

Derechos, Tornadoes, and Cyclones, Oh My: How Iowa Can Reform Assignment of Benefits Law in Property Insurance

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ABSTRACT: Assignment of Benefits (“AOB”) abuse has proliferated throughout the Florida property insurance market, contributing to excessive litigation, insurance company insolvencies, and higher premiums for insureds. The issue became so severe that the Florida legislature recently prohibited the practice of assigning property insurance benefits. This problem has been exacerbated in Florida by environmental, legislative, and judicial conditions, but AOB abuse across the country is a growing concern that cannot be ignored. AOB litigation has already reached the Iowa Supreme Court, and more cases will likely follow in other Iowa courts. While AOB abuse has not reached the magnitude that it has in Florida, the Iowa legislature can proactively address the problem by reforming Iowa’s existing AOB statute to closely reflect recent statutory amendments the Florida legislature enacted to correct the Sunshine State’s troubled property insurance market. Iowa lawmakers should learn a lesson from Florida and make the necessary legislative changes before further difficulties with AOB abuse arise. Consumers will benefit from stable premiums and higher quality insurance products; insurers will benefit from predictability and market stability; and the many honest contractors in the field will be able to operate knowing they will receive fair and just compensation for their work.

INTRODUCTION	404
I. AN OVERVIEW OF ASSIGNMENT OF BENEFITS LAW	407
A. THE CURRENT STATE OF AOB LAW IN IOWA.....	408
1. General Assignment Law Principles	408
2. The Iowa Supreme Court and AOB Law.....	412
3. The Iowa Legislature’s Attempt at AOB Governance.....	413
B. AOB ABUSE AND REFORMS IN FLORIDA.....	414

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1. The 2019 Legislative Reforms.....	415
2. Further Reforms During the May 2022 Special Session.....	416
3. The December 2022 Special Session’s Latest Amendments	418
II. THE ISSUE WITH AOB ABUSE.....	419
A. <i>ECONOMIC PROBLEMS WITH ASSIGNMENT OF BENEFITS</i>	419
1. The Moral Hazard Dilemma	419
2. The Insurable Interest Problem.....	423
B. <i>MORAL PROBLEMS WITH ASSIGNMENT OF BENEFITS</i>	424
C. <i>WHY THE IOWA LEGISLATURE SHOULD PROACTIVELY ADDRESS AOB ABUSE</i>	425
1. AOB Abuse Is a Growing National Problem	425
2. Iowa Consumers Are Harmed by AOB Abuse.....	426
3. AOB Reform Reinforces Iowa’s Probusiness Reputation	428
4. Extreme Weather Events Foster an Environment Ripe for AOB Abuse.....	428
III. SUGGESTIONS FOR REFORMING ASSIGNMENT OF BENEFIT LAW IN IOWA	430
A. <i>THE NECESSITY OF A LEGISLATIVE DECISION</i>	430
B. <i>PROPOSALS FOR REFORMING IOWA’S AOB STATUTE</i>	431
1. The Iowa Legislature Need Not Yet Prohibit AOBs	431
2. Suggested Statutory Amendments	433
CONCLUSION	436

INTRODUCTION

Assignment of Benefits (“AOB”) has become a fairly standard practice in the insurance industry in recent years.¹ In short, “[a]n AOB is an instrument that assigns or transfers post-loss benefits under a residential or commercial property insurance policy to or from a person who protects, repairs, restores, or replaces property or mitigates against further property damage.”² Florida is currently ground zero for AOBs, but that is not to say that the contract is

1. See H.R. STAFF, FINAL BILL ANALYSIS, H.B. 7065, Reg. Sess., at 1, 5 (Fla. 2019) [hereinafter BILL ANALYSIS, HB 7065]; *Our Positions: Assignment of Benefits*, NAT’L ASS’N OF MUT. INS. COS., <https://www.namic.org/issues/assignment-of-benefits> [<https://perma.cc/A7A9-7J4S>].

2. H.R. STAFF, BILL ANALYSIS, H.B. 1A, Spec. Sess. Dec., at 6 (Fla. 2022) [hereinafter BILL ANALYSIS, HB 1A].

not executed elsewhere.³ While AOBs have certain benefits, the practice becomes a problem when homeowners assign the policy without fully understanding the implications, exacerbated by unscrupulous contractors who utilize such agreements to inflate profits at the expense of insurance companies and policyholders.⁴ AOB abuse has proliferated in Florida, leading to extensive litigation and wreaking havoc on the Florida property insurance market.⁵ This havoc prompted Florida Governor Ron DeSantis to call two special sessions of the Florida Legislature in 2022 to address the problem.⁶ During the December 2022 Special Session, the Florida Legislature voted to ban AOBs in the state.⁷

AOB abuse has emerged in Iowa as well, as evidenced by three cases heard by the Iowa Supreme Court litigating aspects of AOB law.⁸ As AOB abuse in Iowa is not yet as severe as it is in Florida, a complete ban on the practice at this stage is likely not necessary. Nonetheless, the Iowa Legislature can take steps to mitigate the issue by reforming Iowa's current property insurance assignment statute, the Insured Homeowner's Protection Act

3. See NAT'L ASS'N OF INS. COMM'RS & IOWA INS. DIV., POST-DISASTER CLAIMS GUIDE 19 (2022), <https://iid.iowa.gov/documents/claims-disaster-guide> [<https://perma.cc/PL76-5NBR>] ("Some states allow assignments of benefits (AOB) after a loss.").

4. See Niji Sabharwal, *Legislative Action Aims to Ease Florida Homeowners Insurance Market Struggles*, INS. J. (Oct. 17, 2022), <https://www.insurancejournal.com/blogs/agentsync/2022/10/17/689495.htm> [<https://perma.cc/ZA87-R6QY>].

5. See Leslie Scism, Arian Campo-Flores & Deborah Acosta, *Florida Lawmakers to Tackle Ballooning Property-Insurance Crisis*, WALL ST. J. (Dec. 11, 2022, 9:00 AM), https://www.wsj.com/articles/florida-lawmakers-to-tackle-ballooning-property-insurance-crisis-11670724426?mod=article_inline [<https://perma.cc/GSE6-AY6M>].

6. Proclamation from Ron DeSantis, Governor of Fla., to Fla. S. & H.R. (Apr. 26, 2022), https://www.flgov.com/wp-content/uploads/2022/04/SKM_C750i22042614070.pdf [<https://perma.cc/EQ53-PE8Y>]; see also Bruce Ritchie & Gary Fineout, *DeSantis Announces Special Legislative Session to Fix Florida's Insurance Industry*, POLITICO (Oct. 20, 2022, 3:36 PM), <https://www.politico.com/news/2022/10/20/desantis-says-special-session-coming-on-property-insurance-0062777> [<https://perma.cc/W78T-S4CG>] (describing the Florida property insurance environment and the special session announcement).

7. See FLA. STAT. § 627.7152(13) (2023); BILL ANALYSIS, HB 1A, *supra* note 2, at 6–7; see also Leslie Scism & Arian Campo-Flores, *Florida Lawmakers Approve Property-Insurance Overhaul, Sending Bill to DeSantis*, WALL ST. J. (Dec. 14, 2022, 3:13 PM), <https://www.wsj.com/articles/florida-lawmakers-approve-property-insurance-overhaul-sending-bill-to-desantis-11671048780> [<https://perma.cc/77EC-8BHH>] (summarizing the changes the bill implements, including a ban on AOBs); Lawrence Mower, *Florida Legislature Passes Property Insurance Overhaul*, TAMPA BAY TIMES (Dec. 14, 2022), <https://www.tampabay.com/news/florida-politics/2022/12/14/florida-legislature-passes-property-insurance-overhaul> [<https://perma.cc/5FLH-KK8E>] (summarizing the changes the bill implements, including a ban on AOBs).

8. See generally 33 Carpenters Constr., Inc. v. State Farm Life & Cas. Co., 939 N.W.2d 69 (Iowa 2020) (analyzing Iowa AOB law); 33 Carpenters Constr., Inc. v. Cincinnati Ins. Co., 939 N.W.2d 82 (Iowa 2020) (relying on the reasoning in *State Farm*); 33 Carpenters Constr., Inc. v. IMT Ins. Co., 939 N.W.2d 95 (Iowa 2020) (relying on the reasoning in *State Farm*).

(“IHPA”),⁹ to proactively prevent the problem from escalating to the levels seen in Florida.

Iowa and Florida both have significant, well-respected insurance industries. The industries are too important to both states to allow economic difficulties to destabilize one of their largest sectors—property insurance. The Florida Office of Insurance Regulation regulates \$209 billion of total business throughout the entire insurance industry,¹⁰ and the Florida property and casualty insurance market saw \$66,410,689 in direct premiums written in 2021.¹¹ In Iowa, comparatively, insurance companies wrote \$8,054,991 in premiums in 2021.¹² 110 property and casualty insurance companies are domiciled in Florida, compared to seventy-one in Iowa.¹³ This disparity makes sense as Florida’s population is nearly seven times that of Iowa’s.¹⁴ However, Iowa has attracted some of the largest insurance carriers and conglomerates in the world, despite its relatively small population.¹⁵ Des Moines—Iowa’s capital—is known as “a global hub of the insurance industry,”¹⁶ but even smaller Iowa towns have attracted large insurance companies.¹⁷

The above statistics suggest the robustness of the Florida insurance industry. A proposition stems from this truth—when the property insurance market sputters, the broader insurance industry falters, and in turn the rest of the economy struggles. To prevent economic downturn, the Florida Legislature acted to prevent AOB abuse. Because the insurance industry has developed into such a vital part of Iowa’s economy, the Iowa Legislature should follow Florida’s lead and take preemptive legislative action. Curtailing AOB abuse will help ensure that Iowan’s property insurance premiums remain stable, benefitting home and business owners and allowing them to reinvest their premium savings into the Iowa economy to drive further growth in the state. For Iowa to prevent adverse economic outcomes, it is incredibly important that AOB abuse is not permitted to pervade the property insurance market in the state.

9. IOWA CODE § 515.137A (2023).

10. FLA. OFF. OF INS. REGUL., <https://flor.com> [<https://perma.cc/Y9YE-ZNMY>].

11. *Direct Premiums Written by State*, INS. INFO. INST., <https://www.iii.org/publications/insurance-handbook/economic-and-financial-data/state-by-state> [<https://perma.cc/P9FU-AHQZ>].

12. *Id.*

13. *Id.*

14. As of July 1, 2022, Florida had a population of 22,244,823, while Iowa had a population of 3,200,517. See *Quick Facts: Florida; Iowa*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/FL,IA/LND110210> [<https://perma.cc/J6PB-YN2K>].

15. For example, companies such as Nationwide and Employers Mutual do significant business in Iowa. See *The Insurance Capital of the U.S.? Look to Des Moines*, U.S. CHAMBER OF COM., <https://www.uschamber.com/co/good-company/growth-studio/des-moines-iowa-insurance> [<https://perma.cc/8JF7-FCE7>].

16. *Id.*

17. For example, Grinnell, Iowa, is home to Grinnell Mutual. See *About Us*, GRINNELL MUT., <https://www.grinnellmutual.com/about-us> [<https://perma.cc/Z26D-64GW>].

This Note argues that, to prevent the proliferation of AOB abuse in coming years, Iowa should expand and reform the state's current property insurance AOB statute—Iowa Code section 515.137A.¹⁸ To make such changes, Iowa lawmakers should incorporate the same amendments that the Florida Legislature adopted into the state's own AOB statutes during the May 2022 special legislative session.¹⁹ In Part I, this Note summarizes the landscape of AOB law in both Iowa and Florida and describes the reforms enacted by the Florida Legislature to combat the state's AOB abuse, culminating in the decision to prohibit AOBs in the state. Part II explains economic and moral issues associated with AOBs and why AOB abuse in Iowa is likely to rise. Part III offers suggestions for the Iowa Legislature to expand and reform the current statute governing AOBs. Finally, this Note concludes by discussing the positive impact such reform would likely have on Iowa home and business owners, insurers, and contractors alike.

I. AN OVERVIEW OF ASSIGNMENT OF BENEFITS LAW

For Iowa to ensure stable premium costs to property insurance consumers in the state, it is important that the Iowa Legislature precludes AOB abuse from penetrating the property insurance market. The actions Florida took in May 2022 provide a framework for how Iowa can begin to address the issue to ensure that Iowa consumers do not experience the same volatile market that Floridians did. To understand the respective benefits and downsides of the practice of AOBs, and to explore how AOB abuse has proliferated, this Part will first outline general assignment law principles and the current state of AOB law in Iowa, discussing the Iowa Supreme Court's decision in *33 Carpenters Construction, Inc. v. State Farm Life & Casualty Co.* and potential problems with the current Iowa statute governing AOBs in property insurance. Next, this Part will discuss Florida's AOB law, focusing on the recent history of the two statutes' governing assignments in property insurance.

