

By Senator Thrasher

6-00792-13

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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.; requiring a party bringing
4 a common-law claim of bad faith against an insurer to
5 first provide written notification to the Department
6 of Financial Services and the insurer; requiring that
7 such notice specify the common-law duty violated by
8 the insurer and specify the amount of moneys that an
9 insurer has failed to pay if the violation includes
10 such failure; providing that a violation based on
11 certain statutory or common-law claim is corrected by
12 payment of certain monetary tenders by an insurer;
13 providing that in a third-party liability claim, an
14 insured is entitled to a general release under certain
15 circumstances; providing that the applicable statute
16 of limitations is tolled if certain notices alleging a
17 violation of common law are mailed; providing that
18 third-party claimants having competing claims are
19 entitled to a prorated share of policy limits under
20 certain circumstances if the insurer files an
21 interpleader action within a certain time period;
22 revising provisions to conform to changes made by the
23 act; making technical and grammatical changes;
24 providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Section 624.155, Florida Statutes, is amended to
29 read:

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30 624.155 Civil remedy.—

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

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

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

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

43 1. Not attempting in good faith to settle claims when,
44 under all the circumstances, it could and should have done so,
45 had it acted fairly and honestly toward its insured and with due
46 regard for her or his interests;

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

50 3. Except as to liability coverages, failing to promptly
51 settle claims, when the obligation to settle a claim has become
52 reasonably clear, under one portion of the insurance policy
53 coverage in order to influence settlements under other portions
54 of the insurance policy coverage.

55
56 Notwithstanding the provisions of this subsection ~~the above~~ to
57 ~~the contrary~~, a person pursuing a remedy under this section need
58 not prove that such act was committed or performed with such

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59 frequency as to indicate a general business practice.

60 (2) Any party may bring a civil action against an
61 unauthorized insurer if such party is damaged by a violation of
62 s. 624.401 by the unauthorized insurer.

63 (3) ~~(a)~~ As a condition precedent to bringing an action under
64 this section or based on a common-law claim of bad faith, the
65 department and the authorized insurer must be ~~have been~~ given 60
66 days' written notice of the violation. If the department returns
67 a notice for lack of specificity, the 60-day time period does
68 ~~shall~~ not begin until a proper notice is filed.

69 (a) ~~(b)~~ The notice must ~~shall~~ be on a form provided by the
70 department and ~~shall~~ state with specificity the following
71 information, and such other information as the department may
72 require:

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

76 2. The facts and circumstances giving rise to the violation
77 and, if the violation includes failure to pay or tender moneys,
78 the amount of such moneys.

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

80 4. Reference to specific policy language that is relevant
81 to the violation, if any. If the person bringing the civil
82 action is a third-party ~~third party~~ claimant, she or he is ~~shall~~
83 not ~~be~~ required to reference the specific policy language if the
84 authorized insurer did ~~has~~ not provide ~~provided~~ a copy of the
85 policy to the third-party ~~third party~~ claimant pursuant to
86 written request.

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

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88 the right to pursue the civil remedy authorized by this section
89 or common law.

90 (b)~~(e)~~ Within 20 days after ~~of~~ receipt of the notice, the
91 department may return any notice that does not provide the
92 specific information required by this section, ~~and the~~
93 ~~department~~ shall indicate the specific deficiencies contained in
94 the notice. A determination by the department to return a notice
95 for lack of specificity is ~~shall be~~ exempt from ~~the requirements~~
96 ~~of~~ chapter 120.

97 (c)~~(d)~~ No action shall lie if, within 60 days after filing
98 notice, the damages are paid or the circumstances giving rise to
99 the violation are corrected. If the alleged violation is based
100 on this section or on the common-law claim of bad faith, the
101 insurer's tender of the amount demanded in the notice or the
102 applicable policy limits constitutes correction of the
103 circumstances giving rise to the violation. In a third-party
104 liability claim:

105 1. If the claimant files the notice, the insured is
106 entitled to a general release from the claimant upon the
107 insurer's tender of the amount demanded in the notice or the
108 applicable policy limits.

