A bill to be entitled
An act relating to agreements between service
providers and consumers; creating s. 501.172, F.S.;
defining terms; specifying limitations and authorized
provisions relating to a service provider’s right to
payment under certain agreements with consumers under
urgent or emergency circumstances; specifying
requirements, limitations, and prohibited provisions
for agreements containing a post-loss assignment of
benefits; providing that a prevailing party under
certain policies and coverages has the right to
attorney fees and costs; providing that a court need
not determine that there is a prevailing party;
providing factors a court must consider in determining
who is the prevailing party, under certain
circumstances; providing construction relating to
waiver of claims and limitations on recovery;
authorizing a court to order an assignee to pay
attorney fees and costs under certain circumstances;
requiring the court to stay proceedings under certain
circumstances; providing applicability; amending ss.
626.9373 and 627.428, F.S.; providing that attorney
fees under certain provisions of the Florida Insurance
Code may not be awarded to an assignee of post-loss
benefits who is a service provider; providing
applicability; providing an effective date.

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

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

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

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

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

WHEREAS, the Legislature intends to maintain its public
policy of making consumers financially whole and reducing
inequities between consumers and their insurance companies, as
such consumers have the right to obtain attorney fees in civil
actions they bring against their insurers, NOW, THEREFORE,
Be It Enacted by the Legislature of the State of Florida:

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

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

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

(a) If a consumer acts under urgent or emergency circumstances to protect property from damage and enters into an agreement with a service provider to stabilize, protect, repair, or improve the property, the service provider may only contract for, receive, or acquire in any manner from the consumer at the time the right to payment for the work necessary to stabilize, protect, and prevent additional damage to the property. The agreement must be in writing and detail, to the extent reasonable under the circumstances, the work to be performed and the charges for the services to be provided. The right to payment may include:
1. A post-loss assignment of benefits under a property insurance policy or under the comprehensive or combined additional coverage under a motor vehicle insurance policy for coverage of windshield damage, executed pursuant to subsection (3), except that notwithstanding ss. 626.9373 and 627.428, any right to attorney fees or costs against an insurer by any such service provider shall be as provided in subsection (4). A service provider may not receive from a consumer acting under urgent or emergency circumstances an assignment of post-loss benefits:
   a. Under a property insurance policy, in excess of the greater of $3,000 or 1 percent of the Coverage A limit under such policy.
   b. Under a motor vehicle insurance policy for comprehensive or combined additional coverage for windshield damage, in excess of $500.

2. An acknowledgment of the rights that may exist, if any, under chapter 713 to make a claim upon the property.
   (b) To the extent that an agreement between a consumer and a service provider purports to provide greater rights to the service provider under such urgent or emergency circumstances, including alleged rights to do further repairs, remediation, or improvements or an assignment of rights, benefits, causes of action, or other contractual rights in violation of this subsection, such purported assignment is void.

(3) REQUIREMENTS FOR POST-LOSS AGREEMENTS, INCLUDING THOSE CONTAINING A POST-LOSS ASSIGNMENT OF BENEFITS.—In all circumstances, an agreement entered into by a consumer and a 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
provider retains the right to payment for services performed pursuant to the agreement before receiving notice of the rescission.

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

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

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

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

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

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

(4) ATTORNEY FEES.—

(a) In a civil action under a property insurance policy or under the comprehensive or combined additional coverage under a motor vehicle insurance policy for coverage of windshield damage, between an insurer and a service provider who obtains an
assignment of post-loss benefits, the prevailing party has the
right to attorney fees and costs from the:
   1. Insurer, if the service provider is the prevailing
   party.
   2. Service provider, if the insurer is the prevailing
   party.

(b) The prevailing party is the party which prevails on the
significant issues of the case. The court may determine that
there is no prevailing party in a case. In determining if there
is a prevailing party, the court must consider:
   1. The issues litigated;
   2. The amount of the claims by the service provider versus
   the amount recovered;
   3. The existence of setoffs and counterclaims, if any; and
   4. The amounts offered by either party to resolve the
   issues prior to or during litigation.

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

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

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

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

626.9373 Attorney’s fees.—

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

(2) If awarded, attorney attorney’s fees or compensation
shall be included in the judgment or decree rendered in the
case.

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

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

627.428 Attorney fees Attorney’s fee.—
(1) Upon the rendition of a judgment or decree by any of
the courts of this state against an insurer and in favor of any
named or omnibus insured or the named beneficiary under a policy
or contract executed by the insurer, the trial court or, in the
event of an appeal in which the insured or beneficiary prevails,
the appellate court shall adjudge or decree against the insurer
and in favor of the insured or beneficiary a reasonable sum as
fees or compensation for the insured’s or beneficiary’s attorney
prosecuting the suit in which the recovery is had.

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

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

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

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

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