18. IOWA CODE § 515.137A (2023).

19. See S. 2D, 2022 Leg., May Spec. Sess. (Fla. 2022) (making technical modifications to the AOB statutes); H.R. 1D, 2022 Leg., May Spec. Sess. (Fla. 2022) (making technical modifications to the AOB statutes); S. 2A, 2022 Leg., Dec. Spec. Sess. (Fla. 2022) (banning AOBs); H.R. 1A, 2022 Leg., Dec. Spec. Sess. (Fla. 2022) (banning AOBs). Florida's property insurance code, including the amended AOB statutory scheme, is much more complex than Iowa's. Prior to the amendment, there were two main statutory provisions governing AOB law in Florida: one governing the nature and substance of the agreement itself and one governing clauses in insurance provisions that prevent an insured from executing AOBs, known as anti-assignment provisions. See FLA. STAT. § 627.7152 (2022) (amended May 2022); *id.* § 627.7153 (2023). The old provisions of Section 627.7152 now only govern assignment agreements from July 1, 2019, to January 1, 2023. *Id.* § 627.7152(13). The amended statute prohibits assignments from January 1, 2023, onward declaring any such assignment agreement "void, invalid, and unenforceable." *Id.*

A. THE CURRENT STATE OF AOB LAW IN IOWA

There is a burgeoning body of case law regarding AOBs in property insurance. The Iowa Legislature has adopted a statute governing AOBs as part of the state insurance code. The following first describes general assignment law principles before delving into Iowa case law and the IHPA in more detail.

1. General Assignment Law Principles

The concept of an assignment “is not . . . exclusive to insurance.”²⁰ For example, the concept is crucial to real property rights in Iowa as well: “[a]n assignment occurs when an assignor transfers to its assignee ‘the whole of any property or right in the property’ such that ‘the assignee assumes the rights, remedies, and benefits of the assignor,’ and ‘also takes the property subject to all defenses to which the assignor is subject.’”²¹ In the insurance industry, assignment law differs to varying degrees depending on the field.²²

Nonetheless, certain basic tenets of assignment law govern the entire industry. In its most basic form, the assignment contract is an agreement to

20. See Ramy I. Hijazi, Note, *A Survey of Michigan Assignment Law as It Relates to No-Fault Insurance Contracts: Post-Covenant*, 64 WAYNE L. REV. 817, 821 (2019).

21. See *TSB Holdings, LLC v. Bd. of Adjustment for Iowa City*, 913 N.W.2d 1, 16 (Iowa 2018) (quoting *Red Giant Oil Co. v. Lawlor*, 528 N.W.2d 524, 533 (Iowa 1995)).

22. For a discussion of AOB issues related to health insurance, see generally Elliott McKinnis, Note, *The Case for State Mandatory Assignment of Benefits Legislation*, 8 IND. HEALTH L. REV. 171 (2011) (summarizing the history of AOBs and providing an overview of AOB state law in the healthcare industry prior to the Affordable Care Act); Isaac D. Buck, *Furthering the Fiduciary Metaphor: The Duty of Providers to the Payers of Medicare*, 104 CALIF. L. REV. 1043 (2016) (arguing that post-ACA healthcare providers should owe a fiduciary duty of loyalty to the taxpayer when making claims against Medicare). Assignment law is also an important aspect of the debate around the life settlement industry in life insurance. See KENNETH S. ABRAHAM & DANIEL SCHWARCZ, *INSURANCE LAW AND REGULATION: CASES AND MATERIALS* 332–33 (7th ed. 2020) (explaining the life settlement industry where the individual holding the life insurance policy assigns the policy to a third party in exchange for payment from that party); Susan Lorde Martin, *Life Settlements: The Death Wish Industry*, 64 SYRACUSE L. REV. 91, 95–96 (2014) (“Once purchasers of life policies insuring themselves or others in whom they have an insurable interest own the policies, courts and state statutes permit assigning, *e.g.*, by selling the policies to someone with no insurable interest in the insured.”). In other industries, such as legal and medical malpractice insurance, assignment is typically not permitted. See *White v. Auto Club Inter-Ins. Exch.*, 984 S.W.2d 156, 160–61 (Mo. Ct. App. 1998) (holding that a legal malpractice claim was not assignable because allowing assignability would create an economic market for such claims in which market participants had no fiduciary relationship with their attorney); *Goodley v. Wank & Wank, Inc.*, 133 Cal. Rptr. 83, 87 (Cal. Ct. App. 1976) (“It is the unique quality of legal services, the personal nature of the attorney’s duty to the client and the confidentiality of the attorney-client relationship that invoke public policy considerations in our conclusion that malpractice claims should not be subject to assignment.”). However, there are exceptions in which assignment is permitted. See *Hedlund Mfg. Co. v. Weiser, Stapler & Spivak*, 539 A.2d 357, 359 (Pa. 1988) (“We will not allow the concept of the attorney-client relationship to be used as a shield by an attorney to protect him or her from the consequences of legal malpractice. Where the attorney has caused harm to his or her client, there is no relationship that remains to be protected.”).

transfer one's interest in the proceeds of the insurance policy to the assignee.²³ At common law, policyholders were prohibited from assigning their rights under an insurance policy.²⁴ The law has changed in this regard, and assignment of insurance policies is generally allowed under statutory provisions permitting the assignment of contracts.²⁵

It is generally understood that, if there is no language in the insurance contract prohibiting assignment, the "policy may be assigned."²⁶ If the policy is silent on assignment, courts often construe the policy as being ambiguous on the matter, interpret the policy against the drafter, and permit assignment.²⁷ This rule of interpretation is "known as *contra proferentem*" in insurance law.²⁸ Because of the rule, the insurer must include an anti-assignment provision in the insurance contract in order to prevent assignment.²⁹ Assignments may occur before a loss, known as pre-loss assignments, or after a loss, known as post-loss assignments.³⁰ The distinction can matter when a court determines the validity of the assignment and the anti-assignment clauses in the insurance contract.³¹ Courts typically only apply anti-assignment provisions to assignments occurring before the loss.³² Even in pre-loss assignment cases with no anti-assignment provision in the insurance policy, the Iowa Supreme Court has refused to enforce pre-loss assignment of property insurance policies unless the insurer consents to the assignment, largely because the identity of the policyholder matters a great deal to the carrier when determining if the carrier is willing to provide insurance.³³

Courts view post-loss assignments more favorably. Even if there is a specific provision in the insurance policy prohibiting post-loss assignments, the general rule is that courts will deem this term of the policy null and void as against public policy.³⁴ The Iowa Supreme Court has determined that "[t]he great weight of authority supports the rule that an anti-assignment clause

23. Hijazi, *supra* note 20, at 821.

24. *Conrad Bros. v. John Deere Ins. Co.*, 640 N.W.2d 231, 236 (Iowa 2001).

25. *Id.*; see also IOWA CODE § 539.1 (2023) (allowing for the assignment of nonnegotiable instruments).

26. See STEVEN PLITT, DANIEL MALDONADO, JOSHUA D. ROGERS & JORDAN R. PLITT, 3 COUCH ON INSURANCE § 35:1, Westlaw (2022).

27. See *id.*

28. See ABRAHAM & SCHWARZ, *supra* note 22, at 45.

29. See PLITT ET AL., *supra* note 26, § 35:1.

30. See Catherine M. Colinvaux & Kristin Suga Heres, *The Assignment Clause in First-Party Property Insurance Policies: Are Postloss Assignments of Policy Proceeds Enforceable?*, BRIEF, Winter 2010, at 20, 20, 22.

31. See *id.* at 22.

32. See PLITT ET AL., *supra* note 26, § 35:8.

33. *Bartling v. German Mut. Lightning & Tornado Ins. Co.*, 134 N.W. 864, 866 (Iowa 1912) ("But it is fundamental that an insurance policy cannot be assigned by the assured, before loss, to a stranger without the consent of insurer, for the plain reason that the company issuing the policy has the right to say whom it will insure.").

34. See PLITT ET AL., *supra* note 26, § 35:9.

does not apply to the assignment of claims arising after the loss.”³⁵ The court explained that insurers are not entitled to the same post-loss protections because “the need to protect the insurer no longer exists after the insured sustains the loss because the liability of the insurer is essentially fixed.”³⁶ After a loss “the personal character of the insured can no longer affect the insurer’s liability.”³⁷ Additionally, “once the loss has triggered the liability provisions of the insurance policy, an assignment is no longer regarded as a transfer of the actual policy.”³⁸ Rather, the rights under the policy become “a chose in action under the policy.”³⁹ Thus, the court reasoned, “if we permitted an insurer to avoid its contractual obligations by prohibiting all post-loss assignments, we could be granting the insurer a windfall.”⁴⁰ When such assignment is valid, the assignee is vested with “an absolute right to the insurance.”⁴¹

In the property insurance context, assignments typically occur when a policyholder executes an assignment agreement with a contractor who has agreed to repair the policyholder’s damaged property.⁴² As illustrated by the fact pattern in *33 Carpenters*, the precipitating events follow a predictable pattern: a severe weather event, followed by water intrusion or roof deterioration.⁴³ Subsequently, the homeowner either contacts a restoration, mitigation, or construction company about repairs.⁴⁴ In increasingly common instances, employees of contracting companies solicit business from homeowners by asking to inspect homes.⁴⁵

The assignment often takes the form of a brief agreement where the written terms are regulated by state statutes outlining the nature of the

35. *Conrad Bros. v. John Deere Ins. Co.*, 640 N.W.2d 231, 237 (Iowa 2001).

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* at 238.

40. *Id.* It should be noted, however, that the May 2022 Special Session of the Florida Legislature drafted a unique statutory solution for the anti-assignment provision addressing the aforementioned concerns. *See* FLA. STAT. § 627.7153 (2022).

41. PLITT ET AL., *supra* note 26, § 34:2. Unlike Florida, Iowa has no statute governing the provision of attorney’s fees in disputes between assignees and insurance companies, so the default rule is that each party pays their own attorney’s fees. *See* Theodore Eisenberg & Geoffrey P. Miller, *The English Versus the American Rule on Attorney Fees: An Empirical Study of Public Company Contracts*, 98 CORNELL L. REV. 327, 328–29 (2013) (discussing fee rules).

42. *See* PLITT ET AL., *supra* note 26, § 34:1.

43. *33 Carpenters Constr., Inc. v. State Farm Life & Cas. Co.*, 939 N.W.2d 69, 72–74 (Iowa 2020) (describing hail damage to roof); *see also* Mark Broom, Note, *Assignments of Benefits in the Homeowner’s Insurance Market: Why Florida’s Rates Are Skyrocketing, and How to Control the Spiral*, 38 REV. LITIG. 151, 156–57 (2018) (describing common AOB abuse scenario starting with water damage).

44. *See, e.g.*, Broom, *supra* note 43, at 157.

45. *See, e.g.*, *33 Carpenters*, 939 N.W.2d at 72 (“On June 29, Matt Shepherd, an employee . . . approached the Clausens at their home and asked if he could inspect their roof for hail damage.”).

assignment.⁴⁶ The assignment is signed by the insured and the contractor.⁴⁷ Once the assignment is completed, the contractor is entitled to payment directly from the insurance company under the policy, usually billing for work performed, but sometimes increasing the invoice at exorbitant rates after the insurance company tenders a claims payment.⁴⁸

In theory, the AOB concept is practicable and even preferable. The idea is that, after a property loss, a restoration or mitigation professional (who sometimes has extensive experience working with insurance companies to adjust claims and resolve disputes) can quickly complete necessary repairs on behalf of the policyholder and bill the insurance company directly.⁴⁹ This scenario is possible because the contractor now possesses the rights of the homeowner to collect proceeds under the policy.⁵⁰ Furthermore, the homeowner can forego further interactions directly with the insurance company.⁵¹ AOB advocates support the practice by pointing to expedited emergency repairs, improved policyholder experience, and easier access to claims compensation for policyholders who likely do not possess the sophistication or resources to protect their own interests.⁵² Contractors argue that, either way, after a claim is filed, the contractor's invoice will be submitted to a claims analyst for review.⁵³ Thus, "[t]he only difference an assignment makes is that, if an insurance company wishes to partially deny coverage or contest an invoice as unreasonable, the insured policyholder is not mired in litigation in which they have no stake."⁵⁴

However, insurers argue that AOBs are quite susceptible to abuse. Unscrupulous contractors, the argument goes, complete the repairs at an inflated price before the insurer can send an adjuster to inspect the damage, causing difficulties for the insurer when verifying the extent of the damage.⁵⁵ For example, if a property has a damaged roof, the contractor may overbill

46. See, e.g., *id.* at 71–72 (illustrating the typical AOB agreement in Iowa and highlighting how the agreement is governed by state statute).

