

By the Committees on Judiciary; and Banking and Insurance; and Senators Broxson, Hooper, and Simmons

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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 that there is a prevailing party;
14 providing factors a court must consider in determining
15 who is the prevailing party, under certain
16 circumstances; providing construction relating to
17 waiver of claims and limitations on recovery;
18 authorizing a court to order an assignee to pay
19 attorney fees and costs under certain circumstances;
20 requiring the court to stay proceedings under certain
21 circumstances; providing applicability; amending ss.
22 626.9373 and 627.428, F.S.; providing that attorney
23 fees under certain provisions of the Florida Insurance
24 Code may not be awarded to an assignee of post-loss
25 benefits who is a service provider; providing
26 applicability; providing an effective date.

27
28 WHEREAS, the Legislature finds that provisions of law
29 allowing insureds to recover attorney fees in litigation against

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30 their insurers are intended to level the economic playing field
31 between the economically-advantaged insurance company and the
32 individual consumer, and

33 WHEREAS, the award of attorney fees to the individual
34 consumer under such laws makes the consumer financially whole
35 and discourages insurance companies from contesting valid
36 claims, and

37 WHEREAS, however, the Legislature finds that the increased
38 use of post-loss assignment of benefits by service providers has
39 led to a dramatic increase in assignment of benefits litigation,
40 and

41 WHEREAS, the Legislature recognizes that additional costs
42 incurred by insurance companies in contesting assignment of
43 benefits-related litigation or in paying inflated claims for
44 insurance proceeds are factored into the rates charged for
45 property insurance and motor vehicle insurance, and

46 WHEREAS, the Legislature finds that by explicitly providing
47 that any right to attorney fees or costs against an insurer by a
48 service provider must be as provided in this act, the
49 Legislature is addressing the dramatic increase in assignment of
50 benefits litigation by nonparties to property insurance policies
51 and motor vehicle insurance policies for coverage of windshield
52 damage and the associated increase in insurance premiums that
53 are experienced by consumers, and

54 WHEREAS, the Legislature intends to maintain its public
55 policy of making consumers financially whole and reducing
56 inequities between consumers and their insurance companies, as
57 such consumers have the right to obtain attorney fees in civil
58 actions they bring against their insurers, NOW, THEREFORE,

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60 Be It Enacted by the Legislature of the State of Florida:

61
62 Section 1. Section 501.172, Florida Statutes, is created to
63 read:

64 501.172 Agreements between service providers and
65 consumers.-

66 (1) DEFINITIONS.-As used in this section:

67 (a) "Consumer" means a person who has an interest in, or
68 who has a right to manage real or personal property, including
69 improvements upon such property, regardless of whether for
70 personal or business purposes, including an owner, a tenant, a
71 licensee, or a property manager.

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

75 (2) LIMITATION ON AGREEMENTS BETWEEN SERVICE PROVIDERS AND
76 CONSUMERS UNDER URGENT OR EMERGENCY CIRCUMSTANCES.-

77 (a) If a consumer acts under urgent or emergency
78 circumstances to protect property from damage and enters into an
79 agreement with a service provider to stabilize, protect, repair,
80 or improve the property, the service provider may only contract
81 for, receive, or acquire in any manner from the consumer at the
82 time the right to payment for the work necessary to stabilize,
83 protect, and prevent additional damage to the property. The
84 agreement must be in writing and detail, to the extent
85 reasonable under the circumstances, the work to be performed and
86 the charges for the services to be provided. The right to
87 payment may include:

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88 1. A post-loss assignment of benefits under a property
89 insurance policy or under the comprehensive or combined
90 additional coverage under a motor vehicle insurance policy for
91 coverage of windshield damage, executed pursuant to subsection
92 (3), except that notwithstanding ss. 626.9373 and 627.428, any
93 right to attorney fees or costs against an insurer by any such
94 service provider shall be as provided in subsection (4). A
95 service provider may not receive from a consumer acting under
96 urgent or emergency circumstances an assignment of post-loss
97 benefits:

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

101 b. Under a motor vehicle insurance policy for comprehensive
102 or combined additional coverage for windshield damage, in excess
103 of \$500.

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

106 (b) To the extent that an agreement between a consumer and
107 a service provider purports to provide greater rights to the
108 service provider under such urgent or emergency circumstances,
109 including alleged rights to do further repairs, remediation, or
110 improvements or an assignment of rights, benefits, causes of
111 action, or other contractual rights in violation of this
112 subsection, such purported assignment is void.

113 (3) REQUIREMENTS FOR POST-LOSS AGREEMENTS, INCLUDING THOSE
114 CONTAINING A POST-LOSS ASSIGNMENT OF BENEFITS.-In all
115 circumstances, an agreement entered into by a consumer and a
116 service provider after a loss or damage has occurred to the

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117 consumer's property must be in writing. The agreement must
118 detail, to the extent reasonable under the circumstances, the
119 work to be performed, the charges for the services to be
120 provided, and the dates by which work on the property will
121 commence and be completed. The agreement may also provide for
122 subsequent change orders, subject to the approval by the
123 consumer and service provider, which must also set forth in
124 writing the changes to the scope of work and the cost for the
125 changes to the work. To the extent that the agreement contains a
126 post-loss assignment of insurance benefits to the service
127 provider or some third person under a property insurance policy
128 or under the comprehensive or combined additional coverage under
129 a motor vehicle insurance policy for coverage of windshield
130 damage, the purported assignment of benefits is valid only if
131 all of the following are satisfied:

132 (a) The consumer or service provider provides a copy of the
133 agreement to the consumer's insurer, sent to the location
134 designated for receipt of such agreements if specified in the
135 insurance policy, within 3 business days after the agreement's
136 execution.

