

By the Committee on Banking and Insurance; and Senators Posey and Fasano

311-2014-03

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A bill to be entitled  
An act relating to the unauthorized sale of insurance; providing a short title; amending s. 624.155, F.S.; providing a civil remedy for consumers against unauthorized insurers for unpaid claims; amending s. 624.401, F.S.; providing criminal penalties for an entity transacting insurance without a certificate of authority; providing an effective date.

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

Section 1. This act may be cited as the "Pete Orr Insurance Anti-Fraud Act."

Section 2. Section 624.155, Florida Statutes, is amended to read:

624.155 Civil remedy.--

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

1 had it acted fairly and honestly toward its insured and with  
2 due regard for her or his interests;

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

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

11  
12 Notwithstanding the provisions of the above to the contrary, a  
13 person pursuing a remedy under this section need not prove  
14 that such act was committed or performed with such frequency  
15 as to indicate a general business practice.

16 (2) Any party may bring a civil action against an  
17 unauthorized insurer if such party is damaged by a violation  
18 of s. 624.401 by the unauthorized insurer.

19 (3)(2)(a) As a condition precedent to bringing an  
20 action under this section, the department and the authorized  
21 insurer must have been given 60 days' written notice of the  
22 violation. If the department returns a notice for lack of  
23 specificity, the 60-day time period shall not begin until a  
24 proper notice is filed.

25 (b) The notice shall be on a form provided by the  
26 department and shall state with specificity the following  
27 information, and such other information as the department may  
28 require:

29 1. The statutory provision, including the specific  
30 language of the statute, which the authorized insurer  
31 allegedly violated.

1           2. The facts and circumstances giving rise to the  
2 violation.

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

5           4. Reference to specific policy language that is  
6 relevant to the violation, if any. If the person bringing the  
7 civil action is a third party claimant, she or he shall not be  
8 required to reference the specific policy language if the  
9 authorized insurer has not provided a copy of the policy to  
10 the third party claimant pursuant to written request.

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

14           (c) Within 20 days of receipt of the notice, the  
15 department may return any notice that does not provide the  
16 specific information required by this section, and the  
17 department shall indicate the specific deficiencies contained  
18 in the notice. A determination by the department to return a  
19 notice for lack of specificity shall be exempt from the  
20 requirements of chapter 120.

21           (d) No action shall lie if, within 60 days after  
22 filing notice, the damages are paid or the circumstances  
23 giving rise to the violation are corrected.

24           (e) The authorized insurer that is the recipient of a  
25 notice filed pursuant to this section shall report to the  
26 department on the disposition of the alleged violation.

27           (f) The applicable statute of limitations for an  
28 action under this section shall be tolled for a period of 65  
29 days by the mailing of the notice required by this subsection  
30 or the mailing of a subsequent notice required by this  
31 subsection.

1           ~~(4)(3)~~ Upon adverse adjudication at trial or upon  
2 appeal, the authorized insurer shall be liable for damages,  
3 together with court costs and reasonable attorney's fees  
4 incurred by the plaintiff.

5           ~~(5)(4)~~ No punitive damages shall be awarded under this  
6 section unless the acts giving rise to the violation occur  
7 with such frequency as to indicate a general business practice  
8 and these acts are:

9           (a) Willful, wanton, and malicious;

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

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

14  
15 Any person who pursues a claim under this subsection shall  
16 post in advance the costs of discovery. Such costs shall be  
17 awarded to the authorized insurer if no punitive damages are  
18 awarded to the plaintiff.

19           ~~(6)(5)~~ This section shall not be construed to  
20 authorize a class action suit against an authorized insurer or  
21 a civil action against the department, its employees, or the  
22 Insurance Commissioner, or to create a cause of action when an  
23 authorized ~~a~~ health insurer refuses to pay a claim for  
24 reimbursement on the ground that the charge for a service was  
25 unreasonably high or that the service provided was not  
26 medically necessary.