47. See, e.g., *id.* at 72.

48. See *id.* at 78 (“After receiving the initial insurance payment for the repairs, 33 Carpenters prepared a supplement with an 81.3 [percent] increase in the total repair cost. . . . Then, 33 Carpenters prepared yet another cost estimate for a 90.4 [percent] increase from State Farm’s substituted estimate.”); PRO. STAFF OF THE COMM. ON BANKING & INS., BILL ANALYSIS AND FISCAL IMPACT STATEMENT, S. 2022-2A, Dec. Spec. Sess., at 24 (Fla. 2022) (highlighting an insurer’s explanation of contractor’s inflated billing practices) [hereinafter BILL ANALYSIS, SB 2-A].

49. See Broom, *supra* note 43, at 153.

50. See *id.*

51. See *id.*

52. See BILL ANALYSIS, SB 2-A, *supra* note 48, at 24–25; Broom, *supra* note 43, at 153.

53. BILL ANALYSIS, SB 2-A, *supra* note 48, at 25.

54. *Id.* (quoting Appellant’s Initial Brief at 46–48, *One Call Prop. Servs. Inc. v. Sec. First Ins. Co.*, 165 So. 3d 749 (Fla. Dist. Ct. App. 2015) (No. 4D14-424)).

55. See BILL ANALYSIS, HB 7065, *supra* note 1, at 5; Broom, *supra* note 43, at 153–54.

for labor hours, necessary materials, or “overhead and profit.”⁵⁶ If the insurance company refuses to pay, as is often the case, the contractor then sues the insurance company for the unpaid invoice.⁵⁷ Litigation commences, not uncommonly over relatively small dollar amounts.⁵⁸ Thus, insurance companies must weigh the cost of litigating small claims against individual contractors—this gamesmanship on the part of contractors has caused some insurers to leave the market altogether.⁵⁹

Increased costs for insurance companies, along with a smaller supply of available insurance products due to less competition in the market, are in turn passed to consumers through higher premiums and rates.⁶⁰ In some circumstances, these costs lead some insurers to insolvency.⁶¹ Furthermore, once the insured assigns her rights under the policy to the contractor, she can no longer prevent the contractor from proceeding with litigation and often does not even know that the litigation has commenced against her insurance company.⁶²

2. The Iowa Supreme Court and AOB Law

The Iowa Supreme Court decided three cases litigating AOBs in 2020.⁶³ In one of these cases,⁶⁴ *33 Carpenters v. State Farm Life and Casualty Company*, the court examined the validity of an assignment contract when the contractor acted as an unlicensed public adjuster.⁶⁵ In the case, a hailstorm damaged a home insured by State Farm.⁶⁶ The insured eventually executed an assignment agreement with the contractor, 33 Carpenters, to repair the damage.⁶⁷ State Farm offered a series of estimates for coverage payments, wherein the company agreed to pay more on the claim in each updated estimate.⁶⁸ In response, the assignee—33 Carpenters—submitted multiple supplemental cost

56. See, e.g., BILL ANALYSIS, SB 2-A, *supra* note 48, at 24.

57. See Broom, *supra* note 43, at 155.

58. William Rabb, *Florida Supreme Court Disbars Notorious Plaintiff's Lawyer. Infamous Public Adjuster Could Be Next*, INS. J. (Jan. 23, 2023), <https://www.insurancejournal.com/magazines/mag-g-features/2023/01/23/703417.htm> [<https://perma.cc/6MWY-AWR5>].

59. BILL ANALYSIS, HB 7065, *supra* note 1, at 6.

60. *Id.*

61. *Id.* at 7.

62. See NAT'L ASS'N OF INS. COMM'RS & IOWA INS. DIV., *supra* note 3, at 19; Broom, *supra* note 43, at 157.

63. See generally *33 Carpenters Constr., Inc. v. State Farm Life & Cas. Co.*, 939 N.W.2d 69 (Iowa 2020) (adjudicating the validity of an assignment agreement); *33 Carpenters Constr., Inc. v. Cincinnati Ins. Co.*, 939 N.W.2d 82 (Iowa 2020) (adjudicating the validity of an assignment agreement); *33 Carpenters Constr., Inc. v. IMT Ins. Co.*, 939 N.W.2d 95 (Iowa 2020) (adjudicating the validity of an assignment agreement).

64. Because the cases were closely related and involved the same plaintiff, the court reserved extensive analysis for only *33 Carpenters Construction, Inc. v. State Farm Life & Casualty Co.*

65. *33 Carpenters*, 939 N.W.2d at 72–73.

66. *Id.* at 72.

67. *Id.* at 72–73.

68. *Id.*

estimates, increasing the claim by 81.3 percent and 90.4 percent respectively.⁶⁹ State Farm refused to pay the claim after the second supplemental cost estimate and filed a motion for summary judgment, arguing that the assignment contract between the homeowner and 33 Carpenters should be void because 33 Carpenters acted as an unlicensed public adjuster.⁷⁰

Siding with State Farm, the Iowa Supreme Court upheld the district court's decision that 33 Carpenters acted as a public adjuster under the relevant Iowa statutes.⁷¹ Because 33 Carpenters did not hold a public adjuster's license, the Iowa Supreme Court deemed the assignment invalid and voided the agreement.⁷² This result was in line with precedent voiding contracts when one of the parties entering the contract is acting in a capacity that requires a license without holding such a license.⁷³ In reaching this conclusion, Justice Waterman cited a report referencing how AOB abuse has exacerbated the insurance crisis in Florida, contributing to Floridians paying the highest premiums in the country.⁷⁴ Furthermore, Justice Waterman appeared to accept State Farm's argument that the same abuse that occurred in Florida was present in the 33 Carpenters case.⁷⁵

3. The Iowa Legislature's Attempt at AOB Governance

The Iowa Supreme Court's 33 Carpenters analysis illustrates one AOB issue among many. The court examined only the narrow questions of when, under Iowa law, an assignee also acts as an unlicensed public adjuster, and what happens to the validity of the contract if such action occurs.⁷⁶ The Iowa Legislature passed a more expansive statute governing AOBs in property insurance.⁷⁷ However, the law is inadequate to address the extensive set of problems posed by AOBs. This section will delve into the language of the statute before discussing the statute's shortcomings.

Iowa law permits post-loss assignment of insurance policies to residential contractors.⁷⁸ Section 515.137A(3) lists a number of conditions an assignment agreement must meet for the contract to be considered valid.⁷⁹ For one, "the assignment shall only authorize a residential contractor to be named as a co-

69. *Id.* at 73.

70. *Id.*

71. *Id.* at 82.

72. *Id.* at 81.

73. *Id.*

74. *Id.* at 77-78 (quoting JAMES LYNCH & LUCIAN MCMAHON, INS. INFO. INST., FLORIDA'S ASSIGNMENT OF BENEFITS CRISIS: RUNAWAY LITIGATION IS SPREADING, AND CONSUMERS ARE PAYING THE PRICE 2 (2019)).

75. *See id.* at 78.

76. *See id.* at 81.

77. *See* IOWA CODE § 515.137A (2023).

78. *See id.*

79. *See id.* § 515.137A(3).

payee,” rather than the sole payee.⁸⁰ The statute also dictates that any assignment must include “[a]n itemized description of the work to be performed,” “[a]n itemized description of the materials, labor, and fees for the work to be performed,” and “[a] total itemized amount to be paid for the work to be performed.”⁸¹ The next two provisions of the statute outline notification requirements that must be included in the language of the assignment agreement so that the assignor is aware of the significance of the assignment, her rights and responsibilities under the agreement, and the ramifications of entering the agreement.⁸²

The statute protects the interest of any “mortgagee [who is] listed on the declarations page of the . . . insurance policy.”⁸³ Under the statute, the insurer is still permitted to speak with the insured even after an assignment,⁸⁴ and the assignment must “be provided to the insure[d] . . . within five business days after execution of the assignment.”⁸⁵ The statute permits the assignor “to cancel the assignment [agreement] . . . within five business days” of executing the agreement and provides ten business days for the assignee to refund any proceeds received under the agreement.⁸⁶ The final two sections of the statute further dictate notice requirements that must be included in the assignment agreement and declare that a violation of the statute voids any contract entered with the party who violated the statute.⁸⁷

It is clear, given this information, that the assignment landscape in Iowa is well-developed. Nonetheless, AOBs in the property insurance market pose unique problems that neither the common law nor Section 515.137A adequately address. The statute does not effectively dissuade moral hazard, protect against issues related to third party contractors lacking an insurable interest, or prevent other moral problems related to AOBs.⁸⁸ Therefore, additions to the statutory language are necessary.

B. AOB ABUSE AND REFORMS IN FLORIDA

The problem of excessive litigation stemming from AOB abuse has seriously affected Florida insurers, and, even with reforms to the two AOB

80. *Id.* § 515.137A(3)(a). Thus, both the homeowner’s and the contractor’s name must appear on the policy as the payee. Listing both names ensures that the homeowner remains aware of payouts to the contractor.

81. *See id.* § 515.137A(3)(b).

82. *See id.* §§ 515.137A(3)(c), 515.137A(3)(d).

83. *See id.* § 515.137A(3)(e).

84. *Id.* § 515.137A(3)(f).

85. *Id.* § 515.137A(3)(g).

86. *See id.* § 515.137A(3)(h).

87. *See id.* §§ 515.137A(4), 515.137A(5).

88. For detailed descriptions of the moral hazard, insurable interest, and other moral problems with AOBs, see *infra* Sections IIA–B. For a description of the technical issues in the statutory language, see *infra* Section III.B.

statutes, six Florida carriers have claimed insolvency in 2022.⁸⁹ The industry attributes the rise in insurer insolvency to “excessive litigation,” frequently stemming from AOBs, including inflated claims by roofing and water damage mitigation companies.⁹⁰

1. The 2019 Legislative Reforms

In recent years, the Florida Legislature has attempted to correct problems with AOBs, and the litigious Florida claims environment more generally, by passing three bills—the first reform efforts occurring in 2019. Prior to the 2019 reform “AOB lawsuits [had] exploded over the [previous] ten years.”⁹¹ Recall that insurers typically must increase rates to respond to higher litigation costs. AOB litigation became so widespread that Citizens Property Insurance Corporation, a state-run insurer serving Floridians who cannot purchase insurance on the regular market, “proposed rate increases for [ninety-seven] percent of its homeowners policyholders for 2019.”⁹² The fact that the proposed rate increases would affect so many Floridians demonstrates how serious AOB litigation was in Florida prior to the 2019 legislation.

89. See William Rabb, *Florida Restructure Plan Didn't Take: FedNat Insurance Deemed Insolvent*, INS. J. (Sept. 27, 2022), <https://www.insurancejournal.com/news/southeast/2022/09/27/686796.htm> [<https://perma.cc/W53G-FT86>].

90. See Leslie Scism & Arian Campo-Flores, *Insurance Costs Threaten Florida Real-Estate Boom*, WALL ST. J. (Apr. 25, 2021, 5:07 PM), https://www.wsj.com/articles/insurance-costs-threaten-florida-real-estate-boom-11619343002?mod=article_inline [<https://perma.cc/L874-J8BK>]. In a recent decision that rattled the Florida property insurance market, the financial stability rating company Demotech downgraded seventeen Florida insurance carriers, citing “disparate, disproportionate level[s] of litigation and the increasing non-catastrophe claim frequency” as reasons for the mass downgrade. See Letter from Joseph L. Petrelli, President, Demotech, Inc., to David Altmaier, Comm’r, Fla. Off. Ins. Regul. (July 26, 2022), https://content.govdelivery.com/attachments/FLOIR/2022/07/27/file_attachments/2228909/David_Altmaier_20220726.pdf [<https://perma.cc/6TD7-LMZ8>]; Stassy Olmos, *Demotech Notifies 17 Property Insurance Companies of Rating Downgrades*, ABC ACTION NEWS (July 22, 2022, 5:30 PM), <https://www.abcactionnews.com/news/in-depth/demotech-notifies-17-property-insurance-companies-of-rating-downgrades> [<https://perma.cc/T52J-443L>]. While Demotech ultimately reversed many of the downgrade decisions, the Florida insurance industry was nonetheless struck by the serious negative impact that such downgrades could have on insurers and policyholders given that mortgages backed by Fannie Mae and Freddie Mac require mortgagees’ homeowner’s insurance companies to maintain an “A” rating from Demotech. FANNIE MAE, SELLING GUIDE: FANNIE MAE SINGLE FAMILY 903 (2022); FREDDIE MAC, SINGLE-FAMILY: SELLER/SERVICER GUIDE 4703-1 (2022); Letter from David Altmaier, Comm’r, Fla. Off. Ins. Regul., to Joseph Petrelli, President, Demotech, Inc. (July 21, 2022), https://content.govdelivery.com/attachments/FLOIR/2022/07/27/file_attachments/2228908/7.21.22%20Letter%20to%20Demotech.pdf [<https://perma.cc/3ZNS-VPRT>].

91. Amy O’Connor, *Florida Governor Signs AOB Reform Bill; Law to Take Effect July 1*, INS. J. (May 24, 2019), <https://www.insurancejournal.com/news/southeast/2019/05/24/527402.htm> [<https://perma.cc/XCW8-UF4U>].

