

Bill Would Change How Mitigation Companies Do Business

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Insurance companies doing business in Florida have been forced to face an escalating challenge when it comes to adjusting their policyholders' claims—assignments of claims to mitigation companies.

These assignments, which insureds become compelled to sign in the face of situations such as their business being flooded by a supply line leak or for fear of their home being overcome with mold, often result in invoices well above the ordinary and customary market charges for such services.

In addition, inappropriate charges for overhead and profit, supervision and equipment rentals, mean less insurance benefits available for insureds and insurance companies potentially facing attorneys' fees claims for two lawsuits (one by the insured and one by the mitigation company). One has to merely look at the daily log of lawsuits filed in South Florida to appreciate the burgeoning problem.

In a year in which the legislature has been relatively silent on legislation affecting the insurance industry, the state House has proposed a significant amendment to Florida Statutes §627.422 and §627.428, involving the assignment of post-loss benefits under an insurance policy, as well as an amendment to prohibit the award of attorney fees in lawsuits brought by a third party to the insurance contract.

House Bill 669, filed by Rep. John Tobia, R-Melbourne Beach, seeks to combat the rising number of lawsuits brought by third-party

vendors against insurance companies. The pertinent provision of the amendment reads:

627.422 Assignment of policies.—An insurance policy, or post-loss benefits provided by an insurance policy, may be assignable, or not assignable, as provided by the terms of the insurance policy.

627.428(4) As to suits based on claims brought by a third party to an insurance contract, such attorney fees are not allowed if such suit was commenced by or on behalf of the third party or if proceeds of a court award would be directed to the third party.

Assignments and Fees

If signed into law, H.B. 669 would give insurance companies the option of precluding the insured from assigning his or her post-loss benefits, unless the insurer's consent is obtained. The bill also seeks to prohibit attorneys from collecting fees in lawsuits against insurance companies filed by third parties to an insurance contract. Tobia explained, "With the growing number of suspicious insurance claims across Florida, resulting in rising premiums to policyholders, this bill will help curb increased litigation and ensure claims are handled appropriately."

As it stands, Florida's one-way attorney fee-shifting statute, designed to "discourage insurers from contesting valid claims," has become a vehicle for attorneys and third-party vendors to abuse the system and hold the insurance industry hostage to pay their claims, whether valid or not.

Nikki Fried, Esq., a government lawyer who practices in Fort Lauderdale and Tallahassee, stated that “Unfortunately, there are a lot of bad actors who are taking advantage of a homeowner, normally in times of emergencies. These bad actors are inflating the costs of their services and then suing insurance companies when then they deny to pay the full claims.”

This practice becomes especially troubling when an insured is faced with a claim which may have a low sublimit, such as in the case of mold claims, which typically will be subject to a \$10,000 limit. The increased costs of litigation, with the inflated costs, are driving up premiums and ultimately impacting the consumer.

Although current law permits the assignment of post-loss benefits, there has been an influx of litigation involving the validity of these assignments which typically transfer pre-loss rights to the contract. Third-party vendors, such as water mitigation companies, have flooded the courts with lawsuits separate and apart from the insured, forcing the insurer to defend two suits for the same claim and essentially exposing the insurance company to double liability for attorney fees pursuant to Florida Statute §627.428. H.B. 669 seeks to discourage unnecessary litigation by prohibiting the award of attorney fees in suits based on claims brought by a third party to an insurance contract.

Immediate Notification

Tobia believes this amendment will also help with future claim investigations, as many claims are not timely reported to the insurance company. In recent years, the insurance industry has seen an overwhelming number of water losses in which water mitigation companies have submitted bills for the alleged work performed, but which

cannot be verified since the insurer was not timely notified of the loss.

Should the insurer incorporate language into the policy to mandate their consent to the assignment of post-loss benefits, this would force the insured or third-party vendor to immediately notify the insurance company of the loss. The insurer would therefore be able to inspect and evaluate the damages on a timely basis, thereby assisting with the ultimate goal of placing the homeowner back to the pre-loss condition.

H.B. 669 is still being tweaked as it makes its way through the Florida Senate. Florida Senate Sen. Dorothy Hukill recently filed S.B. 1064 relating to the assignment of post-loss benefits, and Sen. Alan Hays filed S.B. 1210 relating to the prohibition of attorney's fees in suits brought by third parties.

The amendments, which are strikingly similar, each appear to be working toward the same goal of tackling the issues surrounding assignment of post-loss benefits and attorneys' fees to third-party vendors. If signed into law, this bill will have a major impact on the insurance industry by reducing unwarranted litigation and ensuring all parties' rights are protected.



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