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LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Simmons) 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 with service providers entered into
under urgent or emergency circumstances; assignment of benefits
relating to property insurance; limitations.—

(1) For purposes of this section, the term:

(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 real property, regardless of whether for personal or
14 business purposes, including an owner, a tenant, a licensee, or
15 a 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) If a consumer, including a consumer who is a
20 policyowner of a property insurance policy, acts under urgent or
21 emergency circumstances to protect property from damage and
22 enters into an agreement with a service provider to stabilize,
23 protect, repair, or improve such property, the service provider
24 may only contract for or receive from the consumer at such time
25 the right to payment for the amount of work necessary to
26 stabilize, protect, and prevent additional damage from occurring
27 to the property. Such right to payment may include a post-loss
28 assignment of benefits under a property insurance policy or a
29 grant of a lien upon the property as permitted under chapter
30 713. A consumer's agreement to provide greater rights to a
31 service provider under such urgent or emergency circumstances,
32 including alleged rights to do further repairs, remediation, or
33 improvements or an assignment of rights, benefits, causes of
34 action, or other contractual rights in violation of this
35 subsection, is void.

36 (3) In all circumstances, an agreement entered into by a
37 consumer and a service provider after a loss or damage has
38 occurred to the consumer's property which contains a post-loss
39 assignment of benefits to the service provider or some third
40 person is not valid:



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41 (a) Unless the consumer or service provider provides a copy
42 of the agreement to the consumer's property insurer within 3
43 business days after execution by both the service provider and
44 consumer;

45 (b) Unless, with the exception of payment for work already
46 performed by a service provider to prevent additional damage
47 from occurring to the property as provided in subsection (2),
48 the agreement allows the consumer to rescind the agreement in
49 writing and without penalty or obligation within 3 business days
50 after the date the agreement is executed or within 3 business
51 days after the insurer has been provided with the agreement,
52 whichever is later. However, if the agreement is executed to
53 perform work resulting from an event for which the Governor has
54 declared a state of emergency and is within 1 year after such
55 declaration, the consumer has 5 business days after the date the
56 agreement is executed to rescind the agreement;

57 (c) To the extent that the agreement imposes any fee for
58 rescinding the agreement, a check processing fee, or a mortgage
59 processing fee;

60 (d) To the extent that the agreement prevents or inhibits
61 an insurer from communicating with the consumer at any time;

62 (e) To the extent that the agreement purports to transfer
63 or create any authority to adjust, negotiate, or settle any
64 portion of a claim to a person or an entity who is not
65 authorized to adjust, negotiate, or settle a claim on behalf of
66 the insured or claimant under part VI of chapter 626; or

67 (f) Unless the agreement contains the following notice in
68 14-point type to the consumer:

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70 WARNING: IF YOU HAVE PROPERTY INSURANCE, YOU MAY BE
71 AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR
72 INSURANCE POLICY TO A THIRD PARTY. PLEASE READ AND
73 UNDERSTAND THIS DOCUMENT BEFORE SIGNING IT. WITH THE
74 EXCEPTION OF PAYMENT FOR WORK ALREADY PERFORMED BY A
75 SERVICE PROVIDER TO PREVENT ADDITIONAL DAMAGE FROM
76 OCCURRING TO THE PROPERTY RESULTING FROM EMERGENCY OR
77 URGENT CIRCUMSTANCES, YOU HAVE THE RIGHT TO RESCIND
78 THIS AGREEMENT WITHOUT PENALTY WITHIN 3 BUSINESS DAYS
79 AFTER THE DATE THIS AGREEMENT IS EXECUTED OR WITHIN 3
80 BUSINESS DAYS AFTER YOUR PROPERTY INSURANCE COMPANY
81 HAS RECEIVED A COPY OF THIS AGREEMENT, WHICHEVER IS
82 LATER. IF WORK IS BEING PERFORMED AS A RESULT OF
83 DAMAGES CAUSED BY AN EVENT FOR WHICH THE GOVERNOR HAS
84 DECLARED A STATE OF EMERGENCY AND IS WITHIN 1 YEAR
85 AFTER SUCH DECLARATION, THE 3 BUSINESS DAY PERIOD TO
86 RESCIND THIS AGREEMENT IS EXTENDED TO 5 BUSINESS DAYS.
87 THIS AGREEMENT DOES NOT CHANGE YOUR DUTIES UNDER YOUR
88 PROPERTY INSURANCE POLICY, SUCH AS PROMPTLY NOTIFYING
89 YOUR INSURANCE COMPANY OF A LOSS AND MITIGATING YOUR
90 PROPERTY FROM FURTHER DAMAGE.

