

By the Committee on Banking and Insurance; and Senators Broxson and Hooper

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1                                   A bill to be entitled  
2       An act relating to agreements between service  
3       providers and consumers; creating s. 501.172, F.S.;  
4       defining terms; specifying limitations and authorized  
5       provisions relating to a service provider's right to  
6       payment under certain agreements with consumers under  
7       urgent or emergency circumstances; specifying  
8       requirements, limitations, and prohibited provisions  
9       for agreements containing a post-loss assignment of  
10      benefits; providing that a prevailing party under  
11      certain policies and coverages has the right to  
12      attorney fees and costs; providing that a court need  
13      not determine there is a prevailing party; providing  
14      factors a court must consider in determining who the  
15      prevailing party is under certain circumstances;  
16      providing construction relating to waiver and  
17      limitations on recovery; authorizing a court to order  
18      an assignee to pay attorney fees and costs under  
19      certain circumstances; requiring the court to stay  
20      proceedings under certain circumstances; providing  
21      applicability; providing legislative findings and  
22      intent; amending ss. 626.9373 and 627.428, F.S.;  
23      providing that attorney fees under certain provisions  
24      of the Florida Insurance Code may not be awarded to an  
25      assignee of post-loss benefits who is a service  
26      provider; providing applicability; providing an  
27      effective date.

28  
29   Be It Enacted by the Legislature of the State of Florida:

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30  
31 Section 1. Section 501.172, Florida Statutes, is created to  
32 read:

33 501.172 Agreements between service providers and  
34 consumers.—

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

36 (a) "Consumer" means a person who has an interest in, or  
37 who has a right to manage real or personal property, including  
38 improvements upon such property, regardless of whether for  
39 personal or business purposes, including an owner, a tenant, a  
40 licensee, or a property manager.

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

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

46 (a) If a consumer acts under urgent or emergency  
47 circumstances to protect property from damage and enters into an  
48 agreement with a service provider to stabilize, protect, repair,  
49 or improve such property, the service provider may only contract  
50 for, receive, or acquire in any manner from the consumer at such  
51 time the right to payment for the work necessary to stabilize,  
52 protect, and prevent additional damage to the property. Such  
53 right to payment may include:

54 1. A post-loss assignment of benefits under a property  
55 insurance policy or under the comprehensive or combined  
56 additional coverage under a motor vehicle insurance policy for  
57 coverage of windshield damage, executed pursuant to subsection  
58 (3), except that notwithstanding ss. 626.9373 and 627.428, any

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59 right to attorney fees or costs against an insurer by any such  
60 service provider shall be as provided in subsection (4). A  
61 service provider may not receive from a consumer acting under  
62 urgent or emergency circumstances an assignment of post-loss  
63 benefits in excess of:

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

67 b. Under a motor vehicle insurance policy for comprehensive  
68 or combined additional coverage for windshield damage, in excess  
69 of \$500.

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

72 (b) An agreement between a consumer and a service provider  
73 that provides greater rights to the service provider under such  
74 urgent or emergency circumstances, including alleged rights to  
75 do further repairs, remediation, or improvements or an  
76 assignment of rights, benefits, causes of action, or other  
77 contractual rights in violation of this subsection is void.

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

84 (a) The consumer or service provider provides a copy of the  
85 agreement to the consumer's insurer, sent to the location  
86 designated for receipt of such agreements if specified in the  
87 insurance policy, within 3 business days after the agreement's

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88 execution;

89 (b) The agreement contains a provision allowing the  
90 consumer to rescind the agreement in a writing signed by the  
91 assignor, if the consumer provides written notice of the  
92 rescission to the service provider within 14 days of the  
93 execution of the agreement or at least 30 days after the  
94 execution of the agreement if the service provider has not begun  
95 substantial work on the property;

96 (c) The agreement does not impose any fee or penalty for  
97 rescinding the agreement, for check processing, for not using a  
98 specified service provider for permanent repairs, or for  
99 mortgage processing;

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

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

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

111 (g) The agreement does not transfer to the assignee any  
112 greater right to attorney fees and costs from the insurer than  
113 the right to attorney fees and costs as provided for in  
114 subsection (4); and

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

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117 (4) ATTORNEY FEES.—

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

124 1. Insurer, if the service provider is the prevailing  
125 party.

126 2. Service provider, if the insurer is the prevailing  
127 party.