92. *Id.*; see also FLA. STAT. § 627.351(6) (2023) (describing the purpose of Citizens Property Insurance Corporation).

Due to these problems, the state enacted HB 7065.⁹³ A House bill analysis indicates that the bill “addresses the abuse of post-loss AOBs for property insurance claims by,” among other things, “[e]stablishing requirements for the execution, validity, effect, and rescission of an AOB,” “[t]ransferring certain pre-lawsuit duties under the insurance contract to the assignee,” “[r]equiring each insurer to report specified data on claims paid in the prior year under an AOB,” “[s]etting the formula that will determine which party, if any, receives an award of attorney fees should litigation related to an AOB result in a judgment,” and “[a]llowing a policy prohibiting an AOB, in whole or in part, under certain conditions.”⁹⁴ The bill was passed by the Florida Legislature, creating Sections 627.7152 and 627.7153.⁹⁵ These new sections directly govern assignment related issues in property insurance.⁹⁶

2. Further Reforms During the May 2022 Special Session

The 2019 reforms did not effectively stabilize the Florida property insurance crisis, however. The property insurance market remained so precarious that Governor DeSantis elected to call a special session of the Florida Legislature to address the problem.⁹⁷ The special session was called because “Florida’s general tort environment related to property insurance has led to thousands of frivolous lawsuits” and “Florida citizens are seeing the effects of this higher litigation in their rising premiums.”⁹⁸

During the May Special Session, the Florida Legislature subsequently further amended Sections 627.7152 and 627.7153 through CS/SB 2-D, which was signed into law in May 2022.⁹⁹ The new bill made amendments “to address access and affordability of property insurance, and to mitigate insurance fraud in Florida’s property insurance market.”¹⁰⁰ To do so, the bill amended the language of Section 627.7152 to “prohibit[] contractors from [soliciting business by] written or electronic communication[]” without acknowledging that “the [insured] is responsible for the . . . deductible,” to prohibit the contractor from paying or waiving the deductible, and to require a statement in the agreement that “intentionally fil[ing] an insurance claim [with] false . . . information” constitutes a felony.¹⁰¹ Additionally, the new

93. H.R. 7065, 2019 Leg., Reg. Sess. (Fla. 2019); *see also* *Assignment of Benefits*, OFF. INS. REGUL., <https://flor.com/consumers/assignment-of-benefits-resources> [<https://perma.cc/A59H-VCRR>] (summarizing changes the bill introduced).

94. BILL ANALYSIS, HB 7065, *supra* note 1, at 1.

95. *See* FLA. STAT. § 627.7152(13) (2023) (amending § 627.152); *id.* § 627.7153.

96. *See id.* §§ 627.7152, 627.7153.

97. Proclamation from Ron DeSantis, *supra* note 6.

98. *Id.*

99. CS/SB 2-D, 2022 Leg., May Spec. Sess. (Fla. 2022).

100. PRO. STAFF OF THE COMM. ON APPROPRIATIONS, BILL ANALYSIS AND FISCAL IMPACT STATEMENT, SB 2-D, May Spec. Sess., at 1 (Fla. 2022) [hereinafter BILL ANALYSIS, SB 2-D].

101. *Id.* at 3.

legislation effectively prohibited assignees from being eligible to recover attorney's fees when filing suit against an insurer.¹⁰²

After Section 627.7152 was amended during the May 2022 Special Session, the new statute became detailed and lengthy, but a summary of key components of the statute is pertinent.¹⁰³ The statute requires that the assignment agreement “allow[] the assignor to rescind the assignment . . . within 14 days” of executing the agreement, or

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.¹⁰⁴

Section 627.7152(8) similarly requires that “[i]f an assignor acts under an urgent or emergency circumstance to protect property . . . , an assignee may not receive an assignment of post-loss benefits under a residential property insurance policy in excess of the greater of \$3,000 or [one] percent of the Coverage A limit under such policy.”¹⁰⁵

Section 627.7152(9)(a) requires that “[a]n assignee must provide the named insured, the insurer, and the assignor, if not the named insured, with a written notice of intent to initiate litigation before filing suit under the policy.”¹⁰⁶ The statute requires that such notification is given “at least 10 business days before” the lawsuit is filed, but after the insurer has determined coverage.¹⁰⁷ Finally, Section 627.7152(10) provides that an assignee may recover attorney's fees under Section 57.105—the statute that describes how a party may recover attorney's fees in most litigation.¹⁰⁸ Section 57.105 permits recovery of attorney's fees only when

102. *Id.* at 5. The legislation from the May 2022 Special Session is itself pending litigation as contractors challenge the constitutionality of other provisions of the new law on First Amendment and other grounds. *See* Plaintiffs' Response in Opposition to State's Motion for Partial Dismissal of Second Amended Complaint at 2, Restoration Ass'n of Fla. v. Griffin, No. 21-cv-00263, 2022 WL 798319 (N.D. Fla. Feb. 28, 2022); *see also* Jim Saunders, *Contractors Challenge New Florida Insurance Law*, DAILY BUS. REV., LAW.COM (June 1, 2022, 11:23 AM), <https://www.law.com/dailybusinessreview/2022/06/01/contractors-challenge-new-florida-insurance-law> [<https://perma.cc/BJX3-QGU6>] (describing the case and factual background).

103. *See* FLA. STAT. § 627.7152 (2022).

104. *See id.* § 627.7152(2)(a)(3).

105. *See id.* § 627.7152(8)(c). In almost every insurance policy, the coverage A limit refers to coverage provided to the physical building or dwelling being insured, as opposed to separate personal property within the dwelling or structures detached from the main structure, such as a garage. *See, e.g.*, ABRAHAM & SCHWARZ, *supra* note 22, at 196–97; *Homeowners' Insurance*, FLA. OFF. INS. REGUL., <https://www.flair.com/sections/pandc/homeowners/default.aspx> [<https://perma.cc/AT8C-CTDH>].

106. *See* FLA. STAT. § 627.7152(9)(a) (2023).

107. *See id.*

108. *See id.* §§ 627.7152(10), 57.105.

the losing party . . . knew or should have known that a claim or defense when initially presented to the court or at any time before trial: (a) Was not supported by the material facts necessary to establish the claim or defense, or (b) Would not be supported by the application of then-existing law to those material facts.¹⁰⁹

This statute effectively removes for assignees the more generous protections afforded to insureds when recovering attorney's fees in litigation against an insurer, making recovery of such fees more difficult for the assignee.¹¹⁰

Section 627.7153 governs provisions in the insurance policy prohibiting assignment agreements.¹¹¹ The statute permits such provisions so long as they meet five requirements. First, a policy without the provision must also be available for the insured to purchase.¹¹² Second, the policy with the anti-assignment provision must be made available at a cheaper price than the policy without the provision, and cheaper than any policy with partial restrictions on an insured's right to assign the policy.¹¹³ Third, certain notification requirements must be included in the policy so that the insured is aware of the ramifications of the anti-assignment agreement.¹¹⁴ Fourth, the insurance company must "notify the insured at least annually of the coverage options the insurer makes available" for that year.¹¹⁵ Fifth, certain text must be included on the policy form to adequately notify the insured that she is purchasing a policy that is restricted from assignment.¹¹⁶

3. The December 2022 Special Session's Latest Amendments

Members of the governor's office and state legislators did not believe that these changes fully addressed the problems facing the state's property insurance market.¹¹⁷ Thus, in a December 2022 special legislative session, Florida's Senate and House of Representatives passed a bill further reforming legislation governing Florida's property insurance market, including the passage of an amendment to Section 627.7152.¹¹⁸ The amendment resulted in the addition of Section 627.7152(13), mandating that "a policyholder may not

109. *See id.* § 57.105(1).

110. *See* BILL ANALYSIS, SB 2-D, *supra* note 100, at 5; FLA. STAT. § 57.105 (2023).

111. FLA. STAT. § 627.7153 (2023).

112. *Id.* § 627.7153(2)(a).

113. *Id.* §§ 627.7153(2)(b)-(c).

114. *Id.* § 627.7153(2)(d).

115. *Id.* § 627.7153(3).

116. *Id.* § 627.7153(4).

117. *See, e.g.*, Press Release, Jimmy Patronis, Fla. Chief Fin. Officer, CFO Jimmy Patronis Proposes Legislation to Fight Back Against Post-Storm Fraud (Oct. 19, 2022), <https://www.myfloridacfo.com/news/pressreleases/details/2022/10/19/cfo-jimmy-patronis-proposes-legislation-to-fight-back-against-post-storm-fraud> [<https://perma.cc/2VTU-FBSG>] [hereinafter Press Release].

118. *See* SB 2-A, 2022 Leg., Dec. Spec. Sess., at 5 (Fla. 2022); HB 1A, 2022 Leg., Dec. Spec. Sess., at 6 (Fla. 2022).

assign, in whole or in part, any post-loss insurance benefit under any residential property insurance policy or under any commercial property insurance policy as that term is defined in s. 627.0625(1), issued on or after January 1, 2023.”¹¹⁹ Furthermore, Section 627.7152(2)(a)(1) was added to clarify that assignment agreements executed between July 1, 2019, and January 1, 2023, are still valid.¹²⁰ Thus, the provisions from the May 2022 Special Session governed assignment agreements entered before December 31, 2022, but any assignment agreement entered on or after January 1, 2023, is now unenforceable.¹²¹

II. THE ISSUE WITH AOB ABUSE

This Part addresses why Iowa lawmakers should be concerned about growing problems in the property insurance market emerging from assignment agreements. First, this Part utilizes key insurance law principles to highlight economic issues regarding property insurance assignments. Next, it discusses moral concerns about AOBs. It concludes by illustrating that AOB abuse is not a problem unique to Florida by exploring why the Iowa market may be facing similar problems.

A. ECONOMIC PROBLEMS WITH ASSIGNMENT OF BENEFITS

Key insurance law principles help illustrate economic difficulties associated with the practice of assigning property insurance benefits. These principles include moral hazard and the insurable interest requirement. This Section will discuss and apply these foundational insurance concepts in the assignment context to explain why AOBs are susceptible to abuse.

1. The Moral Hazard Dilemma

Iowa’s current property insurance AOB regulatory scheme makes the practice susceptible to moral hazard, a market failure that, along with adverse selection, is particularly relevant to insurance. Adverse selection refers to the problem that a policyholder typically has better information about his own situation than an insurance company.¹²² This information asymmetry can lead to the insurance company issuing a policy to a policyholder who poses an unknown risk.¹²³ Doing so may lead to an adverse selection spiral.¹²⁴ Because

119. FLA. STAT. § 627.7152(13) (2023); see also BILL ANALYSIS, SB 2-A, *supra* note 48, at 44–45 (summarizing the amendment).

120. *Id.* § 627.7152(2)(a)(1).

121. *Id.* §§ 627.7152(2)(a)(1), 627.7152(13).

122. See ABRAHAM & SCHWARZ, *supra* note 22, at 6.

123. See *id.* at 6–7. For a discussion of adverse selection in the property insurance context specifically, see also Kenneth S. Abraham, *Peril and Fortuity in Property and Liability Insurance*, 36 TORT & INS. L.J. 777, 785 (2001).

124. See ABRAHAM & SCHWARZ, *supra* note 22, at 7.

adverse selection, by definition, must occur before the policy is issued, it does not pose a problem in the assignment context.

Adverse selection is not the only market failure relevant to insurance. The concept of moral hazard identifies the problem that occurs once an insured has issued a policy. When a policy is issued, the insured person is disincentivized to avoid risk that he otherwise would take.¹²⁵ While it is true that moral hazard poses less of a problem in property insurance compared to other fields such as liability or auto insurance, the market failure nonetheless presents a dilemma for property insurers.¹²⁶ Insurance companies often impose restrictions and requirements in their policies to mitigate moral hazard problems such as deductibles, coinsurance, and policy limits.¹²⁷ It is commonly argued that, by imposing these restrictions, insurers act as a de facto private regulator.¹²⁸

A version of moral hazard may play out in pre-loss assignments in the following way:¹²⁹ Resident A purchases an insurance policy on her home. After the insurance company thoroughly underwrites Resident A, the company determines that Resident A is an extraordinarily responsible person. The insurance company is willing to issue a policy to Resident A for a low premium. Resident A takes very good care of the home. After a few years, Resident A decides that she wants to rent her home to Resident B. As part of the rental agreement, Resident A assigns the insurance contract to Resident B. Resident B is not nearly as responsible as Resident A. The insurance company would only be willing to issue a policy to Resident B for a high premium. One day, Resident B negligently lights a candle, causing a fire. The assignment of the policy to B without a premium increase created moral hazard because the insurance company did not agree to undertake the heightened risk associated with assigning the policy to B for the lower premium. It is also likely that Resident B, knowing the property was insured, did not care for the property in the same way Resident B would have had the property been uninsured.

