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LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Broxson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 501.172, Florida Statutes, is created to
read:

501.172 Agreements between service providers and
consumers.—

(1) DEFINITIONS.—As used in this section:

(a) "Consumer" means a person who has an interest in, or
who has a right to manage real or personal property, including



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12 improvements upon such property, regardless of whether for
13 personal or business purposes, including an owner, a tenant, a
14 licensee, or a property manager.

15 (b) "Service provider" means a person who enters into an
16 agreement with a consumer for the stabilization, repair,
17 improvement, or remediation of real or personal property.

18 (2) LIMITATION ON AGREEMENTS BETWEEN SERVICE PROVIDERS AND
19 CONSUMERS UNDER URGENT OR EMERGENCY CIRCUMSTANCES.—

20 (a) If a consumer acts under urgent or emergency
21 circumstances to protect property from damage and enters into an
22 agreement with a service provider to stabilize, protect, repair,
23 or improve such property, the service provider may only contract
24 for, receive, or acquire in any manner from the consumer at such
25 time the right to payment for the work necessary to stabilize,
26 protect, and prevent additional damage to the property. Such
27 right to payment may include:

28 1. A post-loss assignment of benefits under a property
29 insurance policy or under the comprehensive or combined
30 additional coverage under a motor vehicle insurance policy for
31 coverage of windshield damage, executed pursuant to subsection
32 (3), except that notwithstanding ss. 626.9373 and 627.428, any
33 right to attorney fees or costs against an insurer by any such
34 service provider shall be as provided in subsection (4). A
35 service provider may not receive from a consumer acting under
36 urgent or emergency circumstances an assignment of post-loss
37 benefits:

38 a. Under a property insurance policy, in excess of the
39 greater of \$3,000 or 1 percent of the Coverage A limit under
40 such policy.



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41 b. Under a motor vehicle insurance policy for comprehensive
42 or combined additional coverage for windshield damage, in excess
43 of \$500.

44 2. An acknowledgment of the rights that may exist, if any,
45 under chapter 713 to make a claim upon the property.

46 (b) To the extent that an agreement between a consumer and
47 a service provider purports to provide greater rights to the
48 service provider under such urgent or emergency circumstances,
49 including alleged rights to do further repairs, remediation, or
50 improvements or an assignment of rights, benefits, causes of
51 action, or other contractual rights in violation of this
52 subsection, such purported assignment is void.

53 (3) REQUIREMENTS FOR AGREEMENTS CONTAINING A POST-LOSS
54 ASSIGNMENT OF BENEFITS.—In all circumstances, an agreement
55 entered into by a consumer and a service provider after a loss
56 or damage has occurred to the consumer's property which contains
57 a post-loss assignment of insurance benefits under a property
58 insurance policy or under the comprehensive or combined
59 additional coverage under a motor vehicle insurance policy for
60 coverage of windshield damage to the service provider or some
61 third person, such purported assignment of benefits is valid
62 only if:

63 (a) The consumer or service provider provides a copy of the
64 agreement to the consumer's insurer, sent to the location
65 designated for receipt of such agreements if specified in the
66 insurance policy, within 3 business days after the agreement's
67 execution;

68 (b) The agreement contains a provision allowing the
69 consumer to rescind the agreement in a writing signed by the



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70 assignor if the consumer provides written notice of the
71 rescission to the service provider within 14 days after the
72 execution of the agreement or at least 30 days after the
73 execution of the agreement if the service provider has not begun
74 substantial work on the property; except that the service
75 provider retains the right to payment under paragraph (2) (a) for
76 services it performs under urgent or emergency circumstances
77 before receiving such notice;

78 (c) The agreement does not impose any fee or penalty for
79 rescinding the agreement, for check processing, for not using a
80 specified service provider for permanent repairs, or for
81 mortgage processing;

82 (d) The agreement does not prevent or inhibit an insurer
83 from communicating with the consumer at any time;

84 (e) The agreement, if made under a motor vehicle insurance
85 policy for comprehensive or combined additional coverage for
86 windshield damage, does not assign the right to more than \$500
87 in post-loss benefits;

88 (f) The agreement does not transfer or create any authority
89 to adjust, negotiate, or settle any portion of a claim to a
90 person or an entity who is not authorized to adjust, negotiate,
91 or settle a claim on behalf of the insured or claimant under
92 part VI of chapter 626;

93 (g) The agreement does not transfer to the assignee any
94 greater right to attorney fees and costs from the insurer than
95 the right to attorney fees and costs as provided for in
96 subsection (4); and

97 (h) The agreement relates only to work performed or to be
98 performed by the service provider.



