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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2011	.	
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	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

624.155 Civil remedy.—

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

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

1. Section 626.9541(1)(i), (o), or (x);
2. Section 626.9551;



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- 14 3. Section 626.9705;
15 4. Section 626.9706;
16 5. Section 626.9707; or
17 6. Section 627.7283.

18 (b) By the insurer's commission of any of the following
19 acts ~~by the insurer~~:

20 1. Acting arbitrarily and contrary to the insured's
21 interests in failing ~~Not attempting in good faith~~ to settle
22 claims within the policy limits if ~~when~~, under all the
23 circumstances existing at the relevant time, it could and should
24 have done so, had it acted fairly and honestly toward its
25 insured ~~and with due regard for her or his interests~~;

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

29 3. Except as to liability coverages, failing to promptly
30 settle claims, when the obligation to settle a claim has become
31 reasonably clear, under one portion of the insurance policy
32 coverage in order to influence settlements under other portions
33 of the insurance policy coverage.

34
35 Notwithstanding the ~~provisions of the above to the contrary~~, a
36 person pursuing a remedy under this section need not prove that
37 such act was committed or performed with such frequency as to
38 indicate a general business practice.

39 (2) If a civil action is brought against an insurer
40 pursuant to subparagraph (1)(b)1., or based on a common law
41 claim for a bad faith failure to settle:

42 (a) Only an insured or the insured's assignee may bring



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43 such action.

44 (b) With respect to a third-party claim, an insurer does
45 not violate the duty to attempt in good faith to settle on
46 behalf of its insured if the third-party claimant does not
47 provide a demand to settle which:

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

51 2. States a specified amount within the insured's policy
52 limits for which the third-party claimant offers to settle its
53 claim in full and to release the insured from liability;

54 3. Is limited to one claimant and one line of coverage or,
55 if not so limited, separately designates a demand for each
56 claimant and each line of coverage, each of which may be
57 accepted independently;

58 4. Is submitted by a person having the legal authority to
59 accept payment and to execute the release;

60 5. Does not contain any conditions for acceptance other
61 than payment of the specific amount demanded and compliance with
62 the disclosure requirements of s. 627.4137; and

63 6. Includes a detailed explanation of the coverage and
64 liability issues and the facts giving rise to the claim,
65 including an explanation of injuries and damages claimed; the
66 names of known witnesses; and a listing and copy, if available,
67 of relevant documents, including medical records, which are
68 available to the third-party claimant or authorized
69 representative at the time of the demand to settle. The third-
70 party claimant and his or her representatives have a continuing
71 duty to supplement this information as it becomes available.



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72 (c) With respect to a third-party claim, an insured does
73 not violate the duty to attempt in good faith to settle on
74 behalf of its insured if, within 60 days after the notice of
75 claim, 60 days after the insurer's receipt of the third-party
76 claimant's written demand to settle, or 30 days after the
77 accident or incident giving rise to the claim, whichever is
78 later, the insurer offers to pay the lesser of:

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

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

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

87 (3) Notwithstanding statutory or common law requirements,
88 if two or more third-party claimants make competing claims
89 arising out of a single occurrence, which in total exceed the
90 available policy limits of one or more of the insured parties
91 who may be liable to the third-party claimants, an insurer is
92 not liable beyond the available policy limits for failure to pay
93 all or any portion of the available policy limits to one or more
94 of the third-party claimants if, within 90 days after receiving
95 notice of the competing claims in excess of the available policy
96 limits, the insurer:

97 (a) Files an interpleader action under the Florida Rules of
98 Civil Procedure. If the claims of the competing third-party
99 claimants are found to be in excess of the policy limits, the
100 third-party claimants are entitled to a prorated share of the



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101 policy limits as determined by the trier of fact. An insurer's
102 interpleader action does not alter or amend the insurer's
103 obligation to defend its insured; or

104 (b) Pursuant to binding arbitration agreed to by all
105 parties, makes the entire amount of the policy limits available
106 for payment to the competing third-party claimants before a
107 qualified arbitrator selected by the insurer at the expense of
108 the insurer. The third-party claimants are entitled to a
109 prorated share of the policy limits as determined by the
110 arbitrator, who shall consider the comparative fault, if any, of
111 each third-party claimant, and the total likely outcome at trial
112 based upon the total of the economic and noneconomic damages
113 submitted to the arbitrator for consideration. A third-party
114 claimant whose claim is resolved by the arbitrator shall execute
115 and deliver a general release to the insured party whose claim
116 is resolved by the proceeding.

117 (4) After settlement of a third-party claim, the third-
118 party claimant's attorney is responsible for the satisfaction of
119 any liens from the settlement funds to the extent such
120 settlement funds are sufficient. If the third-party claimant is
121 not represented by counsel, the third-party claimant shall
122 provide the insurer with a written accounting of all outstanding
123 liens.