This Note argues that a different kind of moral hazard occurs in the case of post-loss AOBs. In health and auto insurance, AOBs typically work because the “insurance company has a working relationship with the service provider and has an idea of anticipated costs.”¹³⁰ Under this understanding of the

125. See, e.g., *id.* at 8; KENNETH S. ABRAHAM, *DISTRIBUTING RISK: INSURANCE, LEGAL THEORY, AND PUBLIC POLICY* 14–15 (1986). For an alternative, more skeptical perspective regarding moral hazard and insurance, see generally Tom Baker, *On the Genealogy of Moral Hazard*, 75 *TEX. L. REV.* 237 (1996).

126. See Seth J. Chandler, *Visualizing Moral Hazard*, 1 *CONN. INS. L.J.* 97, 104–05 n.15 (1995).

127. See ABRAHAM & SCHWARZ, *supra* note 22, at 9.

128. See, e.g., Omri Ben-Shahar & Kyle D. Logue, *Outsourcing Regulation: How Insurance Reduces Moral Hazard*, 111 *MICH. L. REV.* 197, 200–02 (2012) (“Regulation-through-insurance is a notion that has been widely recognized in the literature.”).

129. For a similar discussion, see Broom, *supra* note 43, at 153.

130. *Id.* at 151. Thus, healthcare providers typically retain AOBs from patients to work directly with health insurers. *Id.* Insurers generally accept this arrangement because billing is set

assignment agreement, it makes sense that most courts decline to enforce clauses restricting post-loss assignments.¹³¹ However, a unique type of postassignment moral hazard exists in the property insurance market that the traditional understanding of the concept overlooks. As discussed above, when an assignment occurs, a contractor may now bill the insurance company directly, eliminating the insured's involvement.¹³² AOB supporters argue that this streamlined process makes repairs more efficient because the insured is no longer involved in the claim, but it also means that the insured's ability to oversee the repairs and costs of her own property is diminished.¹³³

Since the contractor no longer must concern herself with customer oversight regarding expenditures and compliance with the terms of the insurance policy, she is now incentivized to inflate expenditures because repairs can be done before billing the company.¹³⁴ By the time the insurer receives the bill, it can no longer verify repaired damage.¹³⁵ The contractor may also seek to bill for referral fees to other contractors for work not covered under the policy or for excessive profits and overhead.¹³⁶ In this sense, insurers lose control in handling the claims process, often leading to exceedingly high rates billed against insurance companies.¹³⁷ While an atypical version of moral hazard, the arrangement nonetheless evokes the same principles.¹³⁸ The loss has already occurred, so the concern is no longer how the insured will behave in

on a negotiated payment scale with providers who have already been approved by the health insurer. *Id.* The same is also typically true when body shops repair damage to vehicles in the auto insurance industry. *Id.*

131. See PLITT ET AL., *supra* note 26, § 35:8. (“[T]he great majority of courts adhere to the rule that general stipulations in policies prohibiting assignments of the policy, except with the consent of the insurer, apply only to assignments before loss, and do not prevent an assignment after loss, for the obvious reason that the clause by its own terms ordinarily prohibits merely the assignment of the policy, as distinguished from a claim arising under the policy, and the assignment before loss involves a transfer of a contractual relationship while the assignment after loss is the transfer of a right to a money claim.” (footnotes omitted)). *But see* Tyler v. Nat’l Life & Accident Ins. Co., 172 S.E. 747, 748 (Ga. Ct. App. 1934) (determining that the insurer may include an anti-assignment provision for both pre-loss and postloss assignments); Clinton Condos. Owners Ass’n v. Truck Ins. Exch., 38 P.3d 1279, 1280–81 (Or. Ct. App. 2016) (concluding that the Oregon statute prohibits assignment of claims arising from a judgment necessarily occurring postloss).

132. See *supra* text accompanying notes 46–48; Broom, *supra* note 43, at 157.

133. See Broom, *supra* note 43, at 157.

134. *Id.*

135. See BILL ANALYSIS, HB 7065, *supra* note 1, at 5; Broom, *supra* note 43, at 157.

136. See BILL ANALYSIS, SB 2-A, *supra* note 48, at 24; Broom, *supra* note 43, at 157.

137. See, e.g., 33 Carpenters Constr., Inc. v. State Farm Life & Cas. Co., 939 N.W.2d 69, 78 (Iowa 2020) (mentioning that the contractor prepared a supplement with an 81.3 percent and a 90.4 percent increase in the total repair cost from insurer’s initial substituted estimates); Kevin Poll, *Assignment of Benefits: A Growing Concern*, VERISK (Feb. 21, 2018), <https://www.verisk.com/insurance/visualize/assignment-of-benefits-a-growing-concern> [<https://perma.cc/W2QX-VHM3>].

138. For a good, short summary of the traditional definition of moral hazard, see ABRAHAM & SCHWARZ, *supra* note 22, at 8 (“The term moral hazard now often refers more generally to the tendency of any insured party to exercise less care to avoid an insured loss than would be exercised if the loss were not insured.”).

preventing loss after obtaining the insurance policy, but instead that the contractor—who is technically the new insured after the assignment and is no longer accountable to the homeowner and customer—will bill differently than if she did not possess the rights under the insurance policy.¹³⁹ This version of moral hazard can pose serious economic problems for insurance companies and consumers alike.

The problem is exacerbated when the contractor can recover attorney's fees after suing the insurance company under the policy. The assignee's ability to recover attorney's fees was especially a problem in Florida prior to AOB reform because "insurance companies [needed to] pay legal fees to third parties who successfully sue[d] to obtain payment for their services, even if the court [found] the amount of the claim [to be] only \$1 above the insurance company's settlement offer."¹⁴⁰ The law in Iowa holds that, "[g]enerally, attorney fees are recoverable only by statute or under a contract."¹⁴¹ Otherwise, "Iowa follows the American rule: 'the losing litigant does not normally pay the victor's attorney's fees.'"¹⁴² There are a plethora of statutes instructing courts on how to award attorney's fees in Iowa.¹⁴³ However, no such statute appears to govern disputes between assignees and insurance companies.¹⁴⁴ While litigation abuse due to legislative apportionment and awards of attorney's fees is not as pronounced in Iowa as it is in Florida, there is still room for confusion and the possibility that contractors bring excessive claims in the hope that a court may award attorney's fees. Excessive litigation over assignment related disputes can pose a problem as it unnecessarily backs up courts.¹⁴⁵ Increased litigation costs for insurers also must be passed on to policyholders through higher premiums.¹⁴⁶ Additionally, it becomes more

139. Broom, *supra* note 43, at 157.

140. *Id.*

141. *Thornton v. Am. Interstate Ins. Co.*, 897 N.W.2d 445, 474 (Iowa 2017) (quoting *Miller v. Rohling*, 720 N.W.2d 562, 573 (Iowa 2006)).

142. *Id.* (quoting *Rowedder v. Anderson*, 814 N.W.2d 585, 589 (Iowa 2012)). However, it should be noted that "[t]here is a 'rare' common law exception to this rule, permitting recovery of attorney fees when the defendant 'has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.'" *Id.* (quoting *Hockenberg Equip. Co. v. Hockenberg's Equip. & Supply Co. of Des Moines*, 510 N.W.2d 153, 158 (Iowa 1993)).

143. *See, e.g.*, IOWA CODE §§ 625.22, 669.15 (2023).

144. This assertion is made based off a review of all Iowa statutes governing attorney fees as well as a careful review of Chapter 515, the portion of the Iowa Code governing all insurance other than life insurance.

145. Broom, *supra* note 43, at 157–58.

146. *See* GUY FRAKER, CREDITFUTURES ADVISORY, FLORIDA'S P&C INSURANCE MARKET: SPIRALING TOWARD COLLAPSE 6, <https://www.insurancejournal.com/research/research/floridas-pc-insurance-market-spiraling-toward-collapse> [<https://perma.cc/N7XM-7VDN>] ("In order to provide additional clarity as to scale and depth of dispute driven disruption, think of the litigation costs to insurers as ultimately a tax upon Florida's property owners they don't know exists, much less had the opportunity to approve through any form of democratic process."); *see also* Amy O'Connor, *Florida's Property Insurance Market Is 'Spiraling Towards Collapse' Due to Litigation: Report*,

difficult for insurance companies to retain reinsurance and recruit investors in an overly litigious environment.¹⁴⁷ As discussed further in Section III.B.2, the Iowa Legislature can fix this problem by including language preventing the recovery of attorney's fees by assignees in any AOB reform legislation.¹⁴⁸

2. The Insurable Interest Problem

Assignment poses a further problem—contractors hold no insurable interest in the property. Insurable interest is a basic tenet of property insurance law.¹⁴⁹ For a policyholder to validly procure insurance on a given property, the policyholder must have an insurable interest in the property.¹⁵⁰ In Iowa, “[i]f the holder of an interest in property will suffer loss by its destruction he may indemnify himself therefrom by a contract of insurance.”¹⁵¹ One need not necessarily own, hold title, or possess the property, but merely need hold some limited interest where damage to the property will cause the person to suffer loss.¹⁵² The insurable interest requirement is intended “to prevent the procurement of insurance for speculative purposes and to discourage fraud.”¹⁵³ Additionally, the insurable interest requirement helps insurance companies avoid the moral hazard that would result if policyholders did not have a personal stake in the property that disincentivized destroying the property to claim insurance proceeds.¹⁵⁴

The concern with assignments and lack of an insurable interest differs from the typical understanding of the issue. Even though the loss has already occurred, immoral contractors are still incentivized to create more damage so that they may receive a larger check from the insurance company.¹⁵⁵ Without

INS. J. (Jan. 20, 2021), <https://www.insurancejournal.com/news/southeast/2021/01/20/598034.htm> [<https://perma.cc/3WAQ-AD9A>] (summarizing the report written by Guy Fraker).

147. O'Connor, *supra* note 146.

148. See discussion *infra* Section III.B.2.

149. ABRAHAM & SCHWARZ, *supra* note 22, at 224 (“The principle that insurance coverage is limited to policyholders’ ‘insurable interest’ is universal in insurance law.”).

150. See *id.*

151. *Merrett v. Farmers’ Ins. Co.*, 42 Iowa 11, 13 (1875).

152. *Id.* (“What is an insurable interest? An interest, to be insurable, does not depend upon title or ownership of the property; it may be a special or limited interest, disconnected from title, lien or possession.”).

153. PLITT ET AL., *supra* note 26, § 246:93.

154. See ABRAHAM & SCHWARZ, *supra* note 22, at 229.

155. See *Roofing Fraud Requires Vigilance*, NAT’L INS. CRIME BUREAU, <https://www.nicb.org/news/blog/roofing-fraud-requires-vigilance> [<https://perma.cc/GF7F-SDNJ>] (“In hopes of a larger payday, shady contractors will state damage exists where none does, exaggerate the scope of damage and necessary repair, or even purposely damage roofs to make it appear that it sustained damage from a weather event.”); Local 5 News, *Be Wary of Shady ‘Free’ Roof Inspections*, *Better Business Bureau Says*, WE ARE IOWA (July 20, 2021, 10:39 PM), <https://www.weareiowa.com/article/news/local/local-5-on-your-side/free-roof-inspection-scam-be-wary-better-business-bureau-city-of-waukee/524-282a46d8-c300-48df-a1a5-81d2d335f103> [<https://perma.cc/RD78-36FX>] (“If [the contractors] don’t find enough wear and tear to merit a whole new roof, they may fabricate it by tearing off shingles to mimic damage, according to the BBB.”).

an insurable interest, the unscrupulous contractor has no disincentive to avoid causing more damage to collect a larger check. Compounding the problem is the fact that the policyholder typically believes that the assignment removes him from the equation. Since he is no longer receiving the bill from the contractor, he is less inclined to thoroughly monitor the contractor's work to ensure that this fraud does not occur.

Furthermore, there is an even greater possibility that contractors will artificially inflate prices. While the potential for a contractor causing further damage to property is a possibility, only the most immoral of contractors are willing to take this illegal action. There is a greater number of contractors who may be willing to inflate prices due to the lack of an insurable interest.¹⁵⁶ Recall that once an assignment occurs, the insured no longer has any control over the claim.¹⁵⁷ The contractor does not have an insurable interest in the property itself and also does not have a general interest in cost efficiency when making repairs.¹⁵⁸ The contractor will not pay premiums, seek policy renewal, or otherwise interact with the insurance company in the future. Therefore, the contractor is incentivized to inflate prices as much as possible to earn the greatest profit, leaving the insured responsible for higher premiums and nonrenewed policies.¹⁵⁹ To compensate for the lack of an insurable interest and future economic interest, Iowa needs to pass AOB reform limiting this practice.

