

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Brown offered the following:

Amendment (with title amendment)

Between lines 1031 and 1032, insert:

Section 26. 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.

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

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

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

37 3. Except as to liability coverages, failing to promptly
38 settle claims, when the obligation to settle a claim has become
39 reasonably clear, under one portion of the insurance policy
40 coverage in order to influence settlements under other portions
41 of the insurance policy coverage.

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

47 (2) In matters relating to professional liability
48 insurance coverage for medical negligence, only the insured may
49 bring a civil action against an insurer when such person is
50 damaged:

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

53 1. Section 626.9541(1)(i), (o), or (x);

54 2. Section 626.9551;

55 3. Section 626.9705;

56 4. Section 626.9706;

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57 5. Section 626.9707; or

58 6. Section 627.7283.

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

61 1. Not attempting in good faith to settle claims when,
62 under all the circumstances, the insurer could and should have
63 done so, had the insurer acted fairly and honestly toward its
64 insured and with due regard for the insured's interests,
65 provided, in any action, whether under the laws of this state or
66 common law, against a liability insurer for alleged failure to
67 settle a claim against its insured:

68 a. The duty of good faith and fairly and honestly dealing
69 with its insured requires the insurer to provide a defense for
70 its insured to give the insured's interests consideration at
71 least equal to its interests and the interests of all its
72 policyholders in deciding whether to litigate or settle a claim.

73 b. An insurer need not submit to demands for settlement
74 within the policy limit simply because there is a possibility of
75 a verdict in excess of the policy limit. The insurer must have
76 had a reasonable opportunity to settle the claim within the
77 policy limits during the life of the claim.

78 c. An insurer shall not be held in bad faith if the
79 insurer tenders its policy limits at least 120 days prior to
80 trial in the underlying case giving rise to a bad faith claim.

81 d. Factors to be considered in determining whether the
82 insurer dealt with its insured in good faith include:

83 (I) The insurer's willingness to negotiate with the
84 claimant.

85 (II) The insurer's proper investigation of the claim.

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86 (III) The insurer's consideration of the advice of its
87 defense counsel.

88 (IV) Whether the insurer informed the insured of the offer
89 to settle within the limits of coverage, the right to retain
90 personal counsel, and the risks of litigation.

91 (V) Whether the insured denied liability or requested that
92 the case be defended.

93 (VI) Whether the claimant imposed any condition, other
94 than tender of policy limits, as to settlement of the claim.

95 e. In the event that an insurer is found to have breached
96 its duty to settle on behalf of an insured, the insurer is
97 responsible to pay on behalf of the insured as to such judgment
98 only the applicable policy limits and amount of the excess
99 judgment that the insured can demonstrate could have been
100 satisfied from the attachment or forced sale of property of the
101 insured, absent liability insurance coverage. The court shall
102 enter judgment against the insurer after conducting an inquiry
103 to ascertain the future value of the underlying excess judgment.
104 The inquiry shall include the use of expert testimony on the
105 issues of future income of the insured, accumulation of
106 attachable assets by the insured, and the probability of
107 collecting the underlying excess judgment from the insured,
108 absent liability insurance coverage. The insured shall be deemed
109 not to have waived any exemption from forced sale or attachment
110 available to the insured or insured's spouse under state law,
111 federal law, or law applicable in the jurisdiction where the
112 property is located. This limitation shall not be construed to
113 limit rights or obligations of the insured or insurer other than
114 as specified herein.

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115 f. As to any judgment entered against an insured covered
116 by a liability insurance policy, the judgment debtor is hereby
117 granted an exemption under chapter 55, and from any liens or
118 execution of such judgment, in an amount equal to all sums that
119 have been paid on his or her behalf by a liability insurer. All
120 such sums shall be recorded by the judgment creditor in a manner
121 that reflects an equivalent partial or total satisfaction of the
122 judgment.

123 g. Any judgment entered against a liability insurer and
124 any portion of a settlement designated as damage for breach of
125 this subparagraph shall be reported by the insurer to the Office
126 of Insurance Regulation and the office shall conduct such
127 investigation and impose such penalties as the office determines
128 to be appropriate for any violation of the insurance code.

129 2. Making claims payments to insureds or beneficiaries not
130 accompanied by a statement setting forth the coverage under
131 which payments are being made.

132
133 An insured pursuing a remedy under this subsection need not
134 prove that such act was committed or performed with such
135 frequency as to indicate a general business practice. Nothing in
136 this subsection shall be construed to prohibit an insured from
137 assigning the cause of action to an injured third-party claimant
138 for the insurer's failure to act fairly and honestly towards its
139 insured and with due regard for the insured's interest.

140 (3)+(2)(a) As a condition precedent to bringing an action
141 under this section, the department and the insurer must have
142 been given 60 days' written notice of the violation. If the

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143 department returns a notice for lack of specificity, the 60-day
144 time period shall not begin until a proper notice is filed.