124 (5) An insurer is not liable for amounts in excess of the
125 policy limits or of the award, whichever is less, if it makes
126 timely payment of an appraisal award.

127 (6) The fact that the insurer does not accept a demand to
128 settle or offer policy limits under paragraph (2) (c), pay an
129 appraisal award under subsection (5), or file an interpleader



130 action or make policy limits available for arbitration under
131 subsection (3) during the times specified does not give rise to
132 a presumption that the insurer acted in bad faith.

133 (7)(2) Any party may bring a civil action against an
134 unauthorized insurer if such party is damaged by a violation of
135 s. 624.401 by the unauthorized insurer.

136 (8)(3)(a) Except for an action relating to a third-party
137 claim, as a condition precedent to bringing an action under this
138 section, the department and the authorized insurer must ~~be~~ have
139 been given 60 days' written notice of the violation. If the
140 department returns a notice for lack of specificity, the 60-day
141 time period ~~does shall~~ not begin until a proper notice is filed.

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

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

149 2. The facts and circumstances reasonably known to the
150 insurer giving rise to the violation, stated with specificity,
151 and the corrective action that the insurer needs to take to
152 remedy the alleged violation.

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

154 4. Reference to specific policy language that is relevant
155 to the violation, if any. ~~If the person bringing the civil~~
156 ~~action is a third party claimant, she or he shall not be~~
157 ~~required to reference the specific policy language if the~~
158 ~~authorized insurer has not provided a copy of the policy to the~~



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159 ~~third party claimant pursuant to written request.~~

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

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

163 ~~(b)(e)~~ Within 20 days after ~~of~~ receipt of the notice, the
164 department may return any notice that does not provide the
165 specific information required by this section, ~~and the~~
166 ~~department shall~~ indicate the specific deficiencies contained in
167 the notice. A determination by the department to return a notice
168 for lack of specificity is ~~shall be~~ exempt from ~~the requirements~~
169 ~~of~~ chapter 120.

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

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

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

180 ~~(9)(4)~~ Upon adverse adjudication at trial or upon appeal,
181 the authorized insurer is ~~shall be~~ liable for damages, together
182 with court costs and reasonable attorney's fees incurred by the
183 plaintiff.

184 ~~(10)(5)~~ ~~No~~ Punitive damages may not ~~shall~~ be awarded under
185 this section unless the acts giving rise to the violation occur
186 with such frequency as to indicate a general business practice
187 and these acts are:



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188 (a) Willful, wanton, and malicious;

189 (b) In reckless disregard for the rights of any insured; or

190 (c) In reckless disregard for the rights of a beneficiary
191 under a life insurance contract.

192
193 Any person who pursues a claim under this subsection must ~~shall~~
194 post in advance the costs of discovery. Such costs shall be
195 awarded to the authorized insurer if ~~no~~ punitive damages are not
196 awarded to the plaintiff.

197 ~~(11)(6)~~ This section does ~~shall~~ not be construed to
198 authorize a class action suit against an authorized insurer or a
199 civil action against the commission, the office, or the
200 department or any of their employees, or ~~to~~ create a cause of
201 action if ~~when~~ an authorized health insurer refuses to pay a
202 claim for reimbursement on the ground that the charge for a
203 service was unreasonably high or that the service provided was
204 not medically necessary.

205 ~~(12)(7)~~ ~~In the absence of expressed language to the~~
206 ~~contrary,~~ This section does ~~shall~~ not be construed to authorize
207 a civil action or create a cause of action against an authorized
208 insurer or its employees who, in good faith, release information
209 about an insured or an insurance policy to a law enforcement
210 agency in furtherance of an investigation of a criminal or
211 fraudulent act relating to a motor vehicle theft or a motor
212 vehicle insurance claim.

213 ~~(13)(8)~~ The civil remedy specified in this section does not
214 preempt any other remedy or cause of action provided for
215 pursuant to any other statute or pursuant to the common law of
216 this state. The legal standard established in subsection



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217 (1) (b) (1) and the provisions of subsections (2)-(6) apply
218 equally and without limitation or exception to all common law
219 remedies and causes of action for bad faith failure to settle,
220 regardless of legal theory, and to actions brought pursuant to
221 this section. To prevent circumvention of this section by resort
222 to common-law causes of action, all prior judicial decisions
223 inconsistent with the provisions of this section are
224 disapproved. These include, but are expressly not limited to,
225 Macola v. Gov't Employees Ins. Co., 953 So.2d 451, 457 (Fla.
226 2006), Berges v. Infinity Ins. Co., 896 So.2d 665, 668 (Fla.
227 2004), and Powell v. Prudential Property & Cas. Ins. Co., 584
228 So.2d 12 (Fla. 3rd DCA, 1991). Any person may obtain a judgment
229 under ~~either~~ the common-law remedy for ~~of~~ bad faith or this
230 statutory remedy, but is ~~shall~~ not ~~be~~ entitled to a judgment
231 under both remedies. This section does ~~shall~~ not ~~be construed to~~
232 create a common-law cause of action. The damages recoverable
233 pursuant to this section ~~shall~~ include those damages that ~~which~~
234 are a reasonably foreseeable result of a specified violation of
235 this section by the authorized insurer and may include an award
236 or judgment in an amount that exceeds the policy limits.

