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1 A bill to be entitled
2 An act relating to civil remedies against insurers;
3 amending s. 624.155, F.S.; revising provisions relating to
4 civil actions against insurers; providing a definition;
5 revising the grounds for bringing an action based on the
6 insurer's failure to accept an offer to settle within
7 policy limits; providing who may bring such an action;
8 providing requirements for bringing such an action;
9 providing for the release of an insured if the insurer
10 offers to settle a third-party claim within a specified
11 time under certain circumstances; providing that the
12 insurer has an affirmative defense if a third-party
13 claimant or the insured fails to cooperate with the
14 insurer; providing that an insurer is not liable for two
15 or more claims that exceed the policy limits if it files
16 an interpleader action or makes the policy limits
17 available under arbitration; specifying responsibility for
18 the payment of liens; providing that an insurer is not
19 liable for amounts in excess of the policy limits if it
20 makes timely payment of the appraisal amount; providing
21 that certain refusals to act by the insurer are not
22 presumptive evidence of bad faith; revising requirements
23 relating to the preaction notice of a civil action sent to
24 the Department of Financial Regulation and the insurer;
25 specifying work-product protection requirements;
26 prohibiting an award of fees and costs from including any
27 form of multiplier or enhancement; providing that the
28 provisions of the act replace the common law; amending s.

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29 | 627.311, F.S.; conforming a cross-reference; deleting an
 30 | obsolete provision; amending s. 627.727, F.S.; revising
 31 | and limiting the damages that are recoverable from an
 32 | uninsured motorist carrier in a civil action; providing
 33 | for severability; providing an effective date.

34 |

35 | Be It Enacted by the Legislature of the State of Florida:

36 |

37 | Section 1. Section 624.155, Florida Statutes, is amended
 38 | to read:

39 | 624.155 Civil remedy.—

40 | (1) As used in the section, the term "third-party claim"
 41 | means a claim against an insured, by one other than the insured,
 42 | on account of harm or damage allegedly caused by an insured and
 43 | covered by a policy of liability insurance.

44 | (2)~~(1)~~ Any person may bring a civil action against an
 45 | insurer if ~~when~~ such person is damaged:

46 | (a) By the insurer's ~~a~~ violation of ~~any of~~ the following
 47 | ~~provisions by the insurer:~~

- 48 | 1. Section 626.9541(1)(i), (o), or (x);
- 49 | 2. Section 626.9551;
- 50 | 3. Section 626.9705;
- 51 | 4. Section 626.9706;
- 52 | 5. Section 626.9707; or
- 53 | 6. Section 627.7283.

54 | (b) By the insurer's commission of any of the following
 55 | ~~acts by the insurer:~~

- 56 | 1. Acting in gross disregard of the insured's interest by

57 failing to accept a ~~Not attempting in~~ good faith written demand
 58 to settle claims within the policy limits if ~~when~~, under all the
 59 circumstances existing at the relevant time, it could and should
 60 have done so, had it acted fairly and honestly toward its
 61 insured and ~~with due regard for her or his interests;~~

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

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

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

75 (3) If a civil action is brought against an insurer
 76 pursuant to subparagraph (2)(b)1.:

77 (a) Only an insured or the insured's assignee may bring
 78 such an action.

79 (b) With respect to a third-party claim, an insurer does
 80 not violate the duty set forth in subparagraph (2)(b)1. if the
 81 third-party claimant does not provide a demand to settle which:

82 1. Is in writing, signed by the third-party claimant or
 83 the claimant's authorized representative, and delivered to the
 84 insurer and the insured;

85 2. States that it is a demand to settle made pursuant to
 86 this section;

87 3. States a specified amount within the insured's policy
 88 limits for which the third-party claimant offers to settle its
 89 claim in full and to release the insured from liability;

90 4. Is limited to one claimant and one line of coverage or,
 91 if not so limited, separately designates a demand for each
 92 claimant and each line of coverage, each of which may be
 93 accepted independently;

94 5. Is submitted by a person having the legal authority to
 95 accept payment and to execute the release;

96 6. Does not contain any conditions for acceptance other
 97 than payment of the specific amount demanded and compliance with
 98 the disclosure requirements of s. 627.4137; and

99 7. Includes a detailed explanation of the coverage and
 100 liability issues and the facts giving rise to the claim,
 101 including an explanation of injuries and damages claimed; the
 102 names of known witnesses; and a listing and copy, if available,
 103 of relevant documents, including medical records, which are
 104 available to the third-party claimant or authorized
 105 representative at the time of the demand to settle. The third-
 106 party claimant and his or her representatives have a continuing
 107 duty to supplement this information as it becomes available.

