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LEGISLATIVE ACTION

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| Senate     | . | House |
| Comm: RCS  | . |       |
| 03/04/2019 | . |       |
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The Committee on Banking and Insurance (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



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11 who has a right to manage real or personal property, including  
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 s. 626.9373 and s. 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 in excess of:

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



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40 such policy.

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

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

52 (3) REQUIREMENTS FOR AGREEMENTS CONTAINING A POST-LOSS  
53 ASSIGNMENT OF BENEFITS.—In all circumstances, an agreement  
54 entered into by a consumer and a service provider after a loss  
55 or damage has occurred to the consumer's property which contains  
56 a post-loss assignment of benefits to the service provider or  
57 some third person is only valid if:

58 (a) The consumer or service provider provides a copy of the  
59 agreement to the consumer's insurer, sent to the location  
60 designated for receipt of such agreements if specified in the  
61 insurance policy, within 3 business days after the agreement's  
62 execution;

63 (b) The agreement contains a provision allowing the  
64 consumer to rescind the agreement in a writing signed by the  
65 assignor, if the consumer provides written notice of the  
66 rescission to the service provider within 14 days of the  
67 execution of the agreement or at least 30 days after the  
68 execution of the agreement if the service provider has not begun



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69 substantial work on the property;

70 (c) The agreement does not impose any fee or penalty for  
71 rescinding the agreement, for check processing, for not using a  
72 specified service provider for permanent repairs, or for  
73 mortgage processing;

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

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

80 (f) The agreement does not transfer or create any authority  
81 to adjust, negotiate, or settle any portion of a claim to a  
82 person or an entity who is not authorized to adjust, negotiate,  
83 or settle a claim on behalf of the insured or claimant under  
84 part VI of chapter 626;

85 (g) The agreement does not transfer to the assignee any  
86 greater right to attorney fees and costs from the insurer than  
87 the right to attorney fees and costs as provided for in  
88 subsection (4); and

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

91 (4) ATTORNEY FEES.—

92 (a) In a civil action under a property insurance policy or  
93 under the comprehensive or combined additional coverage under a  
94 motor vehicle insurance policy for coverage of windshield  
95 damage, between an insurer and a service provider who obtains an  
96 assignment of post-loss benefits, the prevailing party has the  
97 right to attorney fees and costs from the:



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98           1. Insurer, if the service provider is the prevailing  
99 party.

100           2. Service provider, if the insurer is the prevailing  
101 party.

102           (b) The prevailing party is the party which prevails on the  
103 significant issues of the case. The court may determine that  
104 there is no prevailing party in a case. In determining if there  
105 is a prevailing party, the court must consider:

106           1. The issues litigated;

107           2. The amount of the claims by the service provider versus  
108 the amount recovered;

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

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

112           (5) LIMITATION ON RECOVERY FROM ASSIGNOR.—An assignee  
113 service provider and any subcontractor of the service provider  
114 that accepts an assignment of post-loss benefits waives any and  
115 all claims against a consumer, except as provided herein. The  
116 consumer remains responsible for the payment of any deductible  
117 amount provided for by the terms of the insurance policy, and  
118 for the cost of any betterment ordered by the consumer. This  
119 subsection does not prohibit the assignee from collecting or  
120 attempting to collect money from, maintaining an action at law  
121 against, or claiming a lien on the property of a consumer or  
122 reporting a consumer to a credit agency for payment of the  
123 amount of the insurance deductible, or any amount attributable  
124 to betterment ordered by the consumer. This waiver is effective  
125 notwithstanding any subsequent determination that the assignment  
126 agreement is invalid or the rescission of the assignment



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127 agreement by the consumer.

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

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

147 (8) LEGISLATIVE FINDINGS AND INTENT.—

148 (a) The Legislature recognizes that the provisions of s.  
149 626.9373 and s. 627.428 are intended to level the economic  
150 playing field between the economically-disadvantaged insurance  
151 company and the individual consumer. The award of attorney fees  
152 to the individual consumer under these statutes makes the  
153 consumer financially whole and discourages insurance companies  
154 from contesting valid claims.

155 (b) The increased use of post-loss assignment of benefits



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156 by service providers, however, has led to a dramatic increase in  
157 assignment of benefits litigation. The Legislature recognizes  
158 that additional costs incurred by insurance companies, in  
159 contesting assignment of benefits-related litigation or paying  
160 inflated claims for insurance proceeds, are factored into the  
161 rates charged for property insurance and motor vehicle  
162 insurance.

