

HB 427

2012

1 A bill to be entitled
2 An act relating to civil remedies against insurers;
3 amending s. 624.155, F.S.; requiring that before
4 bringing a common-law bad faith action against an
5 insurer, the party bringing the action must first
6 provide to the department and insurer prior written
7 notification of a specified number of days; requiring
8 that a notice relating to the bringing of a common-law
9 claim of bad faith must specify the common-law duty
10 violated by the insurer; requiring a notice to specify
11 the amount of moneys that an insurer has failed to
12 tender or pay if the specific statutory or common-law
13 based violation includes such failure; providing that
14 the circumstances giving rise to certain statutory or
15 common-law based violations are corrected by
16 specifically described monetary tenders by an insurer;
17 providing that either a third-party claimant or
18 insured is entitled to a general release under certain
19 circumstances; providing that the applicable statute
20 of limitations is tolled for a specified period of
21 time when certain notices alleging a common-law based
22 violation are mailed; revising provisions to conform
23 to changes made by the act relating to statutory or
24 common-law based actions being brought against
25 insurers; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. Subsections (3) and (8) of section 624.155,
 30 Florida Statutes, are amended to read:

31 624.155 Civil remedy.—

32 (3)~~(a)~~ As a condition precedent to bringing an action
 33 either under this section or based on the common-law claim of
 34 bad faith, the department and the authorized insurer must have
 35 been given 60 days' written notice of the violation. If the
 36 department returns a notice for lack of specificity, the 60-day
 37 time period shall not begin until a proper notice is filed.

38 (a)~~(b)~~ The notice shall be on a form provided by the
 39 department and shall state with specificity the following
 40 information, and such other information as the department may
 41 require:

42 1. The statutory provision or common-law duty, including
 43 the specific language of the statute, if applicable, which the
 44 authorized insurer allegedly violated.

45 2. The facts and circumstances giving rise to the
 46 violation and, if the violation includes failure to pay or
 47 tender moneys, the amount of such moneys.

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

49 4. Reference to specific policy language that is relevant
 50 to the violation, if any. If the person bringing the civil
 51 action is a third-party ~~third-party~~ claimant, she or he shall
 52 not be required to reference the specific policy language if the
 53 authorized insurer has not provided a copy of the policy to the
 54 third-party ~~third-party~~ claimant pursuant to written request.

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

57 | section or by the common law.

58 | (b)-(e) Within 20 days after ~~of~~ receipt of the notice, the
 59 | department may return any notice that does not provide the
 60 | specific information required by this section, and the
 61 | department shall indicate the specific deficiencies contained in
 62 | the notice. A determination by the department to return a notice
 63 | for lack of specificity shall be exempt from the requirements of
 64 | chapter 120.

65 | (c)-(d) No action shall lie if, within 60 days after filing
 66 | notice, the damages are paid or the circumstances giving rise to
 67 | the violation are corrected. If the alleged violation is based
 68 | on this section or on the common-law claim of bad faith, the
 69 | insurer's tender of either the amount demanded in the notice or
 70 | the applicable policy limits constitutes correction of the
 71 | circumstances giving rise to the violation. In third-party
 72 | liability claims:

73 | 1. If the claimant files the notice, the insured is
 74 | entitled to a general release from the claimant upon the
 75 | insurer's tender of the amount demanded in the notice or the
 76 | applicable policy limits.

77 | 2. If the insured files the notice and the claimant
 78 | accepts the insurer's tender, the insured is entitled to a
 79 | general release from the claimant.

80 | (d)-(e) The authorized insurer that is the recipient of a
 81 | notice filed pursuant to this section shall report to the
 82 | department on the disposition of the alleged violation.

83 | (e)-(f) The applicable statute of limitations for an action
 84 | under this section or based on the common-law claim of bad faith

HB 427

2012

85 shall be tolled for a period of 65 days by the mailing of the
86 notice required by this subsection or the mailing of a
87 subsequent notice required by this subsection.

88 (8) Except as provided in subsection (3), the civil remedy
89 specified in this section does not preempt any other remedy or
90 cause of action provided for pursuant to any other statute or
91 pursuant to the common law of this state. Any person may obtain
92 a judgment under either the common-law remedy of bad faith or
93 this statutory remedy, but shall not be entitled to a judgment
94 under both remedies. This section shall not be construed to
95 create a common-law cause of action. The damages recoverable
96 pursuant to this section shall include those damages which are a
97 reasonably foreseeable result of a specified violation of this
98 section by the authorized insurer and may include an award or
99 judgment in an amount that exceeds the policy limits.

100 Section 2. This act shall take effect July 1, 2012.