B. MORAL PROBLEMS WITH ASSIGNMENT OF BENEFITS

Beyond economic reasons for limiting post-loss AOBs, there are also moral reasons. For one, the practice of soliciting an assignment is sometimes seen as predatory.¹⁶⁰ Typically, contractors approach insureds at one of the most vulnerable times in an insured's life.¹⁶¹ The insured has often just suffered serious damage to her home.¹⁶² When a contractor approaches an insured at this time, the insured likely will feel desperate and assign her policy without fully understanding what she is agreeing to or the possible repercussions.¹⁶³ Once the assignment occurs, the insured no longer has any

156. Keeping in mind the proposition that, of course, most contractors are honest and not seeking to take advantage of the homeowner or the insurance company, this assertion simply refers to a greater number of the dishonest few who might not be willing to commit a crime but are willing to inflate the value of their work product.

157. See *supra* note 63 and accompanying text.

158. See Broom, *supra* note 43, at 157.

159. *Id.*

160. *Id.* at 153–54.

161. Press Release, *supra* note 117.

162. *What to Do After a Storm? Read the Fine Print and Be Aware of Assignment of Benefits*, NAT'L ASS'N INS. COMM'RS (Apr. 13, 2020), <https://content.naic.org/article/consumer-insight-what-to-do-after-storm-read-fine-print-and-be-aware-assignment-benefits> [<https://perma.cc/Q5Q5-NDGD>] [hereinafter *What to Do After a Storm?*].

163. For the National Association of Insurance Commissioners's guidance to help prevent this problem, see *id.*

rights under the policy.¹⁶⁴ She cannot dictate the course of litigation or settlement, nor can she dictate the scope of work to be completed under the policy.¹⁶⁵ She also might still be a third party to the litigation against her will.¹⁶⁶

It is possible that a contractor works on a project for several weeks, and the insured very well may want the contractor to abandon the work due to substandard quality or any number of other reasons. But, under the policy, the contractor is entitled to complete the work and receive the full payment.¹⁶⁷ Bottom line, the assignment makes it much more difficult for the insured to switch contractors if she so desires, essentially locking the insured into working with a single contractor.¹⁶⁸ This inflexibility harms the many decent practicing contractors in the field who perform high-quality work for a fair price. Additionally, after the assignment occurs, the insured could still be responsible for any outstanding sums owed to the contractor that the insurer refuses to pay under the policy.¹⁶⁹

C. WHY THE IOWA LEGISLATURE SHOULD PROACTIVELY ADDRESS AOB ABUSE

AOB abuse is a growing national problem extending beyond the borders of Florida. Cases of contractors exploiting assignment agreements have emerged in Iowa. The ramifications to Iowa home and business owners of such exploitation are too severe to allow the problem to grow, especially considering that, like Florida, Iowa also experiences severe natural disasters. By addressing AOB abuse, Iowa lawmakers can also signal that Iowa is serious about maintaining its reputation as a probusiness state and insurance hub.

1. AOB Abuse Is a Growing National Problem

Issues with AOB abuse are not a problem specific to Florida.¹⁷⁰ There is no doubt that insurance fraud, often driven in part by AOB abuse, is a national concern for the property insurance industry, with some estimates that fraud costs the industry \$45 billion annually.¹⁷¹ It is true that certain environmental and legislative conditions in Florida exacerbated and accelerated the problem

164. See *supra* note 63 and accompanying text.

165. *What to Do After a Storm?*, *supra* note 162 (“With an Assignment of Benefits, the third party, like a roofer or plumber, files the claim, makes the repair decision and collects insurance payments without your involvement.”).

166. *Assignment of Benefits*, *supra* note 93.

167. FLA. OFF. INS. REGUL., POST-LOSS ASSIGNMENT OF BENEFITS (AOB) FACT SHEET, <https://www.floridaind.com/siteDocuments/OIRPost-LossAOBFactSheet.pdf> [<https://perma.cc/R3KV-FMTQ>].

168. See *id.*

169. *Id.*

170. *Insurance Fraud in America: Current Issues Facing Industry and Consumers: Hearing Before the Subcomm. on Consumer Prot., Prod. Safety, Ins. & Data Sec. of the S. Comm. on Com., Sci. & Transp.*, 115th Cong. 4 (2017) (statement of John Doak, Comm’r, Okla. Ins. Dep’t) [hereinafter Doak Statement].

171. See COAL. AGAINST INS. FRAUD, THE IMPACT OF INSURANCE FRAUD ON THE U.S. ECONOMY 11–12 (2022), <https://insurancefraud.org/wp-content/uploads/The-Impact-of-Insurance-Fraud-on-the-U.S.-Economy-Report-2022-8.26.2022-1.pdf> [<https://perma.cc/XEgH-LQWg>].

in the state.¹⁷² For example, the Florida Supreme Court's decision to apply concurrent causation analysis to claims of this nature has helped contribute to a litigious claims environment in the state.¹⁷³ Additionally, Florida's former one-way attorney's fee statute, requiring insurance companies to pay attorney's fees if the court awarded even one dollar more than the settlement offer to plaintiffs, incentivized contractors, other assignees, and their attorneys to bring as many lawsuits as possible.¹⁷⁴

Nonetheless, AOB abuse continues to be a growing issue across the country.¹⁷⁵ Oklahoma Insurance Commissioner John Doak testified before Congress on behalf of the National Association of Insurance Commissioners that national insurance fraud is trending upward, in part due to "[c]ontractors or insurance adjusters [requiring] advance payments from consumers for services or advance assignment of insurance policy benefits."¹⁷⁶ It is clear that the fraud problem extends beyond the borders of Florida to the rest of the country.

2. Iowa Consumers Are Harmed by AOB Abuse

The Iowa Supreme Court's decisions in the 33 *Carpenters* cases suggest that the AOB abuse problem is trending in the wrong direction in Iowa.¹⁷⁷ The problem could have serious ramifications for the Iowa insurance market, and therefore the general economy. Iowans depend on property insurance for risk transfer, risk pooling, risk allocation, and risk reduction.¹⁷⁸ It is also a necessary part of domestic life throughout the state due to the insurance requirement for mortgaged homes.¹⁷⁹ It is therefore important to Iowa consumers that premium rates remain stable.

AOB reform may help prevent Iowans' insurance premiums from skyrocketing.¹⁸⁰ As of 2020, the latest year with data verified by the National

172. See Sabharwal, *supra* note 4.

173. See *Sebo v. Am. Home Assurance Co.*, 208 So. 3d 694, 699–700 (Fla. 2016); see also FRAKER, *supra* note 146, at 16–17 (discussing ramifications of the *Sebo* opinion).

174. See, e.g., Letter from David Altmaier, Comm'r, Fla. Off. Ins. Regul., to Blaise Ingoglia, Com. Comm. Chair, Fla. H.R., at 4 (Apr. 2, 2021), <https://www.insurancejournal.com/app/uploads/2021/04/Florida-OIR-Report.pdf> [<https://perma.cc/7JL3-VSXX>] (“However, the current one-way attorney’s fees statute provides an incentive for litigation to come before our judicial system that may not always be legitimate. The primary driver of this is the reality that plaintiffs need not necessarily prevail ‘substantially,’ but only win at least one penny more than the insurer’s initial offer in order to win attorney’s fees.”).

175. Doak Statement, *supra* note 170, at 4.

176. *Id.*

177. See 33 *Carpenters Constr., Inc. v. State Farm Life & Cas. Co.*, 939 N.W.2d 69, 71–74 (Iowa 2020); 33 *Carpenters Constr., Inc. v. Cincinnati Ins. Co.*, 939 N.W.2d 82, 84–85 (Iowa 2020); 33 *Carpenters Constr., Inc. v. IMT Ins. Co.*, 939 N.W.2d 95, 97 (Iowa 2020).

178. See ABRAHAM & SCHWARZ, *supra* note 22, at 3–6.

179. See FANNIE MAE, *supra* note 90, at 902–08; FREDDIE MAC, *supra* note 90, at 8202-1.

180. See Matthew Lerner, *Florida Insurance Reforms Welcomed by Industry*, BUS. INS. (Jan. 3, 2023), <https://www.businessinsurance.com/article/20230103/NEWS06/912354629/Florida-insurance-reforms-welcomed-by-industry> [<https://perma.cc/QFF7-TBJ4>].

Association of Insurance Commissioners, the average premium for \$200,000–\$299,999 worth of coverage on an HO-3¹⁸¹ insurance policy in Iowa was \$991 annually,¹⁸² compared to \$910 for the same coverage in 2019¹⁸³ and \$1,010 in 2018.¹⁸⁴ While many factors work together to affect the cost of premiums, the Florida Legislature found that claims litigation is one of the largest drivers of rate increases.¹⁸⁵ Insurers argue that much of this litigation stems from lawsuits filed on assigned claims when the insurer refuses to pay after the assignee submits an invoice to the insurer.¹⁸⁶ On average, these invoices are thirty percent higher than invoices submitted when no assignment is involved.¹⁸⁷

The economic reality is that these increased litigation costs borne by insurers are passed on to consumers through annual premiums.¹⁸⁸ Therefore, when insurers' litigation costs are driven up by inflated AOB claims, these costs are shifted to the homeowners who assign their policy in the first place. Reducing these litigation costs for insurers will continue to ensure that Iowans' yearly premiums remain stable, steadying the cost of living in the state. Such stability will continue to make home ownership a feasible reality for many Iowans, and perhaps even encourage immigration to the state. Those Iowans who already own a home will appreciate the future savings afforded to them by AOB reform and will likely continue to funnel the extra spending money back into the Iowa economy. The same is true for Iowa business owners, who will likely invest these savings to expand their businesses and further the state's growth.

Maintaining stable premium rates is also important because the maintenance of property insurance affects a homeowner's ability to participate in other peripheral areas of the economy, such as obtaining mortgages, wherein almost every lending institution (most importantly Fannie Mae and Freddie Mac in the secondary-mortgage market) requires the borrower to purchase

181. An HO-3 policy is the standard policy issued to homeowners throughout the United States. *See generally* AM I COVERED?, INS. INFO. INST., <https://www.iii.org/sites/default/files/docs/pdf/AmICovered.pdf> [<https://perma.cc/VL7Z-3KYU>] (describing the Ho-3 policy).

182. NAT'L ASS'N INS. COMM'RS, DWELLING FIRE, HOMEOWNERS OWNER-OCCUPIED, AND HOMEOWNERS TENANT AND CONDOMINIUM/COOPERATIVE UNIT OWNER'S INSURANCE REPORT: DATA FOR 2020 60 (2022), <https://content.naic.org/sites/default/files/publication-hmr-zu-ho-meowners-report.pdf> [<https://perma.cc/9SBL-MB9U>] [hereinafter NAIC INSURANCE REPORT 2020].

183. NAT'L ASS'N INS. COMM'RS, DWELLING FIRE, HOMEOWNERS OWNER-OCCUPIED, AND HOMEOWNERS TENANT AND CONDOMINIUM/COOPERATIVE UNIT OWNER'S INSURANCE REPORT: DATA FOR 2019 65 (2022), <https://naic.soutrnglobal.net/Portal/Public/enGB/DownloadImageFile.ashx?objectId=8246&ownerType=0&ownerId=2006> [<https://perma.cc/S46L-MAUP>].

184. NAT'L ASS'N INS. COMM'RS, DWELLING FIRE, HOMEOWNERS OWNER-OCCUPIED, AND HOMEOWNERS TENANT AND CONDOMINIUM/COOPERATIVE UNIT OWNER'S INSURANCE REPORT: DATA FOR 2018 65 (2020), <https://naic.soutrnglobal.net/Portal/Public/enGB/DownloadImageFile.ashx?objectId=6451&ownerType=0&ownerId=2006> [<https://perma.cc/7TFB-K7JE>].

185. *See* BILL ANALYSIS, HB 1A, *supra* note 2, at 2.

186. *See* BILL ANALYSIS, SB 2-A, *supra* note 48, at 24.

187. *Id.*

188. Broom, *supra* note 43, at 165.

homeowner's insurance before granting a loan.¹⁸⁹ With these considerations in mind, unstable premium rates due to AOB abuse will not only cause homeowners to have trouble reallocating their own personal risk, but it will also affect homeowners and other Iowans in several other market activities.

3. AOB Reform Reinforces Iowa's Probusiness Reputation

Rising insurer costs could cause insurers to leave the market, as in Florida.¹⁹⁰ Insurers forced to exit the market will not only cause premium rates to rise due to a spiral effect, but it will also lead to job loss for Iowans working in the insurance industry—an industry that Iowa Workforce Development, a state agency, approximates accounted for 46,572 jobs in 2019.¹⁹¹ If Iowa seeks to continue its reputation as “the nation's insurance capital,” reforming AOB law in the state to permit a more favorable regulatory climate—in conjunction with other commendatory features of the Iowa legal and economic landscape such as reasonable tax and wage laws, an educated population, and a central geographic location—will go a long way toward ensuring that property insurance companies continue to bring business to the state.¹⁹²

Additionally, the stability such reform will provide will benefit honest contractors. These individuals are also harmed by the business practices of the unscrupulous few, as those who abuse AOB law tend to reap the greatest profits by exploiting policyholders and insurance companies. A snowball effect then occurs, whereby the unprincipled groups grow their businesses at the expense of smaller operations who play by the rules and only expect the true value of their work product. AOB reform will help ensure that honest contractors can effectively compete in the market. Legislation amending the law will also strengthen the contractor-insurance company relationship, facilitating cordial communications to ensure that each party sees the other as a partner working to reach a common goal, rather than as an adversary.