108 (c) With respect to a third-party claim, an insurer does
 109 not violate the duty set forth in subparagraph (2) (b)1. if,
 110 within 60 days after the insurer's receipt of the third-party
 111 claimant's written demand to settle, or within 90 days after the
 112 insurer's receipt of the notice of the claim, whichever is

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113 later, the insurer offers to pay the lesser of:

114 1. The amount requested in the third-party claimant's
115 written demand to settle; or

116 2. The insured's policy limits, in exchange for a release
117 of liability.

118 (d) An insurer has an affirmative defense to any such
119 action if the third-party claimant, the insured, or their
120 representatives fail to fully cooperate in providing all
121 relevant information and in presenting the claim.

122 (4) Notwithstanding subsection (3), if two or more third-
123 party claimants make competing claims arising out of a single
124 occurrence, which in total exceed the available policy limits of
125 one or more of the insured parties who may be liable to the
126 third-party claimants, an insurer is not liable beyond the
127 available policy limits for failure to pay all or any portion of
128 the available policy limits to one or more of the third-party
129 claimants if, within 90 days after receiving notice of the
130 competing claims in excess of the available policy limits, the
131 insurer:

132 (a) Files an interpleader action under the Florida Rules
133 of Civil Procedure. If the claims of the competing third-party
134 claimants are found to be in excess of the policy limits, the
135 third-party claimants are entitled to a prorated share of the
136 policy limits as determined by the trier of fact. An insurer's
137 interpleader action does not alter or amend the insurer's
138 obligation to defend its insured; or

139 (b) Pursuant to binding arbitration, makes the entire
140 amount of the policy limits available for payment to the

141 competing third-party claimants before a qualified arbitrator
 142 selected by the insurer at the expense of the insurer. The
 143 third-party claimants are entitled to a prorated share of the
 144 policy limits as determined by the arbitrator, who shall
 145 consider the comparative fault, if any, of each third-party
 146 claimant, and the total likely outcome at trial based upon the
 147 total of the economic and noneconomic damages submitted to the
 148 arbitrator for consideration. A third-party claimant whose claim
 149 is resolved by the arbitrator shall execute and deliver a
 150 general release to the insured party whose claim is resolved by
 151 the proceeding.

152 (5) After settlement of a third-party claim, the third-
 153 party claimant's attorney is responsible for the satisfaction of
 154 any liens from the settlement funds to the extent such
 155 settlement funds are sufficient. If the third-party claimant is
 156 not represented by counsel, the third-party claimant shall
 157 provide the insurer with a written accounting of all outstanding
 158 liens.

159 (6) An insurer is not liable for amounts in excess of the
 160 policy limits or of the award, whichever is less, if it makes
 161 timely payment of an appraisal award.

162 (7) The fact that the insurer does not accept a demand to
 163 settle or offer policy limits under paragraph (3)(c), pay an
 164 appraisal award under subsection (6), or file an interpleader
 165 action or make policy limits available for arbitration under
 166 subsection (4) during the times specified does not give rise to
 167 a presumption that the insurer acted in bad faith.

168 (8)-2- Any party may bring a civil action against an

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169 unauthorized insurer if such party is damaged by a violation of
170 s. 624.401 by the unauthorized insurer.

171 ~~(9)(3)(a)~~ Except for an action relating to a third-party
172 claim, as a condition precedent to bringing an action under this
173 section, the department and the authorized insurer must be ~~have~~
174 ~~been~~ given 60 days' written notice of the violation. If the
175 department returns a notice for lack of specificity, the 60-day
176 time period does ~~shall~~ not begin until a proper notice is filed.

177 ~~(a)(b)~~ The notice shall be on a form provided by the
178 department, sent by certified mail to the claim handler if known
179 or, if unknown, to the specific office handling the claim, and
180 ~~shall~~ state with specificity the following information, ~~and such~~
181 ~~other information as the department may require:~~

182 1. The statutory provision, including the specific
183 language of the statute, which the authorized insurer allegedly
184 violated.

185 2. The facts and circumstances reasonably known to the
186 insurer giving rise to the violation, stated with specificity,
187 and the corrective action that the insurer needs to take to
188 remedy the alleged violation.

