in the voluntary market.

3. Percentage of homeowners and condominium unit owners who obtain insurance from the Citizens Property Insurance Corporation.

4. Profitability of the homeowners' and condominium unit owners' lines of insurance in this state, including a comparison

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with similar lines of insurance in other hurricane-prone states and with the national average.

5. Average premiums charged for homeowners' and condominium unit owners' insurance in each of the 67 counties in this state.

6. Results of the latest annual catastrophe stress tests of all domestic insurers and insurers that are commercially domiciled in this state.

7. The availability of reinsurance in the personal lines insurance market.

8. The number of property and casualty insurance carriers referred to the insurer stability unit for enhanced monitoring, including the reason for the referral.

9. The number of referrals to the insurer stability unit which were deemed appropriate for enhanced monitoring, including the reason for the monitoring.

10. The name of any insurer against which delinquency proceedings were instituted, including the grounds for rehabilitation pursuant to s. 631.051 and the date that each insurer was deemed impaired of capital or surplus, as the terms impairment of capital and impairment of surplus are defined in s. 631.011, or insolvent, as the term insolvency is defined in s. 631.011; a concise statement of the circumstances that led to the insurer's delinquency; and a summary of the actions taken by the insurer and the office to avoid delinquency.

11. Recommendations for improvements to the regulation of the homeowners' and condominium unit owners' insurance market and an indication of whether such improvements require any change to existing laws or rules.

12. Identification of any trends that may warrant attention

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in the future.

(4) Any of the following events must trigger a referral to the insurer stability unit:

(a) Consumer complaints related to homeowners' insurance or condominium unit owners' insurance under s. 624.307(10), if the complaints, in the aggregate, suggest a trend within the marketplace and are not an isolated incident.

(b) There is reason to believe that an insurer who is authorized to sell homeowners' or condominium unit owners' insurance in this state has engaged in an unfair trade practice under part IX of chapter 626.

(c) A market conduct examination determines that an insurer has exhibited a pattern or practice of willful violations of an unfair insurance trade practice related to claims-handling which caused harm to policyholders, as prohibited by s. 626.9541(1)(i).

(d) An insurer authorized to sell homeowners' or condominium unit owners' insurance in this state requests a rate increase that exceeds 15 percent, in accordance with s. 627.0629(6).

(e) An insurer authorized to sell homeowners' or condominium unit owners' insurance in this state violates the ratio of actual or projected annual written premiums required by s. 624.4095(4)(a).

(f) An insurer authorized to sell homeowners' or condominium unit owners' insurance in this state files a notice pursuant to s. 624.4305 advising the office that it intends to nonrenew more than 10,000 residential property insurance policies in this state within a 12-month period.

(g) A quarterly or annual financial statement required by ss. 624.424 and 627.915 demonstrates that an insurer authorized to sell homeowners' or condominium unit owners' insurance in this state is in an unsound condition, as defined in s. 624.80(2); has exceeded its powers in a manner as described in s. 624.80(3); is impaired, as defined in s. 631.011(12) or (13); or is insolvent, as defined in s. 631.011.

(h) An insurer authorized to sell homeowners' or condominium unit owners' insurance in this state files a quarterly or annual financial statement required by ss. 624.424 and 627.915 which is misleading or contains material errors.

(i) An insurer authorized to sell homeowners' or condominium unit owners' insurance in this state fails to timely file a quarterly or annual financial statement required by ss. 624.424 and 627.915.

(j) An insurer authorized to sell homeowners' or condominium unit owners' insurance in this state files a risk-based capital report that triggers a company action level event, regulatory action level event, authorized control level event, or mandatory control level event, as those terms are defined in s. 624.4085.

(k) An insurer selling homeowners' or condominium unit owners' insurance in this state that is subject to the own-risk solvency assessment requirement of s. 628.8015, and fails to timely file the own-risk solvency assessment.

(l) A reinsurance agreement creates a substantial risk of insolvency for an insurer authorized to sell homeowners' or condominium unit owners' insurance in this state, pursuant to s. 624.610(13).

(m) An insurer authorized to sell homeowners' or condominium unit owners' insurance in this state is party to a reinsurance agreement that does not create a meaningful transfer of risk of loss to the reinsurer, pursuant to s. 624.610(14).

(n) Citizens Property Insurance Corporation is required to absorb policies from an insurer that participated in the corporation's depopulation program authorized by s. 627.3511 within 3 years after the insurer takes policies out of the corporation.

The insurer stability unit's supervisors shall review all referrals triggered by the statutory provisions to determine whether enhanced scrutiny of the insurer is appropriate.

(5) Expenses of the insurer stability unit shall be paid from moneys allocated to the Insurance Regulatory Trust Fund. However, if the unit recommends that a market conduct exam or targeted market exam be conducted, the reasonable cost of the examination shall be paid by the person examined, in accordance with s. 624.3161.

Section 20. Subsection (1) of section 631.031, Florida Statutes, is amended to read:

631.031 Initiation and commencement of delinquency proceeding.—

(1) Upon a determination by the office that one or more grounds for the initiation of delinquency proceedings exist pursuant to this chapter and that delinquency proceedings must be initiated, the Director of the Office of Insurance Regulation shall notify the department of such determination and shall provide the department with all necessary documentation and

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evidence. If the director must notify the department of a determination regarding a property insurer, the notification must include an affidavit that identifies the grounds for rehabilitation pursuant to s. 631.051; the date that each insurer was deemed impaired of capital or surplus, as the terms impairment of capital and impairment of surplus are defined in s. 631.011, or insolvent, as the term insolvency is defined in s. 631.011; a concise statement of the circumstances that led to the insurer's delinquency; and a summary of the actions taken by the insurer and the office to avoid delinquency. The department shall then initiate such delinquency proceedings.

Section 21. Subsection (3) of section 631.398, Florida Statutes, is amended to read:

631.398 Prevention of insolvencies.—To aid in the detection and prevention of insurer insolvencies or impairments:

(3)(a) The department shall, no later than the conclusion of any domestic insurer insolvency proceeding, prepare a summary report containing such information as is in its possession relating to the history and causes of such insolvency, including a statement of the business practices of such insurer which led to such insolvency.

(b) For an insolvency involving a domestic property insurer, the department shall:

1. Begin an analysis of the history and causes of the insolvency once the department is appointed by the court as receiver.

2. Submit an initial report analyzing the history and causes of the insolvency to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the

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office. The initial report must be submitted no later than 4 months after the department is appointed as receiver. The initial report shall be updated at least annually until the submission of the final report. The report may not be used as evidence in any proceeding brought by the department or others to recover assets on behalf of the receivership estate as part of its duties under s. 631.141(8). The submission of a report under this subparagraph shall not be considered a waiver of any evidentiary privilege the department may assert under state or federal law.

3. Provide a special report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the office, within 10 days upon identifying any condition or practice that may lead to insolvency in the property insurance marketplace.

4. Submit a final report analyzing the history and causes of the insolvency and the review of the Office of Insurance Regulation's regulatory oversight of the insurer to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the office within 30 days of the conclusion of the insolvency proceeding.

5. Review the Office of Insurance Regulation's regulatory oversight of the insurer.

Section 22. If any law amended by this act was also amended by a law enacted during the 2022 Regular Session of the Legislature, such laws shall be construed as if enacted during the same session of the Legislature, and full effect shall be given to each if possible.

Section 23. Except as otherwise expressly provided in this

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act, this act shall take effect upon becoming a law.

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