

By Representative Bainter

1                                   A bill to be entitled  
2           An act relating to civil actions against  
3           insurance companies; providing legislative  
4           findings; prohibiting certain civil actions  
5           against insurers based on insurance code  
6           provisions or related rules under certain  
7           circumstances; prescribing certain conditions  
8           precedent to certain class actions; providing  
9           certain defenses in such actions; proscribing  
10          awarding attorney's fees under provisions of  
11          the insurance code in excess of certain limits  
12          in certain actions; providing an effective  
13          date.

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

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17           Section 1. Findings.--

18           (1) Pursuant to the Legislature's constitutional power  
19 to enact insurance legislation that might, as to other  
20 subjects, be deemed an unconstitutional impairment of the free  
21 flow of interstate commerce, and in recognition of the  
22 importance and complexity of insurance, the Legislature has  
23 enacted and amended an extremely detailed insurance code known  
24 as the Florida Insurance Code.

25           (2) Pursuant to provisions of the Florida Insurance  
26 Code, the Department of Insurance has been given extensive  
27 regulatory authority, including the authority to adopt rules  
28 interpreting and administering the code, to approve or  
29 disapprove various actions of insurers as complying or not  
30 complying with the code or such rules, to examine insurers,  
31 and to investigate insurers' conduct to determine compliance

1 with the code and departmental rules, all for the protection  
2 of the public.

3 (3) When the Legislature created the Florida Insurance  
4 Code and granted the Department of Insurance such authority,  
5 the Legislature did not intend to discourage the transaction  
6 of insurance or add to the cost of insurance by creating  
7 exposures to litigation, and did not intend to subject  
8 insurers to exposure to litigation long after the fact as to  
9 actions taken in reliance upon administrative interpretations  
10 of the code and rules adopted pursuant to the code.

11 (4) It is in the public interest to recognize that the  
12 Department of Insurance, in performing its duties under the  
13 Florida Insurance Code, is the primary regulator of insurance  
14 conduct in this state and to encourage insurers to facilitate  
15 such regulation by enabling insurers to rely upon such  
16 regulatory guidance when insurers seek and obtain such  
17 guidance.

18 (5) The Legislature has enacted various laws unique to  
19 this state which regulate and mandate the automatic award of  
20 reasonable attorney's fees in addition to other damages. Such  
21 laws provide that add-on fees automatically result in every  
22 case in which an insured is successful but that such laws can  
23 never be used by insurers, and the Legislature has reenacted  
24 such laws after various court decisions upholding the  
25 application of "loadstar" principles and multiplier factors.  
26 In such actions, the Legislature intended to create a  
27 deterrent to a potential practice of insurers arbitrarily and  
28 generally denying claims in which the aggregate amount in  
29 controversy was small. However, the Legislature did not  
30 intend to deter insurers from denying claims that insurers  
31 reasonably believed to be excessive or to cause claims to

1 become excessive by subjecting insurers to such multipliers  
2 when the insurer had a good faith and reasonable basis to  
3 believe that the insurer was correct in denying the claim, or  
4 when attorneys have aggregated small claims into large class  
5 actions and the addition of add-on fees is not necessary to  
6 secure counsel.

7       Section 2. (1) No provision of the Florida Insurance  
8 Code and no rule of the Department of Insurance adopted  
9 pursuant to the code shall be the sole, partial, direct, or  
10 indirect basis of any civil action against an insurer for  
11 damages if the alleged course of conduct, action, form, or  
12 practice of the insurer has been filed with and approved by or  
13 accepted for use by the Department of Insurance as complying  
14 with the code.

15       (2) Prior to the accrual of any civil action in which  
16 common questions of law or fact are alleged to exist, arising  
17 from a form, act, or practice of an insurer, and that:

18       (a) Such form, act, or practice is in violation of any  
19 provision of the Florida Insurance Code or rule adopted  
20 pursuant to the code, or judicial decision construing the  
21 code;

22       (b) It appears that such form, act, or practice  
23 alleged is one that would be contrary to the code; or

24       (c) It appears that the form, act, or practice is  
25 regulated by the code,

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27 it shall be a condition precedent that any persons purporting  
28 to represent a class must first secure a declaration, pursuant  
29 to the provisions of s. 120.565, Florida Statutes, as to  
30 whether the alleged form, act, or practice is in violation of  
31 the code. In any such action, it shall be a defense that the

1 form, act, or practice was disclosed to the Department of  
2 Insurance and was approved or accepted for use under the code,  
3 or that after such disclosure the Department of Insurance has  
4 not found the form, act, or practice to be in violation of the  
5 code in such declaration.

6 (3) Attorney's fees shall not be awarded under any  
7 provision of the Florida Insurance Code:

8 (a) In excess of a reasonable hourly rate as  
9 determined based solely upon hourly rates customarily charged  
10 by attorneys in the area, with no "loadstar" or multiplier  
11 factors, unless the court determines that the insurer acted  
12 arbitrarily and without a reasonable basis to deny the claim  
13 or the amount of the claim; or

14 (b) In any class action as to which aggregate damages  
15 requested as to all plaintiffs exceeds \$100,000.

16 Section 3. This act shall take effect upon becoming a  
17 law.

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20 HOUSE SUMMARY

21 Prohibits basing civil actions against insurers on  
22 insurance code provisions or related rules after  
23 Department of Insurance approval. Prescribes conditions  
24 precedent to class actions. Specifies defenses.  
25 Proscribes awarding attorney's fees under provisions of  
26 the insurance code in excess of specific limits.  
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