

1                                   A bill to be entitled  
 2       An act relating to civil remedies; amending s. 624.155,  
 3       F.S.; limiting actions against an insurer to insureds;  
 4       specifying a duty to cooperate with an insurer in  
 5       asserting a demand for settlement; specifying certain  
 6       activities as a defense in certain actions; revising  
 7       certain time periods relating to notices in certain  
 8       actions; revising notice requirements; providing for  
 9       preemption of specified civil remedies; specifying effect  
 10      of certain judgments; specifying a criterion for burden of  
 11      proof in actions against an insurer; limiting insurer  
 12      liability for failure to pay policy limits under certain  
 13      circumstances; authorizing parties to request certain  
 14      court orders relating to unnecessary delay; providing  
 15      requirements for amending witness lists; limiting  
 16      admissibility of certain evidence; specifying  
 17      considerations for a trier of fact in certain actions;  
 18      providing construction relating to assigning causes of  
 19      action; providing an effective date.

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 21 Be It Enacted by the Legislature of the State of Florida:  
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23           Section 1. Subsections (1), (3), and (8) of section  
 24       624.155, Florida Statutes, are amended, and subsections (10),  
 25       (11), (12), and (13) are added to that section, to read:

26           624.155 Civil remedy.--

27           (1) An insured ~~Any person~~ may bring a civil action against  
 28       an insurer when such person is damaged:

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

- 31 1. Section 626.9541(1)(i), (o), or (x);
- 32 2. Section 626.9551;
- 33 3. Section 626.9705;
- 34 4. Section 626.9706;
- 35 5. Section 626.9707; or
- 36 6. Section 627.7283.

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

39 1. Not attempting in good faith to settle claims when,  
 40 under all the circumstances, it could and should have done so,  
 41 had it acted fairly and honestly toward its insured and with due  
 42 regard for her or his interests and the interests of all other  
 43 policyholders. However, both the insured and any person  
 44 asserting any demand for such settlement owes a similar duty to  
 45 the insurer to cooperate fully with the insurer, and it shall be  
 46 a defense to any action under this section if the court finds  
 47 that the insured or other person demanding settlement:

48 a. Failed to cooperate fully in facilitating the  
 49 settlement;

50 b. Imposed or adhered to time limits or other conditions  
 51 on settlement without at that time demonstrating to the insurer  
 52 valid reasons that such time limits or other conditions were  
 53 reasonable and necessary and that such reasons were totally  
 54 unrelated to the possibility of obtaining damages under this  
 55 section; or

56 c. Lacked authority to make the demand or to accept the  
 57 amount demanded in full settlement of all claims, including  
 58 liens, arising from the occurrence;

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

62 3. Except as to liability coverages, failing to promptly  
 63 settle claims, when the obligation to settle a claim has become  
 64 reasonably clear, under one portion of the insurance policy  
 65 coverage in order to influence settlements under other portions  
 66 of the insurance policy coverage.

67  
 68 Notwithstanding the provisions of the above to the contrary, a  
 69 person pursuing a remedy under this section need not prove that  
 70 such act was committed or performed with such frequency as to  
 71 indicate a general business practice.

72 (3) (a) As a condition precedent to bringing an action  
 73 under this section, the department and the authorized insurer  
 74 must have been given 90 ~~60~~ days' written notice of the  
 75 violation. If the department returns a notice for lack of  
 76 specificity, the 90-day ~~60-day~~ time period shall not begin until  
 77 a proper notice is filed.

78 (b) The notice shall be on a form provided by the  
 79 department and shall state with specificity the following  
 80 information, and such other information as the department may  
 81 require:

82 1. The statutory provision, including the specific  
83 language of the statute, which the authorized insurer allegedly  
84 violated.

85 2. The specific facts and circumstances giving rise to the  
86 violation, including facts and circumstances pertinent to each  
87 factor stated in subsection (10) and the identity of all parties  
88 who have made claims against the insured for the occurrence  
89 giving rise to the claim and any documentation pertaining to  
90 such claims.

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

92 4. Reference to specific policy coverage and language that  
93 is relevant to the violation, if any. If the person bringing the  
94 civil action is a third party claimant, she or he shall not be  
95 required to reference the specific policy language if the  
96 authorized insurer has not provided a copy of the policy to the  
97 third party claimant pursuant to written request.

98 5. A statement that the notice is given in order to  
99 perfect the right to pursue the civil remedy authorized by this  
100 section.

101 6. A detailed description of the specific dollar amounts  
102 that are due and unpaid under each available coverage and how  
103 such amounts are calculated and of any other actions requested  
104 to cure the violation.

105 (c) Within 30 ~~20~~ days of receipt of the notice, the  
106 department shall ~~may~~ return any notice that does not provide the  
107 specific information required by this section, and the  
108 department shall indicate the specific deficiencies contained in  
109 the notice. A determination by the department to return a notice

110 for lack of specificity shall be exempt from the requirements of  
 111 chapter 120.

112 (d) No action shall lie if, within 90 ~~60~~ days after filing  
 113 notice, the damages are paid or the circumstances giving rise to  
 114 the violation are corrected.

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

118 (f) The applicable statute of limitations for an action  
 119 under this section shall be tolled for a period of 65 days by  
 120 the mailing of the notice required by this subsection or the  
 121 mailing of a subsequent notice required by this subsection.