128 (b) The prevailing party is the party which prevails on the  
129 significant issues of the case. The court may determine that  
130 there is no prevailing party in a case. In determining if there  
131 is a prevailing party, the court must consider:

132 1. The issues litigated;

133 2. The amount of the claims by the service provider versus  
134 the amount recovered;

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

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

138 (5) LIMITATION ON RECOVERY FROM ASSIGNOR.—An assignee  
139 service provider and any subcontractor of the service provider  
140 that accepts an assignment of post-loss benefits waives any and  
141 all claims against a consumer, except as provided herein. The  
142 consumer remains responsible for the payment of any deductible  
143 amount provided for by the terms of the insurance policy, and  
144 for the cost of any betterment ordered by the consumer. This  
145 subsection does not prohibit the assignee from collecting or

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146 attempting to collect money from, maintaining an action at law  
147 against, or claiming a lien on the property of a consumer or  
148 reporting a consumer to a credit agency for payment of the  
149 amount of the insurance deductible, or any amount attributable  
150 to betterment ordered by the consumer. This waiver is effective  
151 notwithstanding any subsequent determination that the assignment  
152 agreement is invalid or the rescission of the assignment  
153 agreement by the consumer.

154 (6) ACTIONS BASED UPON THE SAME CLAIM AND PARTY PREVIOUSLY  
155 VOLUNTARILY DISMISSED.—If a service provider assignee commences  
156 an action in any court of this state based upon or including the  
157 same claim against the same adverse party that such assignee has  
158 previously voluntarily dismissed in a court of this state the  
159 court may, as it deems proper, order the assignee to pay the  
160 attorney fees and costs of the adverse party of the action  
161 previously voluntarily dismissed. Upon the issuance of such  
162 order, the court shall stay the proceedings in the subsequent  
163 action until the assignee has complied with the order.

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

173 (8) LEGISLATIVE FINDINGS AND INTENT.—

174 (a) The Legislature recognizes that the provisions of ss.

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175 626.9373 and 627.428 are intended to level the economic playing  
176 field between the economically-advantaged insurance company and  
177 the individual consumer. The award of attorney fees to the  
178 individual consumer under these statutes makes the consumer  
179 financially whole and discourages insurance companies from  
180 contesting valid claims.

181 (b) The increased use of post-loss assignment of benefits  
182 by service providers, however, has led to a dramatic increase in  
183 assignment of benefits litigation. The Legislature recognizes  
184 that additional costs incurred by insurance companies, in  
185 contesting assignment of benefits-related litigation or paying  
186 inflated claims for insurance proceeds, are factored into the  
187 rates charged for property insurance and motor vehicle  
188 insurance.

189 (c) By explicitly providing that notwithstanding ss.  
190 626.9373 and 627.428, any right to attorney fees or costs  
191 against an insurer by a service provider shall be as provided in  
192 this section, the Legislature is addressing the dramatic  
193 increase in assignment of benefits litigation by nonparties to  
194 property insurance policies and motor vehicle insurance policies  
195 for coverage of windshield damage and the associated increase in  
196 insurance premiums that are experienced by consumers. The  
197 Legislature is maintaining its public policy of making consumers  
198 financially whole and reducing inequities between consumers and  
199 their insurance companies, as such consumers have the right to  
200 obtain attorney fees under ss. 626.9373 and 627.428 in civil  
201 actions they bring against their insurers.

202 Section 2. Section 626.9373, Florida Statutes, is amended  
203 to read:

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204           626.9373 Attorney ~~Attorney's~~ fees.—

205           (1) Upon the rendition of a judgment or decree by any court  
206 of this state against a surplus lines insurer in favor of any  
207 named or omnibus insured or the named beneficiary under a policy  
208 or contract executed by the insurer on or after the effective  
209 date of this act, the trial court or, if the insured or  
210 beneficiary prevails on appeal, the appellate court, shall  
211 adjudge or decree against the insurer in favor of the insured or  
212 beneficiary a reasonable sum as fees or compensation for the  
213 insured's or beneficiary's attorney prosecuting the lawsuit for  
214 which recovery is awarded.

215           (2) If awarded, attorney ~~attorney's~~ fees or compensation  
216 shall be included in the judgment or decree rendered in the  
217 case.

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

221           Section 3. Section 627.428, Florida Statutes, is amended to  
222 read:

223           627.428 Attorney fees ~~Attorney's fee~~.—

224           (1) Upon the rendition of a judgment or decree by any of  
225 the courts of this state against an insurer and in favor of any  
226 named or omnibus insured or the named beneficiary under a policy  
227 or contract executed by the insurer, the trial court or, in the  
228 event of an appeal in which the insured or beneficiary prevails,  
229 the appellate court shall adjudge or decree against the insurer  
230 and in favor of the insured or beneficiary a reasonable sum as  
231 fees or compensation for the insured's or beneficiary's attorney  
232 prosecuting the suit in which the recovery is had.



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

238 (3) When so awarded, compensation or fees of the attorney  
239 shall be included in the judgment or decree rendered in the  
240 case.

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

244 Section 4. The creation of s. 501.172, Florida Statutes,  
245 and the amendments made to ss. 626.9373 and 627.428, Florida  
246 Statutes, by this act apply to actions pending on or after July  
247 1, 2019, to the extent that the act does not require the  
248 invalidation of any provision of a contract executed before July  
249 1, 2019.

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