

By Senator Thrasher

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1 A bill to be entitled
2 An act relating to civil remedies against insurers;
3 amending s. 624.155, F.S.; revising provisions
4 relating to civil actions against insurers; providing
5 a definition; revising the grounds for bringing an
6 action based on the insurer's failure to accept an
7 offer to settle within policy limits; providing who
8 may bring such an action; providing requirements for
9 bringing such an action; providing for the release of
10 an insured if the insurer offers to settle a third-
11 party claim within a specified time under certain
12 circumstances; providing that the insurer has an
13 affirmative defense if a third-party claimant or the
14 insured fails to cooperate with the insurer; providing
15 that an insurer is not liable for two or more claims
16 that exceed the policy limits if it files an
17 interpleader action or makes the policy limits
18 available under arbitration; specifying responsibility
19 for the payment of liens; providing that an insurer is
20 not liable for amounts in excess of the policy limits
21 if it makes timely payment of the appraisal amount;
22 providing that certain refusals to act by the insurer
23 are not presumptive evidence of bad faith; revising
24 requirements relating to the preaction notice of a
25 civil action sent to the Department of Financial
26 Regulation and the insurer; specifying work-product
27 protection requirements; prohibiting an award of fees
28 and costs from including any form of multiplier or
29 enhancement; providing that the provisions of the act

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30 replace the common law; amending s. 627.311, F.S.;

31 conforming a cross-reference; deleting an obsolete

32 provision; amending s. 627.727, F.S.; revising and

33 limiting the damages that are recoverable from an

34 uninsured motorist carrier in a civil action;

35 providing for severability; providing an effective

36 date.

37

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

39

40 Section 1. Section 624.155, Florida Statutes, is amended to

41 read:

42 624.155 Civil remedy.—

43 (1) As used in the section, the term "third-party claim"

44 means a claim against an insured, by one other than the insured,

45 on account of harm or damage allegedly caused by an insured and

46 covered by a policy of liability insurance.

47 (2)~~(1)~~ Any person may bring a civil action against an

48 insurer if ~~when~~ such person is damaged:

49 (a) By the insurer's a violation of ~~any of~~ the following

50 ~~provisions by the insurer:~~

- 51 1. Section 626.9541(1) (i), (o), or (x);
- 52 2. Section 626.9551;
- 53 3. Section 626.9705;
- 54 4. Section 626.9706;
- 55 5. Section 626.9707; or
- 56 6. Section 627.7283.

57 (b) By the insurer's commission of any of the following

58 acts ~~by the insurer:~~

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59 1. Acting in gross disregard of the insured's interest by
60 failing to accept a ~~Not attempting in~~ good faith written demand
61 to settle claims within the policy limits if ~~when,~~ under all the
62 circumstances existing at the relevant time, it could and should
63 have done so, had it acted fairly and honestly toward its
64 insured ~~and with due regard for her or his interests;~~

65 2. Making claims payments to insureds or beneficiaries not
66 accompanied by a statement setting forth the coverage under
67 which payments are being made; or

68 3. Except as to liability coverages, failing to promptly
69 settle claims, when the obligation to settle a claim has become
70 reasonably clear, under one portion of the insurance policy
71 coverage in order to influence settlements under other portions
72 of the insurance policy coverage.

73
74 Notwithstanding the ~~provisions of the above to the contrary,~~ a
75 person pursuing a remedy under this section need not prove that
76 such act was committed or performed with such frequency as to
77 indicate a general business practice.

78 (3) If a civil action is brought against an insurer
79 pursuant to subparagraph (2) (b) 1.:

80 (a) Only an insured or the insured's assignee may bring
81 such an action.

82 (b) With respect to a third-party claim, an insurer does
83 not violate the duty set forth in subparagraph (2) (b) 1. if the
84 third-party claimant does not provide a demand to settle which:

85 1. Is in writing, signed by the third-party claimant or the
86 claimant's authorized representative, and delivered to the
87 insurer and the insured;

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88 2. States that it is a demand to settle made pursuant to
89 this section;

90 3. States a specified amount within the insured's policy
91 limits for which the third-party claimant offers to settle its
92 claim in full and to release the insured from liability;

93 4. Is limited to one claimant and one line of coverage or,
94 if not so limited, separately designates a demand for each
95 claimant and each line of coverage, each of which may be
96 accepted independently;

97 5. Is submitted by a person having the legal authority to
98 accept payment and to execute the release;

99 6. Does not contain any conditions for acceptance other
100 than payment of the specific amount demanded and compliance with
101 the disclosure requirements of s. 627.4137; and

102 7. Includes a detailed explanation of the coverage and
103 liability issues and the facts giving rise to the claim,
104 including an explanation of injuries and damages claimed; the
105 names of known witnesses; and a listing and copy, if available,
106 of relevant documents, including medical records, which are
107 available to the third-party claimant or authorized
108 representative at the time of the demand to settle. The third-
109 party claimant and his or her representatives have a continuing
110 duty to supplement this information as it becomes available.