237 (14)(9) A surety issuing a payment or performance bond on
238 the construction or maintenance of a building or roadway project
239 is not an insurer for purposes of subsection (1).

240 (15) As used in the section, the term "third-party claim"
241 means a claim against an insured, by one other than the insured,
242 on account of harm or damage allegedly caused by an insured and
243 covered by a policy of liability insurance.

244 Section 2. Paragraph (k) of subsection (3) of section
245 627.311, Florida Statutes, is amended to read:



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246 627.311 Joint underwriters and joint reinsurers; public
247 records and public meetings exemptions.—

248 (3) The office may, after consultation with insurers
249 licensed to write automobile insurance in this state, approve a
250 joint underwriting plan for purposes of equitable apportionment
251 or sharing among insurers of automobile liability insurance and
252 other motor vehicle insurance, as an alternate to the plan
253 required in s. 627.351(1). All insurers authorized to write
254 automobile insurance in this state shall subscribe to the plan
255 and participate therein. The plan shall be subject to continuous
256 review by the office, which may at any time disapprove the
257 entire plan or any part thereof if it determines that conditions
258 have changed since prior approval and that in view of the
259 purposes of the plan changes are warranted. Any disapproval by
260 the office shall be subject to the provisions of chapter 120.
261 The Florida Automobile Joint Underwriting Association is created
262 under the plan. The plan and the association:

263 (k)~~1~~. Shall have no liability, and no cause of action ~~of~~
264 ~~any nature shall arise~~ against any member insurer or its agents
265 or employees, agents or employees of the association, members of
266 the board of governors of the association, the Chief Financial
267 Officer, or the office or its representatives for any action
268 taken by them in the performance of their duties or
269 responsibilities under this subsection. Such immunity does not
270 apply to actions for or arising out of a breach of any contract
271 or agreement pertaining to insurance, or any willful tort.

272 ~~2. Notwithstanding the requirements of s. 624.155(3)(a), as~~
273 ~~a condition precedent to bringing an action against the plan~~
274 ~~under s. 624.155, the department and the plan must have been~~



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275 ~~given 90 days' written notice of the violation. If the~~
276 ~~department returns a notice for lack of specificity, the 90-day~~
277 ~~time period shall not begin until a proper notice is filed. This~~
278 ~~notice must comply with the information requirements of s.~~
279 ~~624.155(3) (b). Effective October 1, 2007, this subparagraph~~
280 ~~shall expire unless reenacted by the Legislature prior to that~~
281 ~~date.~~

282 Section 3. If any provision of this act or its application
283 to any person or circumstance is held invalid, the invalidity
284 does not affect other provisions or applications of the act
285 which can be given effect without the invalid provision or
286 application, and to this end the provisions of this act are
287 severable.

288 Section 4. This act shall take effect July 1, 2011.

289
290 ===== T I T L E A M E N D M E N T =====

291 And the title is amended as follows:

292 Delete everything before the enacting clause
293 and insert:

294 A bill to be entitled
295 An act relating to civil remedies against insurers;
296 amending s. 624.155, F.S.; revising provisions
297 relating to civil actions against insurers; revising
298 the grounds for bringing an action based on the
299 insurer's failure to accept an offer to settle within
300 policy limits; providing who may bring such an action;
301 providing requirements for bringing such an action;
302 providing for the release of an insured if the insurer
303 offers to settle a third-party claim within a



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304 specified time under certain circumstances; providing
305 that the insurer has an affirmative defense if a
306 third-party claimant or the insured fails to cooperate
307 with the insurer; providing that an insurer is not
308 liable for two or more claims that exceed the policy
309 limits if it files an interpleader action or makes the
310 policy limits available under arbitration; specifying
311 responsibility for the payment of liens; providing
312 that an insurer is not liable for amounts in excess of
313 the policy limits if it makes timely payment of the
314 appraisal amount; providing that certain refusals to
315 act by the insurer are not presumptive evidence of bad
316 faith; revising requirements relating to the preaction
317 notice of a civil action sent to the Department of
318 Financial Regulation and the insurer; providing for
319 the relationship of the act to the common law and
320 prior judicial decisions; providing a definition for
321 "third-party claim"; amending s. 627.311, F.S.;
322 conforming a cross-reference; deleting an obsolete
323 provision; providing for severability; providing an
324 effective date.