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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2019	.	
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	.	

The Committee on Judiciary (Broxson) recommended the following:

1 **Senate Substitute for Amendment (380464) (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:

11 (a) "Consumer" means a person who has an interest in, or



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12 who has a right to manage real or personal property, including
13 improvements upon such property, regardless of whether for
14 personal or business purposes, including an owner, a tenant, a
15 licensee, or 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 or personal property.

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

21 (a) If a consumer acts under urgent or emergency
22 circumstances to protect property from damage and enters into an
23 agreement with a service provider to stabilize, protect, repair,
24 or improve the property, the service provider may only contract
25 for, receive, or acquire in any manner from the consumer at the
26 time the right to payment for the work necessary to stabilize,
27 protect, and prevent additional damage to the property. The
28 agreement must be in writing and detail, to the extent
29 reasonable under the circumstances, the work to be performed and
30 the charges for the services to be provided. The right to
31 payment may include:

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



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41 benefits:

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

45 b. Under a motor vehicle insurance policy for comprehensive
46 or combined additional coverage for windshield damage, in excess
47 of \$500.

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

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

57 (3) REQUIREMENTS FOR POST-LOSS AGREEMENTS, INCLUDING THOSE
58 CONTAINING A POST-LOSS ASSIGNMENT OF BENEFITS.—In all
59 circumstances, an agreement entered into by a consumer and a
60 service provider after a loss or damage has occurred to the
61 consumer's property must be in writing. The agreement must
62 detail, to the extent reasonable under the circumstances, the
63 work to be performed, the charges for the services to be
64 provided, and the dates by which work on the property will
65 commence and be completed. The agreement may also provide for
66 subsequent change orders, subject to the approval by the
67 consumer and service provider, which must also set forth in
68 writing the changes to the scope of work and the cost for the
69 changes to the work. To the extent that the agreement contains a



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70 post-loss assignment of insurance benefits to the service
71 provider or some third person under a property insurance policy
72 or under the comprehensive or combined additional coverage under
73 a motor vehicle insurance policy for coverage of windshield
74 damage, the purported assignment of benefits is valid only if
75 all of the following are satisfied:

76 (a) The consumer or service provider provides a copy of the
77 agreement to the consumer's insurer, sent to the location
78 designated for receipt of such agreements if specified in the
79 insurance policy, within 3 business days after the agreement's
80 execution.

81 (b) The agreement provides that the consumer may rescind
82 the agreement by submitting a written notice of rescission which
83 is signed by the consumer to the service provider within 14 days
84 after the execution of the agreement, at least 30 days after the
85 date work on the property is scheduled to commence if the
86 service provider has not substantially performed, or at least 30
87 days after the execution of the agreement if the agreement does
88 not contain a commencement date and the service provider has not
89 begun substantial work on the property. However, the service
90 provider retains the right to payment for services performed
91 pursuant to the agreement before receiving notice of the
92 rescission.

93 (c) The agreement does not impose any fee or penalty for
94 rescinding the agreement, for check processing, for not using a
95 specified service provider for permanent repairs, or for
96 mortgage processing.

97 (d) The agreement does not prevent or inhibit an insurer
98 from communicating with the consumer at any time.



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99 (e) The agreement, if made under a motor vehicle insurance
100 policy for comprehensive or combined additional coverage for
101 windshield damage, does not assign the right to more than \$500
102 in post-loss benefits.

103 (f) The agreement does not transfer or create any authority
104 to adjust, negotiate, or settle any portion of a claim to a
105 person or an entity who is not authorized to adjust, negotiate,
106 or settle a claim on behalf of the insured or claimant under
107 part VI of chapter 626.

108 (g) The agreement does not transfer to the assignee any
109 greater right to attorney fees and costs from the insurer than
110 the right to attorney fees and costs as provided for in
111 subsection (4).

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

114 (4) ATTORNEY FEES.—

115 (a) In a civil action under a property insurance policy or
116 under the comprehensive or combined additional coverage under a
117 motor vehicle insurance policy for coverage of windshield
118 damage, between an insurer and a service provider who obtains an
119 assignment of post-loss benefits, the prevailing party has the
120 right to attorney fees and costs from the:

121 1. Insurer, if the service provider is the prevailing
122 party.

123 2. Service provider, if the insurer is the prevailing
124 party.

125 (b) The prevailing party is the party which prevails on the
126 significant issues of the case. The court may determine that
127 there is no prevailing party in a case. In determining if there



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128 is a prevailing party, the court must consider:

129 1. The issues litigated;

130 2. The amount of the claims by the service provider versus
131 the amount recovered;

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

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

135 (5) LIMITATION ON RECOVERY FROM ASSIGNOR.—An assignee
136 service provider that accepts an assignment of post-loss
137 benefits waives any and all claims against a consumer, except as
138 provided herein. The consumer remains responsible for the
139 payment of any deductible amount provided for by the terms of
140 the insurance policy, and for the cost of any betterment ordered
141 by the consumer. This subsection does not prohibit the assignee
142 from collecting or attempting to collect money from, maintaining
143 an action at law against, or claiming a lien on the property of
144 a consumer or reporting a consumer to a credit agency for
145 payment of the amount of the insurance deductible, or any amount
146 attributable to betterment ordered by the consumer. This waiver
147 is effective notwithstanding any subsequent determination that
148 the assignment agreement is invalid or the rescission of the
149 assignment agreement by the consumer.

