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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/04/2019	.	
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The Committee on Banking and Insurance (Thurston) recommended the following:

1           **Senate Substitute for Amendment (306982) (with title**  
2 **amendment)**

3  
4           Delete everything after the enacting clause  
5 and insert:

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

8           501.172 Agreements between service providers and  
9 consumers.—

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



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11           (a) "Consumer" means a person who has an interest in or who  
12 has a right to manage real property, including improvements upon  
13 such property, regardless of whether for personal or business  
14 purposes. The term includes an owner, a tenant, a licensee, or a  
15 property manager.

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

19           (2) REQUIREMENTS FOR AGREEMENTS CONTAINING A POST-LOSS  
20 ASSIGNMENT OF BENEFITS.—

21           (a) In all circumstances, an agreement entered into by a  
22 consumer and a service provider after a loss or damage has  
23 occurred to the consumer's property which contains a post-loss  
24 assignment of benefits to the service provider is only valid if:

25           1. The consumer or service provider provides a copy of the  
26 agreement to the consumer's insurer within 5 business days after  
27 the agreement's execution;

28           2. The agreement contains a provision allowing the consumer  
29 to rescind the agreement in a writing signed by the consumer if  
30 the consumer provides written notice of the rescission to the  
31 service provider within 3 days after the execution of the  
32 agreement;

33           3. The agreement does not impose any fee or penalty for  
34 rescinding the agreement, for check processing, for not using a  
35 specified service provider for permanent repairs, or for  
36 mortgage processing;

37           4. The agreement does not prevent or inhibit an insurer  
38 from communicating with the consumer at any time;

39           5. The agreement does not transfer or create any authority



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40 to adjust, negotiate, or settle any portion of a claim to a  
41 person or an entity who is not authorized to adjust, negotiate,  
42 or settle a claim on behalf of the insured or claimant under  
43 part VI of chapter 626. However, this subparagraph does not  
44 prevent the service provider from negotiating with the insurer  
45 on the limited issues of the scope of the work to be performed  
46 under the assignment and the pricing therefore;

47 6. The agreement contains an acknowledgement of the rights  
48 that may exist, if any, under chapter 713 to make a claim upon  
49 the property;

50 7. The agreement does not transfer to the service provider  
51 any greater right to attorney fees and costs from the insurer  
52 than the right to attorney fees and costs as provided for in  
53 subsection (3); and

54 8. The agreement relates only to work performed or to be  
55 performed by the service provider.

56 (b) Under an agreement to assign post-loss benefits, a  
57 service provider is bound by all post-loss obligations specified  
58 in the residential homeowner's property insurance policy to the  
59 extent possible by the service provider and limited to the scope  
60 of the assignment. Notwithstanding any policy provision or law  
61 to the contrary, the obligation to submit to an examination  
62 under oath is limited to 1 examination under oath by the insurer  
63 or the insurer's representative relating to an assignment  
64 agreement and services provided by the service provider. The  
65 examination under oath:

66 1. Is limited to the person designated by the service  
67 provider as the person with the most knowledge of the assignment  
68 agreement and services provided pursuant to the assignment;



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69           2. Must occur in the county where the property for which  
70 the loss was assigned and the work performed or in the county  
71 where the service provider has offices or agents or in the  
72 county where the person designated by the service provider as  
73 the person with the most knowledge resides; and

74           3. May not last more than 3 hours.

75           (c) Upon a finding by the court that a service provider has  
76 not complied with its post-loss obligations pursuant to this  
77 section, the court may not award attorney fees to the service  
78 provider under s. 501.172 directly related to the service  
79 provider's noncompliance with post-loss obligations.

80           (3) ATTORNEY FEES.—

81           (a) In a civil action under a homeowner's residential  
82 property insurance policy which is between an insurer and a  
83 service provider who obtains an assignment of post-loss  
84 benefits, the prevailing party has the right to attorney fees  
85 and costs from the:

86           1. Insurer, if the service provider is the prevailing  
87 party.

88           2. Service provider, if the insurer is the prevailing  
89 party. An insurer may not be found to be a prevailing party  
90 unless it serves an offer of judgment upon the service provider  
91 either 10 days after the suit commences or 45 days prior to  
92 trial, providing the service provider with 30 days to accept the  
93 offer and the recovery by the service provider is 25 percent  
94 less than the offer of judgment from the insurer.

95           (b) The prevailing party is the party that prevails on the  
96 significant issues of the case. The court may determine that  
97 there is no prevailing party in a case. In determining if there



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98 is a prevailing party, the court shall consider:

99 1. The issues litigated;

100 2. The amount of the claims by the service provider versus  
101 the amount recovered;

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

103 4. The amounts offered by either party to resolve the  
104 issues before or during litigation.