4. Extreme Weather Events Foster an Environment Ripe for AOB Abuse

Ultimately, the insurance industry is too important for the Iowa Legislature to fail to proactively address the looming AOB dilemma.¹⁹³ Both Iowa and Florida are prone to extreme weather events. Florida hurricanes cause direct property damage leading to roof claims and other claims related to physical

189. See FANNIE MAE, *supra* note 90, at 902–08; FREDDIE MAC, *supra* note 90, at 8202-1.

190. See Sabharwal, *supra* note 4.

191. See IOWA WORKFORCE DEV., 2020 IOWA INDUSTRY PROFILE: FINANCE & INSURANCE 1 (2020).

192. See *Why Iowa Is the New Insurance Capital of the Nation*, IOWA ECON. DEV. (Apr. 20, 2023), <https://www.iowaeda.com/iowa-stories/why-iowa-is-the-new-insurance-capital-of-the-nation> [https://perma.cc/L9ZJ-PJMQ].

193. See *supra* text accompanying notes 12–17.

damage, as well as indirect claims such as mold claims stemming from windstorms.¹⁹⁴ The humid climate also leads to more claims for water damage.¹⁹⁵

While Iowans may not be apprehensive about a hurricane, the state deals with its own serious natural disasters. The 2008 flooding and tornadoes or the 2020 derecho might come to mind for many Iowans.¹⁹⁶ Cedar Rapids residents may consider the ongoing eminent domain fight between the city and residents as the city tries to protect citizens from “[t]he frequency of floods, fires and storms.”¹⁹⁷

The National Centers for Environmental Information (NCEI) estimated that Iowa experienced four “billion-dollar disaster” events in 2022, costing between \$500 million and \$1 billion.¹⁹⁸ NCEI calculated that Florida also experienced four “billion-dollar disasters” in 2022, costing between \$100 and \$200 billion.¹⁹⁹ The difference in total cost is a result of Florida’s higher population density.²⁰⁰

Regardless of the type of natural disaster, any serious weather event leads to a climate ripe for fraud and AOB abuse. The Iowa Insurance Division noted in a discussion of AOBs that “[a]fter storms and other disasters, fraudsters and scam artists often arrive quickly.”²⁰¹ Similarly, after Hurricane Ian, the U.S. Attorney’s Office for the Northern District of Florida wrote that “[i]n the wake of extreme devastation caused by Hurricane Ian, the National Center for Disaster Fraud (NCDF) today issued a reminder that as with any major

194. See, e.g., *Pride Clean Restoration Inc. v. Certain Underwriters at Lloyd’s of London*, 331 So. 3d 841, 842–43 (Fla. Dist. Ct. App. 2021) (describing structural and mold damage to the insured’s home after a hurricane); see also Leslie Scism & Arian Campo-Flores, *In Hurricane Ian’s Wake, Insurers and Homeowners Gear Up for Coverage Fights*, WALL ST. J. (Oct. 7, 2022, 5:30 AM), <https://www.wsj.com/articles/in-hurricane-ians-wake-insurers-and-homeowners-gear-up-for-coverage-fights-11665135002> [<https://perma.cc/g285-KYDD>] (describing the likelihood for legal disputes in the wake of Hurricane Ian).

195. BILL ANALYSIS, HB 7065, *supra* note 1, at 5.

196. See *Review of the 2008 Flood*, NAT’L OCEANIC & ATMOSPHERIC ADMIN.: NAT’L WEATHER SERV., <https://www.weather.gov/dvn/flood2008> [<https://perma.cc/4ZPZ-CUWB>]; *Iowa Town Torn Apart by Deadly Twister*, NBC NEWS (May 27, 2008, 10:05 AM), <https://www.nbcnews.com/id/wbna24840152> [<https://perma.cc/XHT4-NTRM>]; Bob Henson, *Iowa Derecho in August Was Most Costly Thunderstorm Disaster in U.S. History*, WASH. POST (Oct. 17, 2020, 9:04 AM), <https://www.washingtonpost.com/weather/2020/10/17/iowa-derecho-damage-cost> [<https://perma.cc/V3PH-SLBT>].

197. See Shannon Najmabadi, *Cedar Rapids Wants to Take These Homes—Before the Floods Do*, WALL ST. J. (Apr. 6, 2023, 9:00 AM), <https://www.wsj.com/articles/cedar-rapids-wants-to-take-these-homes-before-the-floods-do-14e4d454> [<https://perma.cc/8LE9-99AS>].

198. *Iowa Billion-Dollar Disaster Events 1980–2023 (CPI-Adjusted)*, NAT’L OCEANIC & ATMOSPHERIC ADMIN.: NAT’L CENTERS ENV’T INFO. (May 8, 2023), <https://www.ncei.noaa.gov/access/billions/time-series/IA> [<https://perma.cc/KR6Q-HFWS>].

199. *Florida Billion-Dollar Disaster Events 1980–2023 (CPI-Adjusted)*, NAT’L OCEANIC & ATMOSPHERIC ADMIN.: NAT’L CENTERS ENV’T INFO. (May 8, 2023), <https://www.ncei.noaa.gov/access/billions/time-series/FL> [<https://perma.cc/TF65-PB6R>].

200. See *supra* note 14 and accompanying text.

201. NAT’L ASS’N OF INS. COMM’RS & IOWA INS. DIV., *supra* note 3, at 19.

disaster, there are unscrupulous thieves who seek to take advantage of the environment to line their own pockets.”²⁰² These statements illustrate that postdisaster responses are susceptible to fraud, including AOB abuse. Thus, because both Florida and Iowa are similarly susceptible to postdisaster environments whereby fraud and AOB abuse can occur, Iowa should adopt similar changes to its AOB statute as Florida.

III. SUGGESTIONS FOR REFORMING ASSIGNMENT OF BENEFITS LAW IN IOWA

This Part first explains why the legislature is best equipped to address the AOB issue in Iowa. Next, it argues that Iowa lawmakers need not yet forbid the assignment of property insurance policies as Florida has done. This Part concludes by discussing legislative reforms to Iowa Code Section 515.137A best suited to mitigate AOB abuse to ensure the problem does not reach the same magnitude that it did in Florida.

A. *THE NECESSITY OF A LEGISLATIVE DECISION*

A statutory, rather than judicial, solution is needed because of the competing policy considerations involved.²⁰³ Recall, proponents of AOBs in property insurance argue that the practice helps facilitate recovery by providing resources and knowledge about the process that an individual insured might not have.²⁰⁴ They also argue that AOBs allow the restoration of the property to occur as quickly as possible, sometimes in circumstances when the insured does not have the money to pay the contractor before work is completed.²⁰⁵ On the other hand, as discussed at length previously in this piece, insurers make an equally plausible argument that the process leads to excessive and fraudulent claims.²⁰⁶ Florida courts have hesitated to wade into this public policy debate, acknowledging that solving problems related to AOBs is likely beyond the scope of the judiciary and must be resolved by the legislature.²⁰⁷

202. See Press Release, Jason R. Coody, U.S. Att’y, N. Dist. Fla., National Center for Disaster Fraud Warns of Fraud After Hurricane Ian, U.S. DEP’T OF JUST. (Oct. 7, 2022), <https://www.justice.gov/usao-ndfl/pr/national-center-disaster-fraud-warns-fraud-after-hurricane-ian> [https://perma.cc/K4KH-53RA].

203. See *One Call Prop. Servs. Inc. v. Sec. First Ins. Co.*, 165 So. 3d 749, 755 (Fla. Dist. Ct. App. 2015) (“Turning to the practical implications of this case, we note that this issue boils down to two competing public policy considerations.”).

204. See *id.*; Broom, *supra* note 43, at 163.

205. See *One Call Prop. Servs. Inc.*, 165 So. 3d at 755; Broom, *supra* note 43, at 163.

206. See *supra* Part II; see also *One Call Prop. Servs. Inc.*, 165 So. 3d at 755 (“On the one side, the insurance industry argues that assignments of benefits allow contractors to unilaterally set the value of a claim and demand payment for fraudulent or inflated invoices.”).

207. See, e.g., *Sec. First Ins. Co. v. Fla. Off. of Ins. Regul.*, 177 So. 3d 627, 630 (Fla. Dist. Ct. App. 2015) (“We again conclude, therefore, that it is for the legislative branch to consider this public policy problem, not the courts, at this juncture.”); *Bioscience W., Inc. v. Gulfstream Prop. & Cas. Ins. Co.*, 185 So. 3d 638, 643 (Fla. Dist. Ct. App. 2016) (“We are mindful that there are competing policy considerations here. These policy considerations are for the legislature to decide, not our court.”).

The Iowa Supreme Court has appeared similarly willing to yield to the legislature on competing public policy considerations.²⁰⁸ In the assignment context, Justice Waterman’s opinion in *33 Carpenters* focused on whether the contractor who became the assignee illegally acted as a public adjuster when inducing the assignment from the homeowner.²⁰⁹ In doing so, the court did not address the competing public policy considerations at play with assignment more generally.²¹⁰ Nonetheless, the court ultimately determined that, because *33 Carpenters* acted as an unlicensed public adjuster, the assignment contract was void as against public policy.²¹¹ Justice Waterman concluded the opinion by writing, “[t]he legislature has codified its expression of public policy in Iowa Code section 103A.71(5), and we rely on that statute to affirm the summary judgment.”²¹² Based on existing Iowa Supreme Court precedent, it appears that it will—and ought—to be the legislature’s role to reform Iowa’s AOB property insurance law.

B. PROPOSALS FOR REFORMING IOWA’S AOB STATUTE

Iowa’s property insurance market has not reached crisis levels like Florida’s. Thus, the Iowa Legislature can afford to tinker with the current statute rather than overhaul it. Thus, it is likely not yet necessary for the Iowa Legislature to prohibit AOBs, although this action may ultimately be inevitable. Because Iowa’s legal and political environment is likely not ready for this step, lawmakers should focus their efforts on smaller tweaks to the current statute as written, modeling amendments on the modifications made by the Florida Legislature during the May 2022 Special Session.

1. The Iowa Legislature Need Not Yet Prohibit AOBs

Ultimately, AOB abuse in Iowa may rise to the levels seen in Florida, where a total prohibition may be necessary. At this stage, however, Iowa is not at that breaking point. For one, Florida’s property insurance market is substantially

208. See, e.g., *State v. Middlekauff*, 974 N.W.2d 781, 803 (Iowa 2022) (“Use of marijuana is a public-policy issue best suited for the legislature because it is driven by legal, moral, philosophical, and medical concerns that are ill-suited for resolution by this court.” (quoting *State v. Bonjour*, 694 N.W.2d 511, 514 (Iowa 2005))); *Harvey v. Care Initiatives, Inc.*, 634 N.W.2d 681, 684–85 (Iowa 2001) (“This conclusion, however, does not end our analysis. We must also consider whether our legislature intended to establish a wrongful discharge action for independent contractors by declaring public policy that would embrace non-employees.”); *In re Marriage of Witten*, 672 N.W.2d 768, 780 (Iowa 2002) (“We must look to the Constitution, statutes, and judicial decisions of the state, to determine its public policy and that which is not prohibited by statute, condemned by judicial decision, nor contrary to the public morals contravenes no principle of public policy.” (quoting *Liggett v. Shriver*, 164 N.W. 611, 612–13 (Iowa 1917))).

209. See *33 Carpenters Constr., Inc. v. State Farm Life & Cas. Co.*, 939 N.W.2d 69, 71–72 (Iowa 2020).

210. See *id.* at 76–77.

211. *Id.* at 81–82.

212. *Id.* at 82.

less stable than Iowa's.²¹³ Florida insurance company insolvencies have proceeded at an alarmingly high rate.²¹⁴ The litigation crisis in Florida is also extraordinary, where in 2016 the state accounted for 64.43 percent of all national homeowners' lawsuits against insurance companies; in 2017—68.07 percent; in 2018—79.91 percent; and in 2019—76.45 percent.²¹⁵ Furthermore, Iowa policyholders do not currently pay the same exorbitant premiums as most Floridians. In 2019, the average annual premium paid by Iowans on a homeowner's insurance policy was \$913, compared to \$1,988 paid by Floridians.²¹⁶ In Florida, this number had risen to \$4,231 by 2021,²¹⁷ while in Iowa it remains relatively stable.²¹⁸ Finally, the extreme weather events that recently struck Iowa have not caused the same damage as Hurricanes Ian or Nicole have caused in Florida.²¹⁹ While the AOB issue is certainly looming, and Iowa lawmakers should mitigate the problem by proactively addressing it, lawmakers can first attempt piecemeal legislative reforms before a total ban on the practice is necessary, especially considering the public policy weighing in favor of permitting the practice.²²⁰

Additionally, litigation in Florida is likely to occur over whether the legislature may prohibit the assignment of rights under a property insurance policy. Given the Iowa Supreme Court's partiality to permitting assignment agreements in *Conrad Brothers v. John Deere Insurance Co.*, any law banning the arrangement might also become mired in litigation.²²¹ By delaying a complete bar of the practice, Iowa lawmakers can benefit from observing forthcoming Florida litigation. There also may be political blowback from contractors' groups and some plaintiff's attorneys.²²² While serious reform was necessary in Florida, and the legislature acted effectively, Iowa can afford to take a more gradual approach.