111 (c) With respect to a third-party claim, an insurer does
112 not violate the duty set forth in subparagraph (2) (b)1. if,
113 within 60 days after the insurer's receipt of the third-party
114 claimant's written demand to settle, or within 90 days after the
115 insurer's receipt of the notice of the claim, whichever is
116 later, the insurer offers to pay the lesser of:

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117 1. The amount requested in the third-party claimant's
118 written demand to settle; or

119 2. The insured's policy limits, in exchange for a release
120 of liability.

121 (d) An insurer has an affirmative defense to any such
122 action if the third-party claimant, the insured, or their
123 representatives fail to fully cooperate in providing all
124 relevant information and in presenting the claim.

125 (4) Notwithstanding subsection (3), if two or more third-
126 party claimants make competing claims arising out of a single
127 occurrence, which in total exceed the available policy limits of
128 one or more of the insured parties who may be liable to the
129 third-party claimants, an insurer is not liable beyond the
130 available policy limits for failure to pay all or any portion of
131 the available policy limits to one or more of the third-party
132 claimants if, within 90 days after receiving notice of the
133 competing claims in excess of the available policy limits, the
134 insurer:

135 (a) Files an interpleader action under the Florida Rules of
136 Civil Procedure. If the claims of the competing third-party
137 claimants are found to be in excess of the policy limits, the
138 third-party claimants are entitled to a prorated share of the
139 policy limits as determined by the trier of fact. An insurer's
140 interpleader action does not alter or amend the insurer's
141 obligation to defend its insured; or

142 (b) Pursuant to binding arbitration, makes the entire
143 amount of the policy limits available for payment to the
144 competing third-party claimants before a qualified arbitrator
145 selected by the insurer at the expense of the insurer. The

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146 third-party claimants are entitled to a prorated share of the
147 policy limits as determined by the arbitrator, who shall
148 consider the comparative fault, if any, of each third-party
149 claimant, and the total likely outcome at trial based upon the
150 total of the economic and noneconomic damages submitted to the
151 arbitrator for consideration. A third-party claimant whose claim
152 is resolved by the arbitrator shall execute and deliver a
153 general release to the insured party whose claim is resolved by
154 the proceeding.

155 (5) After settlement of a third-party claim, the third-
156 party claimant's attorney is responsible for the satisfaction of
157 any liens from the settlement funds to the extent such
158 settlement funds are sufficient. If the third-party claimant is
159 not represented by counsel, the third-party claimant shall
160 provide the insurer with a written accounting of all outstanding
161 liens.

162 (6) An insurer is not liable for amounts in excess of the
163 policy limits or of the award, whichever is less, if it makes
164 timely payment of an appraisal award.

165 (7) The fact that the insurer does not accept a demand to
166 settle or offer policy limits under paragraph (3)(c), pay an
167 appraisal award under subsection (6), or file an interpleader
168 action or make policy limits available for arbitration under
169 subsection (4) during the times specified does not give rise to
170 a presumption that the insurer acted in bad faith.

171 (8)~~(2)~~ Any party may bring a civil action against an
172 unauthorized insurer if such party is damaged by a violation of
173 s. 624.401 by the unauthorized insurer.

174 (9)~~(3)~~(a) Except for an action relating to a third-party

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175 claim, as a condition precedent to bringing an action under this
176 section, the department and the authorized insurer must be ~~have~~
177 ~~been~~ given 60 days' written notice of the violation. If the
178 department returns a notice for lack of specificity, the 60-day
179 time period does ~~shall~~ not begin until a proper notice is filed.

180 (a) (b) The notice shall be on a form provided by the
181 department, sent by certified mail to the claim handler if known
182 or, if unknown, to the specific office handling the claim, and
183 ~~shall~~ state with specificity the following information, ~~and such~~
184 ~~other information as the department may require~~:

185 1. The statutory provision, including the specific language
186 of the statute, which the authorized insurer allegedly violated.