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99 (4) ATTORNEY FEES.—

100 (a) In a civil action under a property insurance policy or
101 under the comprehensive or combined additional coverage under a
102 motor vehicle insurance policy for coverage of windshield
103 damage, between an insurer and a service provider who obtains an
104 assignment of post-loss benefits, the prevailing party has the
105 right to attorney fees and costs from the:

106 1. Insurer, if the service provider is the prevailing
107 party.

108 2. Service provider, if the insurer is the prevailing
109 party.

110 (b) The prevailing party is the party which prevails on the
111 significant issues of the case. The court may determine that
112 there is no prevailing party in a case. In determining if there
113 is a prevailing party, the court must consider:

114 1. The issues litigated;

115 2. The amount of the claims by the service provider versus
116 the amount recovered;

117 3. The existence of setoffs and counterclaims, if any; and

118 4. The amounts offered by either party to resolve the
119 issues prior to or during litigation.

120 (5) LIMITATION ON RECOVERY FROM ASSIGNOR.—An assignee
121 service provider that accepts an assignment of post-loss
122 benefits waives any and all claims against a consumer, except as
123 provided herein. The consumer remains responsible for the
124 payment of any deductible amount provided for by the terms of
125 the insurance policy, and for the cost of any betterment ordered
126 by the consumer. This subsection does not prohibit the assignee
127 from collecting or attempting to collect money from, maintaining



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128 an action at law against, or claiming a lien on the property of
129 a consumer or reporting a consumer to a credit agency for
130 payment of the amount of the insurance deductible, or any amount
131 attributable to betterment ordered by the consumer. This waiver
132 is effective notwithstanding any subsequent determination that
133 the assignment agreement is invalid or the rescission of the
134 assignment agreement by the consumer.

135 (6) ACTIONS BASED UPON THE SAME CLAIM AND PARTY PREVIOUSLY
136 VOLUNTARILY DISMISSED.—If a service provider assignee commences
137 an action in any court of this state based upon or including the
138 same claim against the same adverse party that such assignee has
139 previously voluntarily dismissed in a court of this state, the
140 court may, as it deems proper, order the assignee to pay the
141 attorney fees and costs of the adverse party of the action
142 previously voluntarily dismissed. Upon the issuance of such
143 order, the court shall stay the proceedings in the subsequent
144 action until the assignee has complied with the order.

145 (7) APPLICATION.—This section does not apply to a power of
146 attorney granted to a management company, family member,
147 guardian, or similarly situated person which complies with
148 chapter 709 and which may include, as part of the authority
149 granted, the authority to act in place of a principal as it
150 relates to a property insurance or motor vehicle insurance
151 claim, if such power of attorney is not provided to a service
152 provider or any person with a personal or financial interest in
153 the service provider.

154 Section 2. Section 626.9373, Florida Statutes, is amended
155 to read:

156 626.9373 Attorney ~~Attorney's~~ fees.—



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157 (1) Upon the rendition of a judgment or decree by any court
158 of this state against a surplus lines insurer in favor of any
159 named or omnibus insured or the named beneficiary under a policy
160 or contract executed by the insurer on or after the effective
161 date of this act, the trial court or, if the insured or
162 beneficiary prevails on appeal, the appellate court, shall
163 adjudge or decree against the insurer in favor of the insured or
164 beneficiary a reasonable sum as fees or compensation for the
165 insured's or beneficiary's attorney prosecuting the lawsuit for
166 which recovery is awarded.

167 (2) If awarded, attorney ~~attorney's~~ fees or compensation
168 shall be included in the judgment or decree rendered in the
169 case.

170 (3) Attorney fees may not be awarded under this section to
171 an assignee of post-loss benefits who is a service provider
172 under s. 501.172.