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

190 4. Reference to specific policy language that is relevant
191 to the violation, if any. ~~If the person bringing the civil~~
192 ~~action is a third party claimant, she or he shall not be~~
193 ~~required to reference the specific policy language if the~~
194 ~~authorized insurer has not provided a copy of the policy to the~~
195 ~~third party claimant pursuant to written request.~~

196 5. A statement that the notice is given in order to

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197 perfect the right to pursue the civil remedy authorized by this
198 section.

199 6. Such other information as the department may require.

200 (b) ~~(e)~~ Within 20 days after ~~of~~ receipt of the notice, the
201 department may return any notice that does not provide the
202 specific information required by this section, ~~and the~~
203 ~~department shall~~ indicate the specific deficiencies contained in
204 the notice. A determination by the department to return a notice
205 for lack of specificity is ~~shall be~~ exempt from ~~the requirements~~
206 ~~of~~ chapter 120.

207 (c) ~~(d)~~ No action shall lie if, within 60 days after filing
208 notice, the damages are paid or the circumstances giving rise to
209 the violation are corrected.

210 (d) ~~(e)~~ The authorized insurer that is the recipient of the
211 a notice must ~~filed pursuant to this section~~ shall report to the
212 department on the disposition of the alleged violation.

213 (e) ~~(f)~~ The applicable statute of limitations for an action
214 under this section is ~~shall be~~ tolled for ~~a period of~~ 65 days by
215 the mailing of the notice ~~required by this subsection~~ or the
216 mailing of a subsequent notice ~~required by this subsection~~.

217 (10) With respect to:

218 (a) A first-party claim, the insurer does not owe a
219 fiduciary duty to the insured and retains the right to protect
220 materials covered by the work-product privilege found within the
221 claim processing file. The privilege must yield to inspection if
222 an appropriate showing is made under the Florida Rules of Civil
223 Procedure. The attorney-client privilege remains absolute.

224 (b) A third-party claim, until a claim or action for

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225 payment on a policy of insurance is final, all files of an
 226 insurer, including papers, communications, investigatory
 227 reports, or other documents in the insurer's files are the
 228 insurer's work product and immune from production or discovery.
 229 Thereafter, discovery shall be determined in accordance with the
 230 Florida Rules of Civil Procedure. Communications between an
 231 insurer and its counsel which are protected under s. 90.502
 232 remain protected.

233 (11)(4) Upon adverse adjudication at trial or upon appeal,
 234 the authorized insurer is ~~shall be~~ liable for damages, together
 235 with court costs and reasonable attorney's fees incurred by the
 236 plaintiff. An award of fees and costs may not include any form
 237 of multiplier or enhancement.

238 (12)(5) ~~No~~ Punitive damages may not ~~shall~~ be awarded under
 239 this section unless the acts giving rise to the violation occur
 240 with such frequency as to indicate a general business practice
 241 and these acts are:

- 242 (a) Willful, wanton, and malicious;
- 243 (b) In reckless disregard for the rights of any insured;
- 244 or
- 245 (c) In reckless disregard for the rights of a beneficiary
- 246 under a life insurance contract.

247
 248 Any person who pursues a claim under this subsection must ~~shall~~
 249 post in advance the costs of discovery. Such costs shall be
 250 awarded to the authorized insurer if ~~no~~ punitive damages are not
 251 awarded to the plaintiff.

252 (13)(6) This section does ~~shall~~ not be ~~construed to~~

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253 authorize a class action suit against an authorized insurer or a
 254 civil action against the commission, the office, or the
 255 department or any of their employees, or ~~to~~ create a cause of
 256 action if ~~when~~ an authorized health insurer refuses to pay a
 257 claim for reimbursement on the ground that the charge for a
 258 service was unreasonably high or that the service provided was
 259 not medically necessary.

260 ~~(14)(7) In the absence of expressed language to the~~
 261 ~~contrary,~~ This section does ~~shall~~ not be construed to authorize
 262 a civil action or create a cause of action against an authorized
 263 insurer or its employees who, in good faith, release information
 264 about an insured or an insurance policy to a law enforcement
 265 agency in furtherance of an investigation of a criminal or
 266 fraudulent act relating to a motor vehicle theft or a motor
 267 vehicle insurance claim.

