

1 ~~insurer a person~~ violating such provision ~~provisions~~ in the
2 circuit court of the county in which the alleged violator
3 resides or has her or his principal place of business or in
4 the county in which the alleged violation occurred. Upon
5 adverse adjudication, the defendant is ~~will be~~ liable for
6 actual damages or \$500, whichever is greater, together with
7 court costs and reasonable attorney's fees incurred by the
8 plaintiff.

9 ~~(d)(2)~~ ~~No~~ Punitive damages may not be awarded under
10 this subsection ~~section~~ unless the acts giving rise to the
11 violation occur with such frequency as to indicate a general
12 business practice and these acts are:

13 ~~1.(a)~~ Willful, wanton, and malicious; or

14 ~~2.(b)~~ In reckless disregard for the rights of any
15 insured.

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

21 ~~(c)(3)~~ As a condition precedent to bringing an action
22 under this subsection ~~section~~, the department and the insurer
23 shall be given written notice of the violation. The notice
24 must ~~shall~~ state with specificity the facts that ~~which~~
25 allegedly constitute the violation and the law upon which the
26 claimant ~~plaintiff~~ is relying and shall state that such notice
27 is given in order to perfect the right to pursue the civil
28 remedy authorized by this subsection ~~section~~. No action will
29 lie if, within 30 days after notice is given to the department
30 ~~thereafter~~, the damages are paid or the circumstances giving
31 rise to the violation are corrected.

1 (2)(a) If a service warranty association violates s.
2 634.435 by engaging in an unfair claim settlement practice as
3 described in s. 634.436(5) or failing to maintain procedures
4 for handling complaints as described in s. 634.436(6), the
5 person harmed by such violation may bring a civil action
6 against the association in the circuit court of the county in
7 which the plaintiff resides, the county in which the alleged
8 violator resides or has her or his principal place of
9 business, or the county in which the alleged violation
10 occurred. Upon adverse adjudication, the defendant is liable
11 for actual damages or \$500, whichever is greater, together
12 with court costs, reasonable attorney's fees, and expert
13 witness fees.

14 (b) Punitive damages may not be awarded under this
15 subsection unless the acts giving rise to the violation are:
16 1. Willful, wanton, and malicious; or
17 2. In reckless disregard for the rights of the
18 insured.

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20 Punitive damages may be awarded if the association failed to
21 affirm or deny coverage of a claim upon written request by the
22 warranty holder within a reasonable time after notification or
23 if the association failed to promptly provide to the warranty
24 holder a reasonable explanation in writing of the basis for
25 denying the claim or offering a compromise settlement.

26 (c) As a condition precedent to bringing an action
27 under this subsection, the department and the service warranty
28 association must be given written notice of the violation,
29 specifically stating the facts that allegedly constitute the
30 violation and the law upon which the claimant is relying. The
31 notice must state that it is given in order to perfect the

1 right to pursue the civil remedy authorized in this
2 subsection. If, within 30 days after notice is provided to the
3 department and the association, the damages sought by the
4 claimant are paid or the circumstances giving rise to the
5 violation are corrected to the satisfaction of the claimant,
6 the claimant may not bring an action against the association,
7 but the association shall pay all reasonable attorney's fees
8 incurred by the claimant in providing the notice and fees
9 incurred by the claimant in consulting an expert.

10 ~~(3)(4)~~ This section does ~~shall~~ not ~~be construed to~~
11 authorize a class action suit against a service warranty
12 association or a civil action against the department, the
13 office, their employees, or the Chief Financial Officer.

14 Section 3. Subsections (5) and (6) of section 634.436,
15 Florida Statutes, are amended to read:

16 634.436 Unfair methods of competition and unfair or
17 deceptive acts or practices defined.--The following methods,
18 acts, or practices are defined as unfair methods of
19 competition and unfair or deceptive acts or practices:

20 (5) UNFAIR CLAIM SETTLEMENT PRACTICES.--

21 (a) Attempting to settle claims on the basis of an
22 application or any other material document which was altered
23 without notice to, or knowledge or consent of, the warranty
24 holder;

25 (b) Making a material misrepresentation to the
26 warranty holder for the purpose and with the intent of
27 effecting settlement of such claims, loss, or damage under
28 such contract on less favorable terms than those provided in,
29 and contemplated by, such contract; or

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1 (c) Committing or performing with such frequency as to
2 indicate a general business practice any of the following
3 practices:

- 4 1. Failure properly to investigate claims;
- 5 2. Misrepresentation of pertinent facts or contract
6 provisions relating to coverages at issue;
- 7 3. Failure to acknowledge and act promptly upon
8 communications with respect to claims;
- 9 4. Denial of claims without conducting reasonable
10 investigations based upon available information;
- 11 5. Failure to affirm or deny coverage of claims upon
12 written request of the warranty holder within a reasonable
13 time after proof-of-loss statements have been completed; ~~or~~
- 14 6. Failure to promptly provide a reasonable
15 explanation to the warranty holder of the basis in the
16 contract in relation to the facts or applicable law for denial
17 of a claim or for the offer of a compromise settlement; ~~or-~~

18 (d) Refusing, without just cause, to pay a proper
19 claim arising under its service warranty; compelling a
20 warranty holder, without just cause, to accept less than the
21 amount due; or compelling a warranty holder to employ an
22 attorney or to bring suit in order to secure full payment or
23 to settle a claim.

24 (6) FAILURE TO MAINTAIN PROCEDURES FOR HANDLING
25 COMPLAINTS.--Failing to maintain a record of each complaint
26 received for a 3-year period after the date of the receipt of
27 the written complaint. The record must include, but need not
28 be limited to, the name and address of the person who made the
29 complaint and each written document that the association
30 prepared concerning the complaint which describes the basis
31

1 for the complaint or constitutes an attempt by the association
2 to resolve the complaint.

3 Section 4. This act shall take effect July 1, 2007.

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6 SENATE SUMMARY

7 Provides for civil remedies if a service warranty
8 association engages in unfair claim-settlement practices
9 or fails to maintain procedures for handling complaints.
10 Allows certain civil actions to be brought in a county
11 where the claimant resides. Providing for recovery of
12 court costs, expert witness fees, attorney's fees, and
13 damages concerning such actions. Provides requirements
14 for filing a notice with the Department of Financial
15 Services before filing an action in court. Prohibits
16 filing of an action and providing for the recovery of
17 attorney's fees and other costs under certain
18 circumstances. Provides that unfair practices concerning
19 the settlement of claims and the handling of complaints
20 constitute an unfair method of competition or deceptive
21 act or practice.
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