

By Senator Oelrich

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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.; authorizing an insured to
4 bring a civil action against an insurer when the
5 insured is damaged by the commission of certain acts
6 by the insurer; revising notice requirements related
7 to such civil actions; requiring the insured and any
8 person demanding settlement to cooperate with the
9 insurer with regard to facilitating the settlement;
10 requiring that notice of such actions contain certain
11 information; deleting an exemption for a third-party
12 claimant; authorizing the Department of Financial
13 Services to return such notice within a specified
14 period after receipt under certain circumstances;
15 providing that no action shall lie if damages are paid
16 or the circumstances giving rise to the insurer's
17 violation are corrected within a specified period;
18 extending the period for which the applicable statute
19 of limitations may be tolled under certain
20 circumstances; providing for the preemption of other
21 civil remedies; requiring that an insured prove, by
22 clear and convincing evidence, that the insurer's
23 refusal to settle was unreasonable in an action
24 arising from an allegation that the insurer failed to
25 settle a claim for liability insurance coverage;
26 providing that the insurer of an insured or insureds
27 is not liable for extracontractual damages for failing
28 to pay the insurer's policy limits under certain
29 circumstances; providing that an insurer that tenders

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30 its policy limits is entitled to a release from its
31 insured if the claimant accepts the tender; providing
32 circumstances under which a civil cause of action does
33 not exist; providing that an insured is not prohibited
34 from assigning the cause of action to an injured
35 third-party claimant for the insurer's failure to act
36 fairly and honestly toward its insured and with due
37 regard for the insured's interest; providing for
38 applicability; providing an effective date.

39
40 Be It Enacted by the Legislature of the State of Florida:

41
42 Section 1. Subsections (1), (3), and (8) of section
43 624.155, Florida Statutes, are amended, and subsections (10),
44 (11), (12), (13), (14), and (15) are added to that section, to
45 read:

46 624.155 Civil remedy.—

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

49 (a) By a violation of any of the following provisions by
50 the insurer:

- 51 1. Section 626.9541(1) (i), (o), or (x);
- 52 2. Section 626.9551;
- 53 3. Section 626.9705;
- 54 4. Section 626.9706;
- 55 5. Section 626.9707; or
- 56 6. Section 627.7283.

57 (b) By the commission of any of the following acts by the
58 insurer:

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59 1. Not attempting in good faith to settle claims when,
60 under all the circumstances, it could and should have done so,
61 had it acted fairly and honestly toward its insured and with due
62 regard for her or his interests. However, both the insured and
63 any person asserting a demand for such settlement owes a similar
64 duty to the insurer to cooperate fully with the insurer, and it
65 is a defense to any action brought under this section if the
66 court finds that the insured or other person demanding
67 settlement failed to cooperate fully with regard to facilitating
68 the settlement;

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

72 3. Except as to liability coverages, failing to promptly
73 settle claims, when the obligation to settle a claim has become
74 reasonably clear, under one portion of the insurance policy
75 coverage in order to influence settlements under other portions
76 of the insurance policy coverage.

77
78 Notwithstanding the provisions of the above to the contrary, a
79 person pursuing a remedy under this section need not prove that
80 such act was committed or performed with such frequency as to
81 indicate a general business practice.

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

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88 (b) The notice shall be on a form provided by the
89 department and shall state with specificity the following
90 information, and such other information as the department may
91 require:

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

94 2. The facts and circumstances giving rise to the
95 violation, and any amount in dispute.

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

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

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

105 (c) Within 30 ~~20~~ days after the date on which the
106 department receives ~~of receipt of~~ the notice, the department may
107 return any notice that does not provide the specific information
108 required by this section, and the department shall indicate the
109 specific deficiencies contained in the notice. A determination
110 by the department to return a notice for lack of specificity is
111 ~~shall be~~ exempt from the requirements of 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

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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 95 ~~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 all
123 ~~does not preempt any other remedies or causes remedy or cause of~~
124 action for extracontractual damages for failing to settle under
125 an insurance contract that are 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 does ~~shall~~ not
130 ~~be construed to~~ create a common-law cause of action. The damages
131 recoverable pursuant to this section shall include those damages
132 which are a reasonably foreseeable result of a specified
133 violation of this section by the authorized insurer and may
134 include an award or judgment in an amount that exceeds the
135 policy limits.

136 (10) In an action against an insurer arising from an
137 allegation that the insurer failed to settle a claim for
138 liability insurance coverage, the insured has the burden to
139 prove, by clear and convincing evidence, that the insurer's
140 refusal to settle was unreasonable.

141 (11) If multiple claimants seek compensation from the same
142 insured or multiple insureds or if a single claimant seeks
143 compensation from multiple insureds for damages arising from the
144 same occurrence, and such compensation in the aggregate exceeds
145 the policy limits of the insurer, the insurer of the insured or

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146 insureds is not liable for extracontractual damages for failing
147 to pay the insurer's policy limits if the insurer makes a
148 written offer of its policy limits within the timeframe set
149 forth in this section to all known potential claimants in
150 exchange for releases of all claims against all insureds or
151 tenders such limits to the court for apportionment to the
152 claimants.

153 (12) An insurer that tenders its policy limits is entitled
154 to a release from its insured if the claimant accepts the
155 tender.

156 (13) A cause of action does not exist under this section if
157 an insurer remedies the alleged violation contained in the
158 notice issued under subsection (3) within 90 days after the date
159 on which such notice was issued if such notice meets all
160 requirements of that subsection.

161 (14) This section does not prohibit an insured from
162 assigning the cause of action to an injured third-party claimant
163 for the insurer's failure to act fairly and honestly toward its
164 insured or with due regard for the insured's interest.

165 (15) This section applies to all actions involving medical
166 malpractice claims, unless such claims arise under or are
167 controlled by s. 766.1185.

168 Section 2. This act shall take effect July 1, 2009.