27           ~~(7)(6)~~ In the absence of expressed language to the  
28 contrary, this section shall not be construed to authorize a  
29 civil action or create a cause of action against an authorized  
30 insurer or its employees who, in good faith, release  
31 information about an insured or an insurance policy to a law

1 enforcement agency in furtherance of an investigation of a  
2 criminal or fraudulent act relating to a motor vehicle theft  
3 or a motor vehicle insurance claim.

4 (8)~~(7)~~ The civil remedy specified in this section does  
5 not preempt any other remedy or cause of action provided for  
6 pursuant to any other statute or pursuant to the common law of  
7 this state. Any person may obtain a judgment under either the  
8 common-law remedy of bad faith or this statutory remedy, but  
9 shall not be entitled to a judgment under both remedies. This  
10 section shall not be construed to create a common-law cause of  
11 action. The damages recoverable pursuant to this section  
12 shall include those damages which are a reasonably foreseeable  
13 result of a specified violation of this section by the  
14 authorized insurer and may include an award or judgment in an  
15 amount that exceeds the policy limits.

16 Section 3. Section 624.401, Florida Statutes, is  
17 amended to read:

18 624.401 Certificate of authority required.--

19 (1) No person shall act as an insurer, and no insurer  
20 or its agents, attorneys, subscribers, or representatives  
21 shall directly or indirectly transact insurance, in this state  
22 except as authorized by a subsisting certificate of authority  
23 issued to the insurer by the department, except as to such  
24 transactions as are expressly otherwise provided for in this  
25 code.

26 (2) No insurer shall from offices or by personnel or  
27 facilities located in this state solicit insurance  
28 applications or otherwise transact insurance in another state  
29 or country unless it holds a subsisting certificate of  
30 authority issued to it by the department authorizing it to  
31 transact the same kind or kinds of insurance in this state.

1           (3) This state hereby preempts the field of regulating  
2 insurers and their agents and representatives; and no county,  
3 city, municipality, district, school district, or political  
4 subdivision shall require of any insurer, agent, or  
5 representative regulated under this code any authorization,  
6 permit, or registration of any kind for conducting  
7 transactions lawful under the authority granted by the state  
8 under this code.

9           (4)(a) Any person who acts as an insurer, transacts  
10 insurance, or otherwise engages in insurance activities in  
11 this state without a certificate of authority in violation of  
12 this section commits insurance fraud, punishable as provided  
13 in paragraph (b)~~a felony of the third degree, punishable as~~  
14 ~~provided in s. 775.082, s. 775.083, or s. 775.084.~~

15           (b) If the amount of any insurance premium collected  
16 with respect to any violation of this section:

17           1. Is less than \$20,000, the offender commits a felony  
18 of the third degree, punishable as provided in s. 775.082, s.  
19 775.083, or s. 775.084, and the offender shall be sentenced to  
20 a minimum term of imprisonment of 1 year.

21           2. Is \$20,000 or more, but less than \$100,000, the  
22 offender commits a felony of the second degree, punishable as  
23 provided in s. 775.082, s. 775.083, or s. 775.084, and the  
24 offender shall be sentenced to a minimum term of imprisonment  
25 of 18 months.

26           3. Is \$100,000 or more, the offender commits a felony  
27 of the first degree, punishable as provided in s. 775.082, s.  
28 775.083, or s. 775.084, and the offender shall be sentenced to  
29 a minimum term of imprisonment of 2 years.

30           Section 4. This act shall take effect July 1, 2003.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 1680

The committee substitute does the following:

- Deletes the provision authorizing a civil action by a party damaged by a representative of an unauthorized insurer.
- Deletes the section that provides that persons representing unauthorized insurers shall be personally liable for losses or claims not paid by unauthorized insurers.
- Deletes penalty provisions against insurance agents for representing unauthorized insurers.
- Deletes the section pertaining to the reporting and taxation of independently procured coverage applying to unauthorized insurers.
- Deletes the provision which adds specified crimes to the Offense Severity Ranking Chart law under the Criminal Punishment Code.