173 Section 3. Section 627.428, Florida Statutes, is amended to
174 read:

175 627.428 Attorney fees ~~Attorney's fee~~.-

176 (1) Upon the rendition of a judgment or decree by any of
177 the courts of this state against an insurer and in favor of any
178 named or omnibus insured or the named beneficiary under a policy
179 or contract executed by the insurer, the trial court or, in the
180 event of an appeal in which the insured or beneficiary prevails,
181 the appellate court shall adjudge or decree against the insurer
182 and in favor of the insured or beneficiary a reasonable sum as
183 fees or compensation for the insured's or beneficiary's attorney
184 prosecuting the suit in which the recovery is had.

185 (2) As to suits based on claims arising under life



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186 insurance policies or annuity contracts, no such attorney fees
187 ~~attorney's fee~~ shall be allowed if such suit was commenced prior
188 to expiration of 60 days after proof of the claim was duly filed
189 with the insurer.

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

193 (4) Attorney fees may not be awarded under this section to
194 an assignee of post-loss benefits who is a service provider
195 under s. 501.172.

196 Section 4. Section 501.172, Florida Statutes, as created by
197 this act, and the amendments made by this act to ss. 626.9373
198 and 627.428, Florida Statutes, apply to actions pending on or
199 after July 1, 2019, to the extent that the act does not require
200 the invalidation of any provision of a contract executed before
201 July 1, 2019.

202 Section 5. This act shall take effect July 1, 2019.

203
204 ===== T I T L E A M E N D M E N T =====

205 And the title is amended as follows:

206 Delete everything before the enacting clause
207 and insert:

208 A bill to be entitled
209 An act relating to agreements between service
210 providers and consumers; creating s. 501.172, F.S.;
211 defining terms; specifying limitations and authorized
212 provisions relating to a service provider's right to
213 payment under certain agreements with consumers under
214 urgent or emergency circumstances; specifying



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215 requirements, limitations, and prohibited provisions
216 for agreements containing a post-loss assignment of
217 benefits; providing that a prevailing party under
218 certain policies and coverages has the right to
219 attorney fees and costs; providing that a court need
220 not determine that there is a prevailing party;
221 providing factors a court must consider in determining
222 who is the prevailing party, under certain
223 circumstances; providing construction relating to
224 waiver of claims and limitations on recovery;
225 authorizing a court to order an assignee to pay
226 attorney fees and costs under certain circumstances;
227 requiring the court to stay proceedings under certain
228 circumstances; providing applicability; amending ss.
229 626.9373 and 627.428, F.S.; providing that attorney
230 fees under certain provisions of the Florida Insurance
231 Code may not be awarded to an assignee of post-loss
232 benefits who is a service provider; providing
233 applicability; providing an effective date.

234
235 WHEREAS, the Legislature finds that provisions of law
236 allowing insureds to recover attorney fees in litigation against
237 their insurers are intended to level the economic playing field
238 between the economically-advantaged insurance company and the
239 individual consumer, and

240 WHEREAS, the award of attorney fees to the individual
241 consumer under such laws makes the consumer financially whole
242 and discourages insurance companies from contesting valid
243 claims, and



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244 WHEREAS, however, the Legislature finds that the increased
245 use of post-loss assignment of benefits by service providers has
246 led to a dramatic increase in assignment of benefits litigation,
247 and

248 WHEREAS, the Legislature recognizes that additional costs
249 incurred by insurance companies in contesting assignment of
250 benefits-related litigation or in paying inflated claims for
251 insurance proceeds are factored into the rates charged for
252 property insurance and motor vehicle insurance, and

253 WHEREAS, the Legislature finds that by explicitly providing
254 that any right to attorney fees or costs against an insurer by a
255 service provider must be as provided in this act, the
256 Legislature is addressing the dramatic increase in assignment of
257 benefits litigation by nonparties to property insurance policies
258 and motor vehicle insurance policies for coverage of windshield
259 damage and the associated increase in insurance premiums that
260 are experienced by consumers, and

261 WHEREAS, the Legislature intends to maintain its public
262 policy of making consumers financially whole and reducing
263 inequities between consumers and their insurance companies, as
264 such consumers have the right to obtain attorney fees in civil
265 actions they bring against their insurers, NOW, THEREFORE,