

By Senator Baker

20-02616-08

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1 A bill to be entitled

2 An act relating to civil actions against insurers;  
3 amending s. 624.155, F.S.; providing that only an insured  
4 of the insurer may bring a civil action against the  
5 insurer under specified circumstances; requiring the  
6 insured to cooperate fully with an insurer in asserting a  
7 demand for settlement; specifying certain activities the  
8 insurer may interpose as a defense to a civil remedy;  
9 revising time periods relating to notices in certain  
10 actions; revising notice requirements; providing that the  
11 remedies specified preempt other civil remedies created by  
12 statute or common law; specifying the effect of certain  
13 judgments; requiring an insured to prove by clear and  
14 convincing evidence the allegations made in an action  
15 relating to the insurer's failure to settle a claim;  
16 limiting the liability of an insurer for failing to pay  
17 its policy limits under certain circumstances; authorizing  
18 parties to request certain court orders relating to  
19 unnecessary or inappropriate delay; providing procedures  
20 for amending witness lists; limiting admissibility of  
21 certain evidence; specifying considerations for a trier of  
22 fact in certain actions; providing for construction  
23 relating to assigning causes of action; providing an  
24 effective date.

25  
26 Be It Enacted by the Legislature of the State of Florida:  
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28 Section 1. Subsections (1), (3), and (8) of section  
29 624.155, Florida Statutes, are amended, and subsections (10),  
30 (11), (12), and (13) are added to that section, to read:

31 624.155 Civil remedy.--

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

34 (a) By a violation of any of the following provisions by  
35 the insurer:

- 36 1. Section 626.9541(1)(i), (o), or (x);
- 37 2. Section 626.9551;
- 38 3. Section 626.9705;
- 39 4. Section 626.9706;
- 40 5. Section 626.9707; or
- 41 6. Section 627.7283.

42 (b) By the commission of any of the following acts by the  
43 insurer:

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

53 a. Failed to cooperate fully in facilitating the  
54 settlement;

55 b. Imposed or adhered to time limits or other conditions of  
56 settlement without at that time demonstrating to the insurer

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57 valid reasons that such time limits or other conditions were  
58 reasonable and necessary and that such reasons were totally  
59 unrelated to the possibility of obtaining damages under this  
60 section; or

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

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

67 3. Except as to liability coverage, failing to promptly  
68 settle claims, when the obligation to settle a claim has become  
69 reasonably clear, under one portion of the insurance policy  
70 coverage in order to influence settlements under other portions  
71 of the insurance policy coverage.

72  
73 Notwithstanding the provisions of the above to the contrary, a  
74 person pursuing a remedy under this section need not prove that  
75 such act was committed or performed with such frequency as to  
76 indicate a general business practice.

77 (3) (a) As a condition precedent to bringing an action under  
78 this section, the department and the authorized insurer must have  
79 been given 90 ~~60~~ days' written notice of the violation. If the  
80 department returns a notice for lack of specificity, the 90-day  
81 ~~60-day~~ time period does ~~shall~~ not begin until a proper notice is  
82 filed.

83 (b) The notice shall be on a form provided by the  
84 department and shall state with specificity the following

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85 information, and such other information as the department may  
86 require:

87 1. The statutory provision, including the specific language  
88 of the statute, which the authorized insurer allegedly violated.

89 2. The specific facts and circumstances giving rise to the  
90 violation, including facts and circumstances pertinent to each  
91 factor stated in subsection (11) and the identity of all parties  
92 who have made claims against the insured for the occurrence  
93 giving rise to the claim and any documentation pertaining to such  
94 claims.

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

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

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

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

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

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113 specificity is ~~shall be~~ exempt from the requirements of chapter  
114 120.

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

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

121 (f) The applicable statute of limitations for an action  
122 under this section shall be tolled for a period of 95 ~~65~~ days by  
123 the mailing of the notice required by this subsection or the  
124 mailing of a subsequent notice required by this subsection.

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

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142 expected to have assets from which the judgment is expected to be  
143 paid. The satisfaction of a judgment rendered against an insurer  
144 under this section operates as the satisfaction of the underlying  
145 judgment against the insured.

146 (10) In an action against an insurer arising from an  
147 allegation that the insurer failed to settle a claim for  
148 liability insurance coverage, the burden is on the insured to  
149 prove, by clear and convincing evidence, that the insurer's  
150 refusal to settle was unreasonable.

151 (a) An insurer is not liable for failing to pay the  
152 insurer's policy limits if the insurer tenders the insurer's  
153 policy limits by the earlier of:

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

165 2. The 60th day after the conclusion of all of the  
166 following:

167 a. Depositions of all claimants named in the complaint or  
168 amended complaint.

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169 b. Depositions of all defendants named in the complaint or  
170 amended complaint, including, in the case of a corporate  
171 defendant, deposition of a designated representative.

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

173 d. The initial disclosure of witnesses and production of  
174 documents.

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

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

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

202        (d) The time limits specified in this subsection are not  
203 admissible as evidence that the insurer acted in violation of  
204 this section.

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

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

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

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

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

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

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

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



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

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

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

233 (12) An insurer that tenders the insurer's policy limits is  
234 entitled to a release of its insured if the claimant accepts the  
235 tender.

236 (13) This section does not prohibit an insured from  
237 assigning the cause of action to an injured third-party claimant  
238 for the insurer's failure to act fairly and honestly towards its  
239 insured and with due regard for the insured's interest.

240 Section 2. This act shall take effect July 1, 2008.