

By Senator Holzendorf

2-1364-99

1 A bill to be entitled
 2 An act relating to civil actions against
 3 insurers; amending s. 624.155, F.S.; providing
 4 that an insurer that has offered in writing to
 5 an insured that it will pay its applicable
 6 policy limits as directed by the insured has no
 7 duty to settle claims under the requirements of
 8 the section; providing that an insurer is
 9 liable for damages not covered by its policy or
 10 damages exceeding its policy limits only if the
 11 insurer's conduct was the proximate cause of
 12 the damage; repealing s. 627.736(4)(f), F.S.,
 13 relating to when personal injury protection
 14 benefits are due from an insurer; providing an
 15 effective date.

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

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 19 Section 1. Paragraph (b) of subsection (1) and
 20 subsection (7) of section 624.155, Florida Statutes, are
 21 amended to read:

22 624.155 Civil remedy.--

23 (1) Any person may bring a civil action against an
 24 insurer when such person is damaged:

25 (b) By the commission of any of the following acts by
 26 the insurer:

27 1. Not attempting in good faith to settle claims when,
 28 under all the circumstances, it could and should have done so,
 29 had it acted fairly and honestly toward its insured and with
 30 due regard for her or his interests. An insurer that has
 31 offered an insured in writing to pay its applicable policy

1 limits as directed in writing by that insured has no further
2 duty to settle claims under this paragraph or otherwise
3 applicable common law principles. In the case of liability
4 claims against insureds, such an offer may be made through a
5 defense lawyer of the insured and shall remain confidential
6 pursuant to the attorney client privilege unless waived by the
7 insured or unless raised by the insurer in defending against a
8 claim based on any alleged failure to settle the claims;

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

12 3. Except as to liability coverages, failing to
13 promptly settle claims, when the obligation to settle a claim
14 has become reasonably clear, under one portion of the
15 insurance policy coverage in order to influence settlements
16 under other portions of the insurance policy coverage.

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18 Notwithstanding the provisions of the above to the contrary, a
19 person pursuing a remedy under this section need not prove
20 that such act was committed or performed with such frequency
21 as to indicate a general business practice.

22 (7) The civil remedy specified in this section does
23 not preempt any other remedy or cause of action provided for
24 pursuant to any other statute or pursuant to the common law of
25 this state. Any person may obtain a judgment under either the
26 common-law remedy of bad faith or this statutory remedy, but
27 shall not be entitled to a judgment under both remedies. This
28 section shall not be construed to create a common-law cause of
29 action. The damages recoverable pursuant to this section
30 shall include those damages which are a reasonably foreseeable
31 result of a specified violation of this section by the insurer

1 and may include an award or judgment in an amount that exceeds
2 the policy limits. However, notwithstanding any other
3 provision of law, an insurer is liable for damages not covered
4 by its policy or damages exceeding its policy limits only if
5 the insurer's conduct was the proximate cause of such damages.
6 An insurer is not liable for extra contractual damages as to a
7 first-party claim or for attorney's fees under this section
8 when the court finds that the insurer had a good-faith and
9 reasonable basis for its denial of a claim.

10 Section 2. Paragraph (f) of subsection (4) of section
11 627.736, Florida Statutes, 1998 Supplement, is repealed.

12 Section 3. This act shall take effect upon becoming a
13 law.

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15 SENATE SUMMARY

16 Provides that an insurer that has offered an insured in
17 writing to pay its applicable policy limits as directed
18 by the insured has any duty to settle claims under the
19 requirements of s. 624.155, F.S. Provides that an insurer
20 is liable for damages not covered by its policy or
21 damages exceeding its policy limits only if the insurer's
22 conduct was the proximate cause of the damage. Repeals s.
23 627.736(4)(f), F.S., relating to when personal injury
24 protection benefits are due from an insurer.
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