187 2. The facts and circumstances reasonably known to the
188 insurer giving rise to the violation, stated with specificity,
189 and the corrective action that the insurer needs to take to
190 remedy the alleged violation.

191 3. The name of any individual involved in the violation.

192 4. Reference to specific policy language that is relevant
193 to the violation, if any. ~~If the person bringing the civil~~
194 ~~action is a third party claimant, she or he shall not be~~
195 ~~required to reference the specific policy language if the~~
196 ~~authorized insurer has not provided a copy of the policy to the~~
197 ~~third party claimant pursuant to written request.~~

198 5. A statement that the notice is given in order to perfect
199 the right to pursue the civil remedy authorized by this section.

200 6. Such other information as the department may require.

201 (b) (c) Within 20 days after ~~of~~ receipt of the notice, the
202 department may return any notice that does not provide the
203 specific information required by this section, ~~and the~~

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204 ~~department shall~~ indicate the specific deficiencies contained in
205 the notice. A determination by the department to return a notice
206 for lack of specificity is ~~shall be~~ exempt from ~~the requirements~~
207 ~~of~~ chapter 120.

208 (c) ~~(d)~~ No action shall lie if, within 60 days after filing
209 notice, the damages are paid or the circumstances giving rise to
210 the violation are corrected.

211 (d) ~~(e)~~ The authorized insurer that is the recipient of the
212 a notice must ~~filed pursuant to this section shall~~ report to the
213 department on the disposition of the alleged violation.

214 (e) ~~(f)~~ The applicable statute of limitations for an action
215 under this section is ~~shall be~~ tolled for a ~~period of~~ 65 days by
216 the mailing of the notice ~~required by this subsection~~ or the
217 mailing of a subsequent notice ~~required by this subsection~~.

218 (10) With respect to:

219 (a) A first-party claim, the insurer does not owe a
220 fiduciary duty to the insured and retains the right to protect
221 materials covered by the work-product privilege found within the
222 claim processing file. The privilege must yield to inspection if
223 an appropriate showing is made under the Florida Rules of Civil
224 Procedure. The attorney-client privilege remains absolute.

225 (b) A third-party claim, until a claim or action for
226 payment on a policy of insurance is final, all files of an
227 insurer, including papers, communications, investigatory
228 reports, or other documents in the insurer's files are the
229 insurer's work product and immune from production or discovery.
230 Thereafter, discovery shall be determined in accordance with the
231 Florida Rules of Civil Procedure. Communications between an
232 insurer and its counsel which are protected under s. 90.502

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233 remain protected.

234 ~~(11)-(4)~~ Upon adverse adjudication at trial or upon appeal,
 235 the authorized insurer is ~~shall be~~ liable for damages, together
 236 with court costs and reasonable attorney's fees incurred by the
 237 plaintiff. An award of fees and costs may not include any form
 238 of multiplier or enhancement.

239 ~~(12)-(5)~~ ~~No~~ Punitive damages may not ~~shall~~ be awarded under
 240 this section unless the acts giving rise to the violation occur
 241 with such frequency as to indicate a general business practice
 242 and these acts are:

243 (a) Willful, wanton, and malicious;

244 (b) In reckless disregard for the rights of any insured; or

245 (c) In reckless disregard for the rights of a beneficiary
 246 under a life insurance contract.

247

248 Any person who pursues a claim under this subsection must ~~shall~~
 249 post in advance the costs of discovery. Such costs shall be
 250 awarded to the authorized insurer if ~~no~~ punitive damages are not
 251 awarded to the plaintiff.

252 ~~(13)-(6)~~ This section does ~~shall~~ not be construed to
 253 authorize a class action suit against an authorized insurer or a
 254 civil action against the commission, the office, or the
 255 department or any of their employees, or ~~to~~ create a cause of
 256 action if ~~when~~ an authorized health insurer refuses to pay a
 257 claim for reimbursement on the ground that the charge for a
 258 service was unreasonably high or that the service provided was
 259 not medically necessary.

260 ~~(14)-(7)~~ ~~In the absence of expressed language to the~~
 261 ~~contrary,~~ This section does ~~shall~~ not be construed to authorize

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262 a civil action or create a cause of action against an authorized
263 insurer or its employees who, in good faith, release information
264 about an insured or an insurance policy to a law enforcement
265 agency in furtherance of an investigation of a criminal or
266 fraudulent act relating to a motor vehicle theft or a motor
267 vehicle insurance claim.