268 (15) The civil remedies specified in this section are the
 269 sole remedies and causes of action for extracontractual damages
 270 for bad-faith failure to settle under an insurance contract. Any
 271 related common-law causes of action are replaced and superseded
 272 by this section. The provisions of this section apply to all
 273 cases brought pursuant to this section unless specifically
 274 controlled by s. 766.1185.

275 ~~(8) The civil remedy specified in this section does not~~
 276 ~~preempt any other remedy or cause of action provided for~~
 277 ~~pursuant to any other statute or pursuant to the common law of~~
 278 ~~this state. Any person may obtain a judgment under either the~~
 279 ~~common-law remedy of bad faith or this statutory remedy, but~~
 280 ~~shall not be entitled to a judgment under both remedies. This~~

281 ~~section shall not be construed to create a common law cause of~~
 282 ~~action. The damages recoverable pursuant to this section shall~~
 283 ~~include those damages which are a reasonably foreseeable result~~
 284 ~~of a specified violation of this section by the authorized~~
 285 ~~insurer and may include an award or judgment in an amount that~~
 286 ~~exceeds the policy limits.~~

287 (16)~~(9)~~ A surety issuing a payment or performance bond on
 288 the construction or maintenance of a building or roadway project
 289 is not an insurer for purposes of subsection (2) ~~(1)~~.

290 Section 2. Paragraph (k) of subsection (3) of section
 291 627.311, Florida Statutes, is amended to read:

292 627.311 Joint underwriters and joint reinsurers; public
 293 records and public meetings exemptions.—

294 (3) The office may, after consultation with insurers
 295 licensed to write automobile insurance in this state, approve a
 296 joint underwriting plan for purposes of equitable apportionment
 297 or sharing among insurers of automobile liability insurance and
 298 other motor vehicle insurance, as an alternate to the plan
 299 required in s. 627.351(1). All insurers authorized to write
 300 automobile insurance in this state shall subscribe to the plan
 301 and participate therein. The plan shall be subject to continuous
 302 review by the office which may at any time disapprove the entire
 303 plan or any part thereof if it determines that conditions have
 304 changed since prior approval and that in view of the purposes of
 305 the plan changes are warranted. Any disapproval by the office
 306 shall be subject to the provisions of chapter 120. The Florida
 307 Automobile Joint Underwriting Association is created under the
 308 plan. The plan and the association:

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309 (k)~~1~~. Shall have no liability, and no cause of action ~~of~~
310 ~~any nature shall arise~~ against any member insurer or its agents
311 or employees, agents or employees of the association, members of
312 the board of governors of the association, the Chief Financial
313 Officer, or the office or its representatives for any action
314 taken by them in the performance of their duties or
315 responsibilities under this subsection. Such immunity does not
316 apply to actions for or arising out of a breach of any contract
317 or agreement pertaining to insurance, or any willful tort.

318 2. ~~Notwithstanding the requirements of s. 624.155(3)(a),~~
319 ~~as a condition precedent to bringing an action against the plan~~
320 ~~under s. 624.155, the department and the plan must have been~~
321 ~~given 90 days' written notice of the violation. If the~~
322 ~~department returns a notice for lack of specificity, the 90-day~~
323 ~~time period shall not begin until a proper notice is filed. This~~
324 ~~notice must comply with the information requirements of s.~~
325 ~~624.155(3)(b). Effective October 1, 2007, this subparagraph~~
326 ~~shall expire unless reenacted by the Legislature prior to that~~
327 ~~date.~~

328 Section 3. Subsection (10) of section 627.727, Florida
329 Statutes, is amended to read:

330 627.727 Motor vehicle insurance; uninsured and
331 underinsured vehicle coverage; insolvent insurer protection.—

332 (10) The damages recoverable from an uninsured motorist
333 carrier in an action brought under s. 624.155 ~~shall~~ include the
334 total amount of the claimant's damages, including the amount in
335 excess of the policy limits but not exceeding two times the
336 policy limits, any interest on unpaid benefits, and reasonable

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337 attorney's fees and costs, ~~and any damages caused by a violation~~
338 ~~of a law of this state.~~ The total amount of the claimant's
339 damages is recoverable whether caused by an insurer or by a
340 third-party tortfeasor.

341 Section 4. If any provision of this act or its application
342 to any person or circumstance is held invalid, the invalidity
343 does not affect other provisions or applications of the act
344 which can be given effect without the invalid provision or
345 application, and to this end the provisions of this act are
346 severable.

347 Section 5. This act shall take effect July 1, 2011.