145 (b) The notice shall be on a form provided by the
146 department and shall state with specificity the following
147 information, and such other information as the department may
148 require:

149 1. The statutory provision, including the specific
150 language of the statute, which the insurer allegedly violated.

151 2. The facts and circumstances giving rise to the
152 violation.

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

154 4. Reference to specific policy language that is relevant
155 to the violation, if any. If the person bringing the civil
156 action is a third party claimant, she or he shall not be
157 required to reference the specific policy language if the
158 insurer has not provided a copy of the policy to the third party
159 claimant pursuant to written request.

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

163 (c) Within 20 days of receipt of the notice, the
164 department may return any notice that does not provide the
165 specific information required by this section, and the
166 department shall indicate the specific deficiencies contained in
167 the notice. A determination by the department to return a notice
168 for lack of specificity shall be exempt from the requirements of
169 chapter 120.

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

173 (e) The insurer that is the recipient of a notice filed
174 pursuant to this section shall report to the department on the
175 disposition of the alleged violation.

176 (f) The applicable statute of limitations for an action
177 under this section shall be tolled for a period of 65 days by
178 the mailing of the notice required by this subsection or the
179 mailing of a subsequent notice required by this subsection.

180 ~~(4)(3)~~ Upon adverse adjudication at trial or upon appeal,
181 the insurer shall be liable for damages, together with court
182 costs and reasonable attorney's fees incurred by the plaintiff,
183 however, in any action under this section relating to
184 professional liability insurance coverage for medical
185 negligence, no award for attorney's fees shall be enhanced by a
186 contingency risk multiplier.

187 ~~(5)(4)~~ No punitive damages shall be awarded under this
188 section unless the acts giving rise to the violation occur with
189 such frequency as to indicate a general business practice and
190 these acts are:

191 (a) Willful, wanton, and malicious;

192 (b) In reckless disregard for the rights of any insured;

193 or

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

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197 Any person who pursues a claim under this subsection shall post
198 in advance the costs of discovery. Such costs shall be awarded

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199 to the insurer if no punitive damages are awarded to the
200 plaintiff.

201 ~~(6)~~⁽⁵⁾ This section shall not be construed to authorize a
202 class action suit against an insurer or a civil action against
203 the department, its employees, or the Insurance Commissioner, or
204 to create a cause of action when a health insurer refuses to pay
205 a claim for reimbursement on the ground that the charge for a
206 service was unreasonably high or that the service provided was
207 not medically necessary.

208 ~~(7)~~⁽⁶⁾ In the absence of expressed language to the
209 contrary, this section shall not be construed to authorize a
210 civil action or create a cause of action against an insurer or
211 its employees who, in good faith, release information about an
212 insured or an insurance policy to a law enforcement agency in
213 furtherance of an investigation of a criminal or fraudulent act
214 relating to a motor vehicle theft or a motor vehicle insurance
215 claim.

216 ~~(8)~~⁽⁷⁾ The civil remedy specified in this section does not
217 preempt any other remedy or cause of action provided for
218 pursuant to any other statute or pursuant to the common law of
219 this state. Any person may obtain a judgment under either the
220 common-law remedy of bad faith or this statutory remedy, but
221 shall not be entitled to a judgment under both remedies. This
222 section shall not be construed to create a common-law cause of
223 action. The damages recoverable pursuant to this section shall
224 include those damages which are a reasonably foreseeable result
225 of a specified violation of this section by the insurer and may
226 include an award or judgment in an amount that exceeds the
227 policy limits.

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228 Section 27. If any amendment to s. 624.155, Florida
 229 Statutes, contained in this act or the application thereof to
 230 any person or circumstance is held invalid, the invalidity shall
 231 not affect other provisions or applications relating to
 232 amendments to s. 624.155, Florida Statutes, contained in this
 233 act, provided such provisions can be given effect without the
 234 invalid provision or application, and to this end, the
 235 provisions of this act and amendments to s. 624.155, Florida
 236 Statutes, contained in this act are declared severable.

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 238 ===== T I T L E A M E N D M E N T =====

239 Remove line 74, and insert:
 240 to conform; amending s. 624.155, F.S.; eliminating third-party
 241 civil actions against insurers in certain matters involving
 242 insurance coverage for medical negligence; providing
 243 requirements, criteria, and limitations for actions against a
 244 liability insurer for alleged failure to settle a claim;
 245 revising a standard for determination of good faith by an
 246 insurer in medical liability cases; providing factors to be
 247 considered in determining whether an insurer has acted in good
 248 faith in such cases; requiring the reporting of certain
 249 judgments to the Office of Insurance Regulation; providing a
 250 limitation on damages recoverable in certain bad faith actions;
 251 providing an exemption to certain insureds from judgment liens
 252 and execution in an amount equal to sums paid on behalf of such
 253 insured by a liability insurer; providing that no award for
 254 attorney's fees shall be enhanced by a contingency risk
 255 multiplier in certain actions relating to professional liability

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256 insurance coverage for medical negligence; providing
257 severability; amending s. 624.462, F.S.; authorizing health