



452858

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/12/2020	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Brandes) recommended the following:

1 **Senate Amendment to Amendment (632742) (with title**
2 **amendment)**

3
4 Delete lines 145 - 187
5 and insert:

6 Section 5. Subsections (1) and (3) of section 624.155,
7 Florida Statutes, are amended, and subsection (10) is added to
8 that section, to read:

9 624.155 Civil remedy.—

10 (1) Any person may bring a civil action against an insurer



452858

11 when such person is damaged:

12 (a) By a violation of any of the following provisions by
13 the insurer:

- 14 1. Section 626.9541(1)(i), (o), or (x);
- 15 2. Section 626.9551;
- 16 3. Section 626.9705;
- 17 4. Section 626.9706;
- 18 5. Section 626.9707; or
- 19 6. Section 627.7283.

20 (b) By the commission of any of the following acts by the
21 insurer:

22 1. Not attempting in good faith to settle claims when,
23 under the totality of all the circumstances, it could and should
24 have done so, had it acted fairly and honestly toward its
25 insured and with due regard for her or his interests;

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

29 3. Except as to liability coverages, failing to promptly
30 settle claims, when the obligation to settle a claim has become
31 reasonably clear, under one portion of the insurance policy
32 coverage in order to influence settlements under other portions
33 of the insurance policy coverage.

34
35 Notwithstanding paragraphs (a) and (b) the provisions of the
36 above to the contrary, a person pursuing a remedy under this
37 section need not prove that such act was committed or performed
38 with such frequency as to indicate a general business practice.

39 (3) (a) As a condition precedent to bringing an action under



452858

40 this section, the department and the authorized insurer must
41 have been given 60 days' written notice of the violation. Notice
42 to the authorized insurer must be provided by the department to
43 the e-mail address designated by the insurer under s. 624.422.

44 (b) The notice shall be on a form provided by the
45 department and shall state with specificity the following
46 information, and such other information as the department may
47 require:

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

50 2. The facts and circumstances giving rise to the
51 violation.

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

53 4. Reference to specific policy language that is relevant
54 to the violation, if any. If the person bringing the civil
55 action is a third party claimant, she or he shall not be
56 required to reference the specific policy language if the
57 authorized insurer has not provided a copy of the policy to the
58 third party claimant pursuant to written request.

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

61 (c) No action shall lie if, within 60 days after the
62 insurer receives ~~filing~~ notice from the department in accordance
63 with this subsection, the damages are paid or the circumstances
64 giving rise to the violation are corrected.

65 (d) The authorized insurer that is the recipient of a
66 notice filed pursuant to this section shall report to the
67 department on the disposition of the alleged violation.

68 (e) The applicable statute of limitations for an action



452858

69 under this section shall be tolled for a period of:

70 1. Sixty ~~65~~ days after the insurer receives from the
71 department by the mailing of the notice required by this
72 subsection.

73 2. Sixty days after the date appraisal is invoked pursuant
74 to paragraph (f) or the mailing of a subsequent notice required
75 by this subsection.

76 (f) A notice required under this subsection may not be
77 filed within 60 days after appraisal is invoked by any party in
78 a residential property insurance claim.

79 (10) The provisions of this subsection apply to an action
80 against a motor vehicle insurer for third-party bad faith under
81 this chapter or at common law.

82 (a) It is a condition precedent to such action that the
83 insurer first receive written notice that the insurer has
84 violated its duty to act in good faith toward its insured. A
85 notice shall state with specificity the alleged violation and
86 the facts and circumstances giving rise to the violation. The
87 insurer's receipt of written notice does not preclude subsequent
88 written notices that an insurer violated its duty to act in good
89 faith toward its insured. The insurer shall save and document
90 any notice.

91 (b) In handling claims, an insurer stands as a fiduciary
92 for its insured. Accordingly, an insurer shall act in good faith
93 toward its insured throughout the entirety of the claim.

94 (c) A bad faith failure to settle means an insurer's
95 failure to settle a claim when, under the totality of the
96 circumstances, it could and should have done so had it acted
97 fairly, honestly, and with due regard for the interests of an



452858

98 insured. The claimant has the burden to establish through the
99 greater weight of the evidence that specific conduct by the
100 insurer is the cause or substantial cause of the insurer's bad
101 faith failure to settle.

102 1. An insurer's negligent actions alone are insufficient to
103 establish the insurer's bad faith failure to settle, but an
104 insurer's negligent actions are relevant when considering the
105 totality of the circumstances.

106 2. The actions or inactions of the insured or claimant are
107 relevant in an action for a bad faith failure to settle. An
108 insurer may assert as a defense that the conduct of the insured
109 or claimant caused, in whole or in part, the failure to settle
110 the claim.

111 (d) No action against a motor vehicle insurer for third-
112 party bad faith shall lie if, within 45 days after the motor
113 vehicle insurer receives notice pursuant to paragraph (a), the
114 insurer cures the circumstances giving rise to the alleged
115 breach of duty of good faith to the insured. A third party may
116 proceed with a bad faith action against the insurer if the
117 insurer fails to cure the violation within this period.

118 (e) Paragraph (d) does not create a duty that the insurer
119 must offer policy limits or the amount of a demand that is less
120 than policy limits within 45 days after it receives notice under
121 paragraph (a). However, the absence of such offer may be
122 considered as part of the totality of the circumstances in
123 determining whether the insurer in bad faith failed to settle.

124 (f) If two or more third-party claimants in a liability
125 claim make competing claims arising out of a single occurrence
126 which in total exceed the available policy limits of one or more



452858

127 of the insured parties who may be liable to third party
128 claimants, a motor vehicle insurer is not liable beyond the
129 available policy limits for failure to pay all or any portion of
130 the available policy limits to one or more of the third-party
131 claimants if such insurer continues to comply with its good
132 faith duties to its insured throughout the entirety of the
133 claim, including the pendency of an interpleader action filed
134 under the Florida Rules of Civil Procedure within 90 days after
135 receiving notice of the competing claims in excess of the
136 available policy limits. The competing third-party claimants are
137 entitled to a prorated share of the policy limits as determined
138 by the trier of fact.

139
140 ===== T I T L E A M E N D M E N T =====

141 And the title is amended as follows:

142 Delete line 1281

143 and insert:

144 statute of limitations is tolled; providing
145 applicability; requiring that a civil remedy notice be
146 provided to a motor vehicle insurer before a third-
147 party bad faith action is brought against the insurer;
148 specifying requirements for the notice; providing
149 construction relating to the notice; requiring the
150 insurer to save and document any notice; providing
151 construction relating to an insurer's duty of good
152 faith, a bad faith failure to settle, the claimant's
153 burden of proof, negligent actions of an insurer, and
154 actions or inactions of the insured or claimant;
155 providing that such bad faith actions are barred if



452858

156 the insurer cures certain circumstances within a
157 certain timeframe; providing that an insurer is not
158 liable beyond policy limits in certain third-party
159 claims if it meets certain conditions; providing that
160 competing third-party claimants are entitled to a
161 prorated share of policy limits as determined by the
162 trier of fact; amending s. 624.307,