268 (15) The civil remedies specified in this section are the
269 sole remedies and causes of action for extracontractual damages
270 for bad-faith failure to settle under an insurance contract. Any
271 related common-law causes of action are replaced and superseded
272 by this section. The provisions of this section apply to all
273 cases brought pursuant to this section unless specifically
274 controlled by s. 766.1185.

275 ~~(8) The civil remedy specified in this section does not~~
276 ~~preempt any other remedy or cause of action provided for~~
277 ~~pursuant to any other statute or pursuant to the common law of~~
278 ~~this state. Any person may obtain a judgment under either the~~
279 ~~common-law remedy of bad faith or this statutory remedy, but~~
280 ~~shall not be entitled to a judgment under both remedies. This~~
281 ~~section shall not be construed to create a common-law cause of~~
282 ~~action. The damages recoverable pursuant to this section shall~~
283 ~~include those damages which are a reasonably foreseeable result~~
284 ~~of a specified violation of this section by the authorized~~
285 ~~insurer and may include an award or judgment in an amount that~~
286 ~~exceeds the policy limits.~~

287 (16)~~(9)~~ A surety issuing a payment or performance bond on
288 the construction or maintenance of a building or roadway project
289 is not an insurer for purposes of subsection (2) ~~(1)~~.

290 Section 2. Paragraph (k) of subsection (3) of section

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291 627.311, Florida Statutes, is amended to read:

292 627.311 Joint underwriters and joint reinsurers; public
293 records and public meetings exemptions.—

294 (3) The office may, after consultation with insurers
295 licensed to write automobile insurance in this state, approve a
296 joint underwriting plan for purposes of equitable apportionment
297 or sharing among insurers of automobile liability insurance and
298 other motor vehicle insurance, as an alternate to the plan
299 required in s. 627.351(1). All insurers authorized to write
300 automobile insurance in this state shall subscribe to the plan
301 and participate therein. The plan shall be subject to continuous
302 review by the office which may at any time disapprove the entire
303 plan or any part thereof if it determines that conditions have
304 changed since prior approval and that in view of the purposes of
305 the plan changes are warranted. Any disapproval by the office
306 shall be subject to the provisions of chapter 120. The Florida
307 Automobile Joint Underwriting Association is created under the
308 plan. The plan and the association:

309 (k)~~1~~. Shall have no liability, and no cause of action ~~of~~
310 ~~any nature shall arise~~ against any member insurer or its agents
311 or employees, agents or employees of the association, members of
312 the board of governors of the association, the Chief Financial
313 Officer, or the office or its representatives for any action
314 taken by them in the performance of their duties or
315 responsibilities under this subsection. Such immunity does not
316 apply to actions for or arising out of a breach of any contract
317 or agreement pertaining to insurance, or any willful tort.

318 ~~2. Notwithstanding the requirements of s. 624.155(3)(a), as~~
319 ~~a condition precedent to bringing an action against the plan~~

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320 ~~under s. 624.155, the department and the plan must have been~~
321 ~~given 90 days' written notice of the violation. If the~~
322 ~~department returns a notice for lack of specificity, the 90-day~~
323 ~~time period shall not begin until a proper notice is filed. This~~
324 ~~notice must comply with the information requirements of s.~~
325 ~~624.155(3) (b). Effective October 1, 2007, this subparagraph~~
326 ~~shall expire unless reenacted by the Legislature prior to that~~
327 ~~date.~~

328 Section 3. Subsection (10) of section 627.727, Florida
329 Statutes, is amended to read:

330 627.727 Motor vehicle insurance; uninsured and underinsured
331 vehicle coverage; insolvent insurer protection.-

332 (10) The damages recoverable from an uninsured motorist
333 carrier in an action brought under s. 624.155 ~~shall~~ include the
334 total amount of the claimant's damages, including the amount in
335 excess of the policy limits but not exceeding two times the
336 policy limits, any interest on unpaid benefits, and reasonable
337 attorney's fees and costs, ~~and any damages caused by a violation~~
338 ~~of a law of this state.~~ The total amount of the claimant's
339 damages is recoverable whether caused by an insurer or by a
340 third-party tortfeasor.

341 Section 4. If any provision of this act or its application
342 to any person or circumstance is held invalid, the invalidity
343 does not affect other provisions or applications of the act
344 which can be given effect without the invalid provision or
345 application, and to this end the provisions of this act are
346 severable.

347 Section 5. This act shall take effect July 1, 2011.