137 (b) The agreement provides that the consumer may rescind
138 the agreement by submitting a written notice of rescission which
139 is signed by the consumer to the service provider within 14 days
140 after the execution of the agreement, at least 30 days after the
141 date work on the property is scheduled to commence if the
142 service provider has not substantially performed, or at least 30
143 days after the execution of the agreement if the agreement does
144 not contain a commencement date and the service provider has not
145 begun substantial work on the property. However, the service

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146 provider retains the right to payment for services performed
147 pursuant to the agreement before receiving notice of the
148 rescission.

149 (c) The agreement does not impose any fee or penalty for
150 rescinding the agreement, for check processing, for not using a
151 specified service provider for permanent repairs, or for
152 mortgage processing.

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

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

159 (f) The agreement does not transfer or create any authority
160 to adjust, negotiate, or settle any portion of a claim to a
161 person or an entity who is not authorized to adjust, negotiate,
162 or settle a claim on behalf of the insured or claimant under
163 part VI of chapter 626.

164 (g) The agreement does not transfer to the assignee any
165 greater right to attorney fees and costs from the insurer than
166 the right to attorney fees and costs as provided for in
167 subsection (4).

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

170 (4) ATTORNEY FEES.—

171 (a) In a civil action under a property insurance policy or
172 under the comprehensive or combined additional coverage under a
173 motor vehicle insurance policy for coverage of windshield
174 damage, between an insurer and a service provider who obtains an

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175 assignment of post-loss benefits, the prevailing party has the
176 right to attorney fees and costs from the:

177 1. Insurer, if the service provider is the prevailing
178 party.

179 2. Service provider, if the insurer is the prevailing
180 party.

181 (b) The prevailing party is the party which prevails on the
182 significant issues of the case. The court may determine that
183 there is no prevailing party in a case. In determining if there
184 is a prevailing party, the court must consider:

185 1. The issues litigated;

186 2. The amount of the claims by the service provider versus
187 the amount recovered;

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

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

191 (5) LIMITATION ON RECOVERY FROM ASSIGNOR.—An assignee
192 service provider that accepts an assignment of post-loss
193 benefits waives any and all claims against a consumer, except as
194 provided herein. The consumer remains responsible for the
195 payment of any deductible amount provided for by the terms of
196 the insurance policy, and for the cost of any betterment ordered
197 by the consumer. This subsection does not prohibit the assignee
198 from collecting or attempting to collect money from, maintaining
199 an action at law against, or claiming a lien on the property of
200 a consumer or reporting a consumer to a credit agency for
201 payment of the amount of the insurance deductible, or any amount
202 attributable to betterment ordered by the consumer. This waiver
203 is effective notwithstanding any subsequent determination that

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204 the assignment agreement is invalid or the rescission of the
205 assignment agreement by the consumer.

206 (6) ACTIONS BASED UPON THE SAME CLAIM AND PARTY PREVIOUSLY
207 VOLUNTARILY DISMISSED.—If a service provider assignee commences
208 an action in any court of this state based upon or including the
209 same claim against the same adverse party that such assignee has
210 previously voluntarily dismissed in a court of this state, the
211 court may, as it deems proper, order the assignee to pay the
212 attorney fees and costs of the adverse party of the action
213 previously voluntarily dismissed. Upon the issuance of such
214 order, the court shall stay the proceedings in the subsequent
215 action until the assignee has complied with the order.

216 (7) APPLICATION.—This section does not apply to a power of
217 attorney granted to a management company, family member,
218 guardian, or similarly situated person which complies with
219 chapter 709 and which may include, as part of the authority
220 granted, the authority to act in place of a principal as it
221 relates to a property insurance or motor vehicle insurance
222 claim, if such power of attorney is not provided to a service
223 provider or any person with a personal or financial interest in
224 the service provider.

225 Section 2. Section 626.9373, Florida Statutes, is amended
226 to read:

227 626.9373 Attorney ~~Attorney's~~ fees.—

228 (1) Upon the rendition of a judgment or decree by any court
229 of this state against a surplus lines insurer in favor of any
230 named or omnibus insured or the named beneficiary under a policy
231 or contract executed by the insurer on or after the effective
232 date of this act, the trial court or, if the insured or

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233 beneficiary prevails on appeal, the appellate court, shall
234 adjudge or decree against the insurer in favor of the insured or
235 beneficiary a reasonable sum as fees or compensation for the
236 insured's or beneficiary's attorney prosecuting the lawsuit for
237 which recovery is awarded.

238 (2) If awarded, attorney ~~attorney's~~ fees or compensation
239 shall be included in the judgment or decree rendered in the
240 case.

241 (3) 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 3. Section 627.428, Florida Statutes, is amended to
245 read:

246 627.428 Attorney fees ~~Attorney's fee.~~-

247 (1) Upon the rendition of a judgment or decree by any of
248 the courts of this state against an insurer and in favor of any
249 named or omnibus insured or the named beneficiary under a policy
250 or contract executed by the insurer, the trial court or, in the
251 event of an appeal in which the insured or beneficiary prevails,
252 the appellate court shall adjudge or decree against the insurer
253 and in favor of the insured or beneficiary a reasonable sum as
254 fees or compensation for the insured's or beneficiary's attorney
255 prosecuting the suit in which the recovery is had.

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

261 (3) When so awarded, compensation or fees of the attorney

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262 shall be included in the judgment or decree rendered in the
263 case.

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

267 Section 4. Section 501.172, Florida Statutes, as created by
268 this act, and the amendments made by this act to ss. 626.9373
269 and 627.428, Florida Statutes, apply to actions pending on or
270 after July 1, 2019, to the extent that the act does not require
271 the invalidation of any provision of a contract executed before
272 July 1, 2019.

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