163 (c) By explicitly providing that notwithstanding s.  
164 626.9373 and s. 627.428, any right to attorney fees or costs  
165 against an insurer by a service provider shall be as provided in  
166 s. 501.172, the Legislature is addressing the dramatic increase  
167 in assignment of benefits litigation by nonparties to property  
168 insurance policies and motor vehicle insurance policies for  
169 coverage of windshield damage and the associated increase in  
170 insurance premiums that are experienced by consumers. The  
171 Legislature is maintaining its public policy of making consumers  
172 financially whole and reducing inequities between consumers and  
173 their insurance companies, as such consumers have the right to  
174 obtain attorney fees under s. 626.9373 and s. 627.428 in civil  
175 actions they bring against their insurers.

176 Section 2. Section 626.9373, Florida Statutes, is amended  
177 to read:

178 626.9373 Attorney ~~Attorney's~~ fees.—

179 (1) Upon the rendition of a judgment or decree by any court  
180 of this state against a surplus lines insurer in favor of any  
181 named or omnibus insured or the named beneficiary under a policy  
182 or contract executed by the insurer on or after the effective  
183 date of this act, the trial court or, if the insured or  
184 beneficiary prevails on appeal, the appellate court, shall



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185 adjudge or decree against the insurer in favor of the insured or  
186 beneficiary a reasonable sum as fees or compensation for the  
187 insured's or beneficiary's attorney prosecuting the lawsuit for  
188 which recovery is awarded.

189 (2) If awarded, attorney ~~attorney's~~ fees or compensation  
190 shall be included in the judgment or decree rendered in the  
191 case.

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

195 Section 3. Section 627.428, Florida Statutes, is amended to  
196 read:

197 627.428 Attorney fees ~~Attorney's fee~~.—

198 (1) Upon the rendition of a judgment or decree by any of  
199 the courts of this state against an insurer and in favor of any  
200 named or omnibus insured or the named beneficiary under a policy  
201 or contract executed by the insurer, the trial court or, in the  
202 event of an appeal in which the insured or beneficiary prevails,  
203 the appellate court shall adjudge or decree against the insurer  
204 and in favor of the insured or beneficiary a reasonable sum as  
205 fees or compensation for the insured's or beneficiary's attorney  
206 prosecuting the suit in which the recovery is had.

207 (2) As to suits based on claims arising under life  
208 insurance policies or annuity contracts, no such attorney fees  
209 ~~attorney's fee~~ shall be allowed if such suit was commenced prior  
210 to expiration of 60 days after proof of the claim was duly filed  
211 with the insurer.

212 (3) When so awarded, compensation or fees of the attorney  
213 shall be included in the judgment or decree rendered in the





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214 case.

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

218 Section 4. The creation of s. 501.172, Florida Statutes,  
219 and the amendments made to ss. 626.9373 and 627.428, Florida  
220 Statutes, by this act apply to actions pending on or after July  
221 1, 2019, to the extent that the act does not require the  
222 invalidation of any provision of a contract executed before July  
223 1, 2019.

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

225

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

227 And the title is amended as follows:

228 Delete everything before the enacting clause  
229 and insert:

230 A bill to be entitled  
231 An act relating to agreements between service  
232 providers and consumers; creating s. 501.172, F.S.;  
233 defining terms; specifying limitations and authorized  
234 provisions relating to a service provider's right to  
235 payment under certain agreements with consumers under  
236 urgent or emergency circumstances; specifying  
237 requirements, limitations, and prohibited provisions  
238 for agreements containing a post-loss assignment of  
239 benefits; providing that a prevailing party under  
240 certain policies and coverages has the right to  
241 attorney fees and costs; providing that a court need  
242 not determine there is a prevailing party; providing



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243 factors a court must consider in determining who the  
244 prevailing party is under certain circumstances;  
245 providing construction relating to waiver and  
246 limitations on recovery; authorizing a court to order  
247 an assignee to pay attorney fees and costs under  
248 certain circumstances; requiring the court to stay  
249 proceedings under certain circumstances; providing  
250 applicability; providing legislative findings and  
251 intent; amending ss. 626.9373 and 627.428, F.S.;  
252 providing that attorney fees under certain provisions  
253 of the Florida Insurance Code may not be awarded to an  
254 assignee of post-loss benefits who is a service  
255 provider; providing applicability; providing an  
256 effective date.