213. See Becky Sullivan, *Florida's Property Insurance Market Was Already Under Stress. Ian Could Make It Worse*, NPR (Oct. 6, 2022, 5:00 AM), <https://www.npr.org/2022/10/06/1127083845/hurricane-ian-florida-property-insurance> [<https://perma.cc/5XQ7-4BFT>].

214. BILL ANALYSIS, SB 2-A, *supra* note 48, at 6–7.

215. BILL ANALYSIS, HB 1A, *supra* note 2, at 5.

216. *Facts + Statistics: Homeowners and Renters Insurance*, INS. INFO. INST., <https://www.iii.org/facts-statistic/facts-statistics-homeowners-and-renters-insurance> [<https://perma.cc/8BWA-VgYL>].

217. Scism & Campo-Flores, *supra* note 7.

218. See NAIC INSURANCE REPORT 2020, *supra* note 182, at 60.

219. BILL ANALYSIS, SB 2-A, *supra* note 48, at 9.

220. See *supra* text accompanying notes 49–52.

221. See *Conrad Bros. v. John Deere Ins. Co.*, 640 N.W.2d 231, 237 (Iowa 2001); see also *supra* notes 35–41 and accompanying text (discussing the *Conrad Bros.* case).

222. It should be noted that a leading plaintiff's attorney in Florida has expressed support for the prohibition of assignments. See John Morgan (@JohnMorganESQ), TWITTER (May 20, 2022, 9:25 AM), <https://twitter.com/JohnMorganESQ/status/1527656848563773441?s=20&t=Ok3dezAhTEHzsJE1cC2CgA> [<https://perma.cc/7FE4-RLMG>]. Other plaintiff's attorneys disagree. See O'Connor, *supra* note 91 (“Lead Florida AOB attorney Harvey Cohen posted a video within days after the reforms were passed urging vendors to submit their AOB agreements for litigation as soon as possible.”).

2. Suggested Statutory Amendments

Iowa Code Section 515.137A does not adequately address the wide variety of issues that may arise from AOB abuse. The legislature can modify the current statute in five ways to best mitigate AOB abuse. First, the Iowa Legislature should extend the number of days in which an insured may cancel an assignment contract. Second, Iowa lawmakers should write a provision in their own statute emulating Florida Statute Section 627.7152(2)(c). Third, the Iowa Legislature should draft a provision modeled on Florida Statute Section 627.7152(9)(a). Fourth, Iowa lawmakers should add language allowing anti-assignment provisions in insurance policies. Finally, the Iowa Legislature should prohibit assignees from recovering attorney's fees.

To start, the number of days an insured may cancel the assignment contract should be extended to fourteen days, the same as the Florida statute, with a provision further allowing for rescission

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.²²³

A provision of this type will have two effects. First, it will limit concerns related to the moral predicament posed by AOBs. As discussed, often when an AOB is executed, the insured is in a vulnerable, desperate state.²²⁴ The current provision in Iowa Code Section 515.137A, permitting cancellation after only five days, does not sufficiently address this concern.²²⁵ Permitting the insured another week to cancel the policy will help to ensure that the homeowner has more time to process the devastation that has befallen him.

The thirty-day window for cancellation will also give the insured another opportunity to fully consider the ramifications of the assignment and cancel the agreement if the insured deems it appropriate. The provision may disincentivize contractors from quickly beginning work if the insured is permitted to cancel the agreement, but it is more likely that such considerations will not enter a contractor's calculations when completing a project. Ultimately, if the contractor intends to produce a quality work product at a fair price, the contractor will be compensated for that work product. Even if a contractor did decide to delay work to ensure that the homeowner would not cancel the policy, when weighing competing policy objectives, it is more important that the insured have the freedom to make an informed decision as to whether she would rather cancel her assignment agreement or have work completed quickly on her home.

223. See Fla. Stat. § 627.7152(2)(a)(3) (2023).

224. See *supra* Section II.B.

225. IOWA CODE § 515.137(A)(3)(h) (2023).

Additionally, this provision would help reduce the potential for moral hazard.²²⁶ Consider the situation in which the contractor now finds herself: if the contractor delays or does not perform high-quality work, the insured is likely to cancel the AOB agreement and may sue the contractor directly for breach of the repair contract. Such a provision would best ensure that the contractor has the right incentive to complete the work quickly and to the highest quality possible. The contractor is also protected by the provision ensuring that the assignment cannot be canceled upon substantial completion.²²⁷ Moreover, the contractor will still receive payment for any work completed, even if the assignment agreement is canceled.²²⁸ The payment would simply come from the policyholder, meaning more oversight by the policyholder, rather than the insurance company.²²⁹

Similarly, the Iowa Legislature ought to amend Section 515.137A to incorporate an analogous provision to Florida's Section 627.7152(2)(c).²³⁰ Recall this section of the Florida statute provides that "[i]f an assignor acts under an urgent or emergency circumstance to protect property . . . an assignee may not receive an assignment of post-loss benefits under a residential property insurance policy in excess of the greater of \$3,000 or [one] percent of the Coverage A limit under such policy."²³¹ The language here is another effective mechanism to prevent contractors from profiting off of predatory behavior by taking advantage of policyholders in an emergency.²³² It also helps alleviate the moral hazard concern that arises when a contractor completes repairs before the insurer's claims adjuster can inspect such damage, which gives the contractor the opportunity to inflate the bill sent to the insurance company.²³³ Emergency situations are the time when this sort of action is most likely to happen, given the necessity for immediate repairs. By statutorily limiting what a contractor can bill for such repairs, the moral hazard problem is partially, albeit likely not fully, addressed.²³⁴ Iowa should adopt a similar provision in its own assignment statute. It is unlikely that such a provision would have impacted the outcome of *33 Carpenters*.²³⁵ In that case, the contractor approached the insured to inspect the home and notified the homeowner of damage of which the homeowner was unaware,²³⁶ which is

226. See *supra* Section II.A.1.

227. See FLA. STAT. § 627.7152(2)(a)(3) (2023).

228. See *id.*

229. See *id.*

230. *Id.* § 627.7152(2)(c).

231. *Id.*

232. See *supra* Section II.B.

233. See *supra* notes 138–41 and accompanying text.

234. See *supra* Section II.A.1.

235. See *33 Carpenters Constr., Inc. v. State Farm Life & Cas. Co.*, 939 N.W.2d 69, 81 (Iowa 2020).

236. *Id.* at 72.

unlikely to be considered an “emergency.” Nonetheless, in true emergency circumstances, the language would help prevent AOB abuse.

The Iowa Legislature should also incorporate a provision similar to Florida’s Section 627.7152(9)(a).²³⁷ This provision requires that “[a]n assignee must provide the named insured, the insurer, and the assignor, if not the named insured, with a written notice of intent to initiate litigation before filing suit under the policy.”²³⁸ The provision requires a ten-day notification period and that the contractor “must specify the damages in dispute, the amount claimed, and a presuit settlement demand.”²³⁹ Thus, the language decreases the likelihood of litigation that would bog down the court system in AOB disputes and encourages settlement negotiations and alternative dispute resolution.

The Iowa Legislature should also add language similar to Section 627.7153 of Florida’s statutory code, permitting anti-assignment provisions in insurance policies.²⁴⁰ The statute allows an insurer to restrict assignments in the insurance policy, provided that four conditions are met.²⁴¹ First, “[t]he insurer [must make] available to the insured or potential insured at the same time the same coverage under a policy that does not restrict the right to execute an assignment agreement.”²⁴² Second, “[e]ach restricted policy [must be] available at a lower cost than the unrestricted policy.”²⁴³ Third, “[t]he policy prohibiting assignment in whole [must be] available at a lower cost than any policy prohibiting assignment in part.”²⁴⁴ And finally, the statute requires that language be included within the policy, clearly delineating that the policy has an anti-assignment provision and what that provision means for the insured.²⁴⁵

Iowa would do well to incorporate a similar provision. Writing the law as a separate statute as Florida had done is likely unnecessary, as any such provision would fit into the statutory scheme under IHPA.²⁴⁶ The presumptive intent of the Florida Legislature in adopting the scheme was to protect homeowners from an adhesive insurance agreement whereby the insured must agree to an anti-assignment provision. However, the legislature still wanted to permit the homeowner to agree to the anti-assignment provision if that decision makes the most sense given the individual’s economic situation,²⁴⁷ thereby “address[ing] access and affordability of property insurance, and

237. FLA. STAT. § 627.7152(9)(a) (2023).

238. *Id.*

239. *Id.*

240. *Id.* § 627.7153.

241. *Id.* § 627.7153(2).

242. *Id.* § 627.7153(2)(a).

243. *Id.* § 627.7153(2)(b).

244. *Id.* § 627.7153(2)(c).

245. *See id.* § 627.7153(2)(d).

246. *See* IOWA CODE § 515.137A (2023).

247. *See* BILL ANALYSIS, SB 2-D, *supra* note 100, at 5, 41.

[mitigating] insurance fraud in Florida's property insurance market."²⁴⁸ The law effectively balances these two interests by allowing a homeowner to analyze premiums to be paid under an anti-assignment policy and perform her own cost-benefit analysis to decide whether she is willing to forego her right to assign the policy in consideration of lower premiums. The law's requirement that the insurer offer any restricted policy or a policy containing an anti-assignment provision at a lower cost than an unrestricted policy ensures that proper market incentives ultimately dictate the prospective policyholder's decision. In sum, allowing the insured to make an informed decision about whether she wants the right to assign her policy is the most effective means of governing any anti-assignment provision. Hence, Iowa should adopt a similar statute to Florida to be incorporated into IHPA.

Finally, Iowa should prohibit assignees from recovering attorney's fees when a contractor brings suit, as Florida has effectively done most recently when SB 2-D was enacted as law.²⁴⁹ There are valid public policy reasons for granting attorney's fees to homeowners who prevail in litigation against insurers.²⁵⁰ As the Florida Supreme Court notes, "[t]he need for fee and cost reimbursement in the realm of insurance litigation is deeply rooted in public policy. Namely, the Legislature recognized that it was essential to 'level the playing field' between the economically-advantaged and sophisticated insurance companies and the individual citizen."²⁵¹ A contractor operating as a business is a sophisticated party who is able to adequately account and reserve assets for future legal fees, especially when the contractor is going to incur those fees as a plaintiff, as every well-run business must do. There is no longer a concern to "level the playing field."²⁵² As a matter of public policy, preventing moral hazard by discouraging frivolous lawsuits becomes the main concern given that there is no longer a disproportionate power balance in any litigation. Thus, the Iowa Legislature ought to reinforce the importance of this principle by statutorily prohibiting assignees from recovering attorney's fees in any circumstance. Doing so might even have given 33 Carpenters, or any future contractor who considers taking a similar action, second thoughts about filing a lawsuit for their inflated claims.²⁵³

CONCLUSION

AOB abuse became such an outsized problem in Florida that the legislature felt reform was necessary. Foundational insurance concepts, such as moral hazard and the insurable interest requirement, help to explain why

248. *Id.* at 1.

249. *See id.* at 5, 41; FLA. STAT. § 627.428(4) (2023) ("In a suit arising under a residential or commercial property insurance policy, there is no right to attorney fees under this section.").

250. *See, e.g.,* Johnson v. Omega Ins. Co., 200 So. 3d 1207, 1215 (Fla. 2016).

251. *Id.* at 1215 (quoting Ivey v. Allstate Ins. Co., 774 So. 2d 679, 684 (Fla. 2000)).

252. *Id.*

253. *See* 33 Carpenters Constr., Inc. v. State Farm Life & Cas. Co., 939 N.W.2d 69, 72 (Iowa 2020).

AOB abuse poses economic problems. Beyond economic difficulties, there are also moral problems associated with AOBs worthy of mitigation. It is likely that AOB abuse will harm Iowa consumers, especially considering that Iowa, like Florida, is prone to serious natural disasters—an environment ripe for fraud. The Iowa Legislature also has an opportunity to display and reinforce Iowa’s reputation as a pro-business state. Given these considerations, the Iowa Legislature should enact changes to the state AOB statute modeled closely on changes enacted during the May 2022 Special Session of the Florida Legislature. Doing so will best serve the interests of Iowa consumers and businesses and allow the state to further grow and prosper.