122 (8) The civil remedy specified in this section preempts  
 123 ~~all does not preempt any other remedies and causes remedy or~~  
 124 ~~cause of action for extra-contractual damages for failure to~~  
 125 ~~settle under an insurance contract provided for pursuant to any~~  
 126 ~~other statute or pursuant to the common law of this state. Any~~  
 127 ~~person may obtain a judgment under either the common law remedy~~  
 128 ~~of bad faith or this statutory remedy, but shall not be entitled~~  
 129 ~~to a judgment under both remedies.~~ This section shall not be  
 130 construed to create a common-law cause of action. The damages  
 131 recoverable pursuant to this section shall include, but not  
 132 exceed, those actual damages which are a reasonably foreseeable  
 133 result of a specified violation of this section by the  
 134 authorized insurer and may include an award or judgment in an  
 135 amount that exceeds the policy limits. The rendition of a  
 136 judgment against a liability insured shall not raise any  
 137 presumption or inference that the violation will foreseeably

HB 589

2008

138 result in actual damages, except to the extent it is proven that  
139 the insured has or is reasonably expected to have assets from  
140 which such judgment is expected to be paid. The satisfaction of  
141 a judgment rendered against an insurer pursuant to this  
142 subsection shall operate as the satisfaction of the underlying  
143 judgment against the insured.

144 (10) In all actions against an insurer relating to failure  
145 to settle claims for liability insurance coverage, the burden of  
146 proof shall be clear and convincing evidence of an unreasonable  
147 refusal to settle.

148 (a) An insurer shall not be held liable for failure to pay  
149 its policy limits if the insurer tenders its policy limits by  
150 the earlier of:

151 1. The 210th day after service of the complaint in the  
152 negligence action upon the insured. The time period specified in  
153 this subparagraph shall be extended by an additional 60 days if  
154 the court finds in the action for a violation of this section  
155 that, at any time during such period and after the 150th day  
156 after service of the complaint in the underlying liability  
157 action, the claimant provided new information not previously  
158 provided to the insurer relating to the identity or testimony of  
159 any material witnesses or the identity of any additional  
160 claimants or defendants if such disclosure materially alters the  
161 risk to the insured of an excess judgment; or

162 2. The 60th day after the conclusion of all of the  
163 following:

164 a. Depositions of all claimants named in the complaint or  
165 amended complaint.

HB 589

2008

166 b. Depositions of all defendants named in the complaint or  
167 amended complaint, including, in the case of a corporate  
168 defendant, deposition of a designated representative.

169 c. Depositions of all of the claimants' expert witnesses.

170 d. The initial disclosure of witnesses and production of  
171 documents.

172  
173 When there are multiple claimants seeking compensation from the  
174 same insured or multiple insureds or when there is a single  
175 claimant seeking compensation from multiple insureds for damages  
176 arising from the same occurrence, which compensation in the  
177 aggregate exceeds policy limits, the insurer of the insured or  
178 insureds shall not be held liable for extra-contractual damages  
179 for failure to pay its policy limits if the insurer makes a  
180 written offer of its policy limits within the timeframe set  
181 forth in this subsection to all known potential claimants in  
182 exchange for releases of all claims against all insureds or  
183 tenders such limits to the court for apportionment to the  
184 claimants.

185 (b) Either party may request that the court enter an order  
186 finding that the other party has unnecessarily or  
187 inappropriately delayed any of the events specified in  
188 subparagraph (a)2. If the court finds that the claimant was  
189 responsible for such unnecessary or inappropriate delay,  
190 subparagraph (a)1. shall not apply to the insurer's tendering of  
191 policy limits. If the court finds that the defendant or insurer  
192 was responsible for such unnecessary or inappropriate delay,  
193 subparagraph (a)2. shall not apply to the insurer's tendering of

HB 589

2008

194 policy limits.

195 (c) If any party to an action alleging liability for acts  
196 covered by liability insurance amends its witness list after  
197 service of the complaint in such action, that party shall  
198 provide a copy of the amended witness list to the insurer of the  
199 defendant.

200 (d) The time limits specified in this subsection shall not  
201 be admissible as evidence that the insurer acted in violation of  
202 this section.

203 (11) When an insurer does not tender its policy limits to  
204 settle a liability insurance claim under subsection (10), the  
205 trier of fact, in determining whether an insurer has acted in  
206 violation of this section, shall consider only:

207 (a) The insurer's willingness to negotiate with the  
208 claimant in anticipation of settlement.

209 (b) The propriety of the insurer's methods of  
210 investigating and evaluating the claim.

211 (c) Whether the insurer timely informed the insured of an  
212 offer to settle within the limits of coverage, the right to  
213 retain personal counsel, and the risk of litigation.

214 (d) Whether the insured denied liability or requested that  
215 the case be defended after the insurer fully advised the insured  
216 as to the facts and risks.

217 (e) Whether the claimant imposed any condition, other than  
218 the tender of the policy limits, on the settlement of the claim.

219 (f) Whether the claimant provided all relevant information  
220 to the insurer on a timely basis.



221 (g) Whether and when other defendants in the case settled  
 222 or were dismissed from the case.

223 (h) Whether there were multiple claimants seeking, in the  
 224 aggregate, compensation in excess of policy limits from the  
 225 defendant or the defendant's insurer.

226 (i) Whether the insured or claimant misrepresented  
 227 material facts to the insurer or made material omissions of fact  
 228 to the insurer.

229 (j) Other matters that constitute defenses or limitations  
 230 to actions or damages that are specified in this section.

231 (12) An insurer that tenders policy limits shall be  
 232 entitled to a release of its insured if the claimant accepts the  
 233 tender.

234 (13) Nothing in this section shall be construed to  
 235 prohibit an insured from assigning the cause of action to an  
 236 injured third-party claimant for the insurer's failure to act  
 237 fairly and honestly towards its insured and with due regard for  
 238 the insured's interest.

239 Section 2. This act shall take effect upon becoming a law.