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92 (4) This section does not apply to a power of attorney
93 granted to a management company, family member, guardian, or
94 similarly situated person which complies with chapter 709 and
95 which may include, as part of the authority granted, the
96 authority to act in place of a principal as it relates to a
97 property insurance claim.

98 (5) A policyholder who assigns the right to receive the



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99 benefit of payment under the policy is not liable to the
100 assignee for services and materials for which the insurer is
101 liable, and the assignee may not collect or attempt to collect
102 money from, maintain any action at law against, or claim a lien
103 on the real property of a policyholder or report a policyholder
104 to a credit agency for payment for which the insurer is liable
105 under the policy. However, this subsection does not prohibit the
106 assignee from collecting or attempting to collect money from,
107 maintaining an action at law against, or claiming a lien on the
108 real property of a policyholder or reporting a policyholder to a
109 credit agency for payment of the amount of the insurance
110 deductible or any amount attributable to services and materials
111 ordered by the policyholder which are not covered under the
112 insurance policy.

113 Section 2. Section 627.422, Florida Statutes, is amended to
114 read:

115 627.422 Assignment of policies; restrictions on post-loss
116 assignments of policy benefits.-

117 (1) A policy may be assignable, or not assignable, as
118 provided by the policy ~~its~~ terms. Subject to its terms relating
119 to assignability, any life or health insurance policy under the
120 terms of which the beneficiary may be changed upon the sole
121 request of the policyowner may be assigned either by pledge or
122 transfer of title, by an assignment executed by the policyowner
123 alone and delivered to the insurer, regardless of whether ~~or not~~
124 the pledgee or assignee is the insurer. Any such assignment
125 entitles ~~shall entitle~~ the insurer to deal with the assignee as
126 the owner or pledgee of the policy in accordance with the terms
127 of the assignment, until the insurer has received at its home



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128 office written notice of termination of the assignment or pledge
129 or written notice by or on behalf of some other person claiming
130 some interest in the policy in conflict with the assignment.

131 (2) A property insurer may include policy provisions in
132 property insurance policies which limit the post-loss
133 assignability of its policy rights only in accordance with s.
134 501.172. The commission may adopt rules to administer and
135 enforce this subsection.

136 Section 3. This act shall take effect July 1, 2016.

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

139 And the title is amended as follows:

140 Delete everything before the enacting clause
141 and insert:

142 A bill to be entitled
143 An act relating to consumer protection; creating s.
144 501.172, F.S.; defining terms; specifying limitations
145 to the assignment of specified rights by a consumer to
146 a service provider for certain services provided under
147 urgent or emergency circumstances to stabilize,
148 protect, repair, or improve real property; providing
149 that an agreement that provides certain greater rights
150 to a service provider under such circumstances is
151 void; providing that a specified agreement assigning
152 certain rights is not valid unless specified
153 conditions are met; providing applicability; providing
154 that a policyholder who assigns a certain right is not
155 liable to the assignee for specified services and
156 materials; prohibiting an assignee from taking certain



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157 actions for payments for which the insurer is liable;
158 providing applicability; amending s. 627.422, F.S.;
159 providing that a property insurer may include
160 provisions in property insurance policies limiting
161 post-loss assignability of policy rights only in
162 accordance with a specified provision; authorizing the
163 Financial Services Commission to adopt rules;
164 providing an effective date.