

By Senator Grant

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A bill to be entitled
An act relating to insurer bad-faith actions;
amending s. 624.155, F.S.; establishing
standards of proof for bringing a civil action
or common-law action against an insurer;
providing defenses; providing for damages;
providing an effective date.

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

Section 1. Subsections (1), (3), (4), and (7) of
section 624.155, Florida Statutes, are amended and subsection
(8) is added to that section to read:

624.155 Civil remedy.--

(1) Any person may bring a civil action against an
insurer when such person proves by clear and convincing
evidence that such person is damaged:

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

- 1. Section 626.9541(1)(i), (o), or (x);
- 2. Section 626.9551;
- 3. Section 626.9705;
- 4. Section 626.9706;
- 5. Section 626.9707; or
- 6. Section 627.7283.

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

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

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

4 3. Except as to liability coverages, failing to
5 promptly settle claims, when the obligation to settle a claim
6 has become reasonably clear, under one portion of the
7 insurance policy coverage in order to influence settlements
8 under other portions of the insurance policy coverage.

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10 However, an insurer is not liable for a violation of this
11 section if a reasonable insurer would consider the claim
12 fairly debatable in law or fact. A claim is fairly debatable
13 unless there is an absence of a reasonable basis for the
14 insurer's actions.Notwithstanding the provisions of the above
15 to the contrary, a person pursuing a remedy under this section
16 need not prove that such act was committed or performed with
17 such frequency as to indicate a general business practice.

18 (3) Upon adverse adjudication at trial or upon appeal,
19 the insurer shall be liable for damages as specified in
20 subsection (7), together with court costs and reasonable
21 attorney's fees incurred by the plaintiff.

22 (4) No punitive damages shall be awarded under this
23 section unless the acts giving rise to the violation are
24 proved by clear and convincing evidence and occur with such
25 frequency as to indicate a general business practice and these
26 acts are:

27 (a) Willful, wanton, and malicious;

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

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

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2 Any person who pursues a claim under this subsection shall
3 post in advance the costs of discovery. Such costs shall be
4 awarded to the insurer if no punitive damages are awarded to
5 the plaintiff.

6 (7) The civil remedy specified in this section does
7 not preempt any other remedy or cause of action provided for
8 pursuant to any other statute or pursuant to the common law of
9 this state. Any person may obtain a judgment under either the
10 common-law remedy of bad faith or this statutory remedy, but
11 shall not be entitled to a judgment under both remedies. This
12 section shall not be construed to create a common-law cause of
13 action. The damages recoverable pursuant to this section
14 shall include those damages which are a reasonably foreseeable
15 result of a specified violation of this section by the insurer
16 and may include an award or judgment in an amount that exceeds
17 the policy limits. However, an insurer is not liable for
18 noneconomic damages caused by the insurer's violation of this
19 section except for noneconomic damages awarded in a judgment
20 against the insured in a third-party liability claim or
21 against the insurer in a first-party claim for uninsured
22 motorist benefits under s. 627.727(10).

23 (8) A person bringing a common-law cause of action for
24 bad faith must prove by clear and convincing evidence that the
25 insurer acted in bad faith. An insurer is not liable for bad
26 faith if a reasonable insurer would consider the claim fairly
27 debatable in law or fact. A claim is fairly debatable unless
28 there is an absence of a reasonable basis for the insurer's
29 actions. The damages recoverable in a common-law bad-faith
30 cause of action include those damages that are a reasonably
31 foreseeable result of the insurer's bad-faith actions and may

1 include an award or judgment in an amount that exceeds the
2 policy limits.

3 Section 2. This act shall take effect October 1, 2000
4 and applies to all causes of action accruing on or after that
5 date.

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8 SENATE SUMMARY

9 Provides that a person may bring a civil action against
10 an insured for bad-faith actions when the person proves
11 by clear and convincing evidence that such person
12 received damage as a result of specified actions of the
13 insurer. The insurer is not liable if a reasonable
14 insurer would consider the claim fairly debatable in law
15 or fact. Provides that no punitive damages may be awarded
16 unless the prohibited acts are proved by clear and
17 convincing evidence. Provides a limitation on the award
18 of noneconomic damages. Provides standard of proof for
19 bringing a common-law action against an insurer for bad
20 faith. Prescribes damages in such actions.
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