109 2. If the insured files the notice and the claimant accepts
110 the insurer's tender, the insured is entitled to a general
111 release from the claimant.

112 3. The notice may be filed by the claimant or the insured
113 at any time after the incident giving rise to the claimant's
114 liability claim against the insured. The denial of a claim by
115 the insurer is not a precondition for the filing of the notice
116 by the insured or claimant.

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

120 (e)~~(f)~~ The applicable statute of limitations for an action
121 under this section or an action based on a common-law claim of
122 bad faith is shall be tolled for a ~~period of~~ 65 days by the
123 mailing of the notice required by this subsection or the mailing
124 of a subsequent notice required by this subsection.

125 (4) If two or more third-party claimants make competing
126 claims arising out of a single incident, which in total exceed
127 the available policy limits of one or more of the insured
128 parties who may be liable to the third-party claimants, an
129 insurer is not liable beyond the available policy limits for
130 failure to pay all or any portion of the available policy limits
131 to one or more of the third-party claimants if, within 90 days
132 after receiving notice of the competing claims, the insurer
133 files an interpleader action under the Florida Rules of Civil
134 Procedure. If the claims of the competing third-party claimants
135 are found to be in excess of the policy limits, the third-party
136 claimants are entitled to a prorated share of the policy limits
137 as determined by the trier of fact. An insurer's interpleader
138 action does not alter or amend the insurer's obligation to
139 defend its insured.

140 (5)~~(4)~~ Upon adverse adjudication at trial or upon appeal,
141 the authorized insurer is shall be liable for damages, together
142 with court costs and reasonable attorney ~~attorney's~~ fees
143 incurred by the plaintiff.

144 (6)~~(5)~~ ~~No~~ Punitive damages may not shall be awarded under
145 this section unless the acts giving rise to the violation occur

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146 with such frequency as to indicate a general business practice
147 and these acts are:

148 (a) Willful, wanton, and malicious;

149 (b) In reckless disregard for the rights of an ~~any~~ insured;
150 or

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

153

154 Any person who pursues a claim under this subsection must ~~shall~~
155 ~~post in advance~~ the costs of discovery in advance. Such costs
156 shall be awarded to the authorized insurer if ~~no~~ punitive
157 damages are not awarded to the plaintiff.

158 (7) ~~(6)~~ This section does ~~shall~~ not be ~~construed to~~
159 authorize a class action suit against an authorized insurer or a
160 civil action against the commission, the office, or the
161 department or any of their employees, or ~~to~~ create a cause of
162 action if ~~when~~ an authorized health insurer refuses to pay a
163 claim for reimbursement on the ground that the charge for a
164 service was unreasonably high or that the service provided was
165 not medically necessary.

166 (8) ~~(7)~~ In the absence of expressed language to the
167 contrary, this section does ~~shall~~ not be ~~construed to~~ authorize
168 a civil action or create a cause of action against an authorized
169 insurer or its employees who, in good faith, release information
170 about an insured or an insurance policy to a law enforcement
171 agency in furtherance of an investigation of a criminal or
172 fraudulent act relating to a motor vehicle theft or a motor
173 vehicle insurance claim.

174 (9) ~~(8)~~ Except as provided in subsection (3), the civil

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175 remedy specified in this section does not preempt any other
176 remedy or cause of action provided ~~for~~ pursuant to any other
177 statute or pursuant to the common law of this state. A ~~Any~~
178 person may obtain a judgment under ~~either~~ the common-law remedy
179 of bad faith or this statutory remedy, but is ~~shall~~ not be
180 entitled to a judgment under both remedies. This section does
181 ~~shall not be construed to~~ create a common-law cause of action.
182 The damages recoverable pursuant to this section include ~~shall~~
183 ~~include~~ those damages that ~~which~~ are a reasonably foreseeable
184 result of a specified violation of this section by the
185 authorized insurer and may include an award or judgment in an
186 amount that exceeds the policy limits.

187 (10) ~~(9)~~ A surety issuing a payment or performance bond on
188 the construction or maintenance of a building or roadway project
189 is not an insurer for purposes of subsection (1).

190 Section 2. This act shall take effect July 1, 2013.