105 (4) LIMITATION ON RECOVERY FROM SERVICE PROVIDER.—

106 Notwithstanding any other law, the acceptance by a person of any  
107 assignment agreement constitutes a waiver by the service  
108 provider or transferee, and any subcontractor of the service  
109 provider or transferee, of any and all claims against all named  
110 insureds for payment arising from the specified loss, except  
111 that all named insureds remain responsible for the payment of  
112 any deductible amount provided for by the terms of the insurance  
113 policy and for the cost of any betterment ordered by all named  
114 insureds. This waiver remains in effect notwithstanding any  
115 subsequent determination that the assignment agreement is  
116 invalid or notwithstanding the rescission of the assignment  
117 agreement by all named insureds, except that the service  
118 provider is entitled to payment for the reasonable cost of any  
119 contracted work performed before the consumer rescinded the  
120 assignment agreement from the insured or insurance carrier.

121 (5) ACTIONS BASED UPON THE SAME CLAIM AND PARTY PREVIOUSLY  
122 VOLUNTARILY DISMISSED.—If a service provider commences an action  
123 in any court of this state based upon or including the same  
124 claim against the same adverse party which such service provider  
125 has previously voluntarily dismissed in a court of this state,  
126 the court may, as it deems proper, order the service provider to



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127 pay the attorney fees and costs of the adverse party of the  
128 action previously voluntarily dismissed. Upon the issuance of  
129 such order, the court shall stay the proceedings in the  
130 subsequent action until the service provider has complied with  
131 the order.

132 (6) CONDITION ON ATTORNEY FEES.—In any action at law  
133 brought by an assigned of a homeowner's residential property  
134 insurance policy, the service provider is not entitled to  
135 attorney fees or costs unless one of the following events has  
136 occurred:

137 (a) The period established in s. 627.70131 has elapsed;

138 (b) The insurance carrier has denied coverage or payment  
139 for all or part of the claim; or

140 (c) The insurance carrier has made a payment that is less  
141 than the amount sought by the consumer or service provider.

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

151 Section 2. Section 626.9373, Florida Statutes, is amended  
152 to read:

153 626.9373 Attorney ~~Attorney's~~ fees.—

154 (1) Upon the rendition of a judgment or decree by any court  
155 of this state against a surplus lines insurer in favor of any



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

164 (2) If awarded, attorney ~~attorney's~~ fees or compensation  
165 shall be included in the judgment or decree rendered in the  
166 case.

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

170 Section 3. Section 627.428, Florida Statutes, is amended to  
171 read:

172 627.428 Attorney fees ~~Attorney's fee~~.—

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

182 (2) As to suits based on claims arising under life  
183 insurance policies or annuity contracts, no such attorney fees  
184 ~~attorney's fee~~ shall be allowed if such suit was commenced prior



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185 to expiration of 60 days after proof of the claim was duly filed  
186 with the insurer.

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

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

193 Section 4. This act applies to assignment agreements  
194 executed for losses that occur on or after July 1, 2019.

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

196

197 ===== T I T L E A M E N D M E N T =====

198 And the title is amended as follows:

199 Delete everything before the enacting clause  
200 and insert:

201 A bill to be entitled  
202 An act relating to agreements between service  
203 providers and consumers; creating s. 501.172, F.S.;  
204 defining terms; specifying requirements for certain  
205 agreements containing a post-loss assignment of  
206 benefits; specifying requirements and limitations for  
207 obligations to submit to examinations under oath;  
208 prohibiting a court from awarding attorney fees to the  
209 service provider under certain circumstances;  
210 specifying who is the prevailing party entitled to  
211 attorney fees under certain civil actions; providing  
212 factors a court must consider in determining who the  
213 prevailing party is under certain circumstances;





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214 providing construction relating to waiver and  
215 limitations on recovery; authorizing a court to order  
216 an assignee to pay attorney fees and costs under  
217 certain circumstances; requiring the court to stay  
218 proceedings under certain circumstances; providing  
219 that the service provider is not entitled to attorney  
220 fees or costs in certain actions except under certain  
221 circumstances; providing applicability; amending ss.  
222 626.9373 and 627.428, F.S.; providing that attorney  
223 fees under certain provisions of the Florida Insurance  
224 Code may not be awarded to an assignee of post-loss  
225 benefits who is a service provider; providing  
226 applicability; providing an effective date.