150 (6) ACTIONS BASED UPON THE SAME CLAIM AND PARTY PREVIOUSLY
151 VOLUNTARILY DISMISSED.—If a service provider assignee commences
152 an action in any court of this state based upon or including the
153 same claim against the same adverse party that such assignee has
154 previously voluntarily dismissed in a court of this state, the
155 court may, as it deems proper, order the assignee to pay the
156 attorney fees and costs of the adverse party of the action



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157 previously voluntarily dismissed. Upon the issuance of such
158 order, the court shall stay the proceedings in the subsequent
159 action until the assignee has complied with the order.

160 (7) APPLICATION.—This section does not apply to a power of
161 attorney granted to a management company, family member,
162 guardian, or similarly situated person which complies with
163 chapter 709 and which may include, as part of the authority
164 granted, the authority to act in place of a principal as it
165 relates to a property insurance or motor vehicle insurance
166 claim, if such power of attorney is not provided to a service
167 provider or any person with a personal or financial interest in
168 the service provider.

169 Section 2. Section 626.9373, Florida Statutes, is amended
170 to read:

171 626.9373 Attorney ~~Attorney's~~ fees.—

172 (1) Upon the rendition of a judgment or decree by any court
173 of this state against a surplus lines insurer in favor of any
174 named or omnibus insured or the named beneficiary under a policy
175 or contract executed by the insurer on or after the effective
176 date of this act, the trial court or, if the insured or
177 beneficiary prevails on appeal, the appellate court, shall
178 adjudge or decree against the insurer in favor of the insured or
179 beneficiary a reasonable sum as fees or compensation for the
180 insured's or beneficiary's attorney prosecuting the lawsuit for
181 which recovery is awarded.

182 (2) If awarded, attorney ~~attorney's~~ fees or compensation
183 shall be included in the judgment or decree rendered in the
184 case.

185 (3) Attorney fees may not be awarded under this section to



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186 an assignee of post-loss benefits who is a service provider
187 under s. 501.172.

188 Section 3. Section 627.428, Florida Statutes, is amended to
189 read:

190 627.428 Attorney fees ~~Attorney's fee.~~-

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

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

205 (3) When so awarded, compensation or fees of the attorney
206 shall be included in the judgment or decree rendered in the
207 case.

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

211 Section 4. Section 501.172, Florida Statutes, as created by
212 this act, and the amendments made by this act to ss. 626.9373
213 and 627.428, Florida Statutes, apply to actions pending on or
214 after July 1, 2019, to the extent that the act does not require



215 the invalidation of any provision of a contract executed before
216 July 1, 2019.

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

218
219 ===== T I T L E A M E N D M E N T =====

220 And the title is amended as follows:

221 Delete everything before the enacting clause
222 and insert:

223 A bill to be entitled
224 An act relating to agreements between service
225 providers and consumers; creating s. 501.172, F.S.;
226 defining terms; specifying limitations and authorized
227 provisions relating to a service provider's right to
228 payment under certain agreements with consumers under
229 urgent or emergency circumstances; specifying
230 requirements, limitations, and prohibited provisions
231 for agreements containing a post-loss assignment of
232 benefits; providing that a prevailing party under
233 certain policies and coverages has the right to
234 attorney fees and costs; providing that a court need
235 not determine that there is a prevailing party;
236 providing factors a court must consider in determining
237 who is the prevailing party, under certain
238 circumstances; providing construction relating to
239 waiver of claims and limitations on recovery;
240 authorizing a court to order an assignee to pay
241 attorney fees and costs under certain circumstances;
242 requiring the court to stay proceedings under certain
243 circumstances; providing applicability; amending ss.



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244 626.9373 and 627.428, F.S.; providing that attorney
245 fees under certain provisions of the Florida Insurance
246 Code may not be awarded to an assignee of post-loss
247 benefits who is a service provider; providing
248 applicability; providing an effective date.
249

250 WHEREAS, the Legislature finds that provisions of law
251 allowing insureds to recover attorney fees in litigation against
252 their insurers are intended to level the economic playing field
253 between the economically-advantaged insurance company and the
254 individual consumer, and

255 WHEREAS, the award of attorney fees to the individual
256 consumer under such laws makes the consumer financially whole
257 and discourages insurance companies from contesting valid
258 claims, and

259 WHEREAS, however, the Legislature finds that the increased
260 use of post-loss assignment of benefits by service providers has
261 led to a dramatic increase in assignment of benefits litigation,
262 and

263 WHEREAS, the Legislature recognizes that additional costs
264 incurred by insurance companies in contesting assignment of
265 benefits-related litigation or in paying inflated claims for
266 insurance proceeds are factored into the rates charged for
267 property insurance and motor vehicle insurance, and

268 WHEREAS, the Legislature finds that by explicitly providing
269 that any right to attorney fees or costs against an insurer by a
270 service provider must be as provided in this act, the
271 Legislature is addressing the dramatic increase in assignment of
272 benefits litigation by nonparties to property insurance policies



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273 and motor vehicle insurance policies for coverage of windshield
274 damage and the associated increase in insurance premiums that
275 are experienced by consumers, and

276 WHEREAS, the Legislature intends to maintain its public
277 policy of making consumers financially whole and reducing
278 inequities between consumers and their insurance companies, as
279 such consumers have the right to obtain attorney fees in civil
280 actions they bring against their insurers, NOW, THEREFORE,