

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 of Financial Services and  
7           insurer prior written notification of a specified  
8           number of days; requiring that a notice relating to  
9           the bringing of a common-law claim of bad faith must  
10          specify the common-law duty violated by the insurer;  
11          requiring a notice to specify the amount of moneys  
12          that an insurer has failed to tender or pay if the  
13          specific statutory or common-law based violation  
14          includes such failure; providing that the  
15          circumstances giving rise to certain statutory or  
16          common-law based violations are corrected by  
17          specifically described monetary tenders by an insurer;  
18          providing that in third-party claims, the insured is  
19          entitled to a general release under certain  
20          circumstances; providing that a denial of claim by the  
21          insurer is not required before the claimant or insured  
22          may file the required notification of a violation by  
23          the insurer; providing that the applicable statute of  
24          limitations is tolled for a specified period of time  
25          when certain notices alleging a common-law based  
26          violation are mailed; providing that an insurer is not  
27          liable beyond available policy limits with respect to  
28          two or more third-party claims arising out of a single

29 | occurrence under certain circumstances; providing for  
 30 | proration of the policy limits among third-party  
 31 | claimants under certain circumstances; specifying that  
 32 | an interpleader action brought by the insurer does not  
 33 | affect the insurer's obligation to defend the insured;  
 34 | revising provisions to conform to changes made by the  
 35 | act relating to statutory or common-law based actions  
 36 | being brought against insurers; providing an effective  
 37 | date.

38 |  
 39 | Be It Enacted by the Legislature of the State of Florida:

40 |  
 41 | Section 1. Section 624.155, Florida Statutes, is amended  
 42 | to read:

43 | 624.155 Civil remedy.—

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

46 | (a) By a violation of any of the following provisions by  
 47 | 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 commission of any of the following acts by the  
 55 | insurer:

- 56 | 1. Not attempting in good faith to settle claims when,

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57 | under all the circumstances, it could and should have done so,  
58 | had it acted fairly and honestly toward its insured and with due  
59 | regard for her or his interests;

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

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

68 |

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

73 |         (2) Any party may bring a civil action against an  
74 | unauthorized insurer if such party is damaged by a violation of  
75 | s. 624.401 by the unauthorized insurer.

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

82 |         (a) ~~(b)~~ The notice shall be on a form provided by the  
83 | department and shall state with specificity the following  
84 | information, and such other information as the department may

85 require:

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

89 2. The facts and circumstances giving rise to the  
 90 violation and, if the violation includes failure to pay or  
 91 tender moneys, the amount of such moneys.

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

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

99 5. A statement that the notice is given in order to  
 100 perfect the right to pursue the civil remedy authorized by this  
 101 section or by the common law.

102 (b)(e) Within 20 days after ~~of~~ receipt of the notice, the  
 103 department may return any notice that does not provide the  
 104 specific information required by this section, and the  
 105 department shall indicate the specific deficiencies contained in  
 106 the notice. A determination by the department to return a notice  
 107 for lack of specificity shall be exempt from the requirements of  
 108 chapter 120.

109 (c)(d) No action shall lie if, within 60 days after filing  
 110 notice, the damages are paid or the circumstances giving rise to  
 111 the violation are corrected. If the alleged violation is based  
 112 on this section or on the common-law claim of bad faith, the

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113 insurer's tender of either the amount demanded in the notice or  
114 the applicable policy limits constitutes correction of the  
115 circumstances giving rise to the violation. In third-party  
116 liability claims:

117 1. If the claimant files the notice, the insured is  
118 entitled to a general release from the claimant upon the  
119 insurer's tender of the amount demanded in the notice or the  
120 applicable policy limits.

121 2. If the insured files the notice and the claimant  
122 accepts the insurer's tender, the insured is entitled to a  
123 general release from the claimant.

124 3. The notice may be filed by the claimant or the insured  
125 at any time after the incident giving rise to the claimant's  
126 liability claim against the insured, and neither the insured nor  
127 the claimant is required to receive a denial of the claim by the  
128 insurer as a precondition to filing the notice contemplated by  
129 this subsection.

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

133 (e)-(f) The applicable statute of limitations for an action  
134 under this section or based on the common-law claim of bad faith  
135 shall be tolled for a period of 65 days by the mailing of the  
136 notice required by this subsection or the mailing of a  
137 subsequent notice required by this subsection.

138 (4) If two or more third-party claimants make competing  
139 claims arising out of a single occurrence, which in total exceed  
140 the available policy limits of one or more of the insured

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141 parties who may be liable to the third-party claimants, an  
142 insurer is not liable beyond the available policy limits for  
143 failure to pay all or any portion of the available policy limits  
144 to one or more of the third-party claimants if, within 90 days  
145 after receiving notice of the competing claims in excess of the  
146 available policy limits, the insurer files an interpleader  
147 action under the Florida Rules of Civil Procedure. If the claims  
148 of the competing third-party claimants are found to be in excess  
149 of the policy limits, the third-party claimants are entitled to  
150 a prorated share of the policy limits as determined by the trier  
151 of fact. An insurer's interpleader action does not alter or  
152 amend the insurer's obligation to defend its insured.

153 (5)~~(4)~~ Upon adverse adjudication at trial or upon appeal,  
154 the authorized insurer shall be liable for damages, together  
155 with court costs and reasonable attorney's fees incurred by the  
156 plaintiff.

157 (6)~~(5)~~ No punitive damages shall be awarded under this  
158 section unless the acts giving rise to the violation occur with  
159 such frequency as to indicate a general business practice and  
160 these acts are:

- 161 (a) Willful, wanton, and malicious;  
162 (b) In reckless disregard for the rights of any insured;  
163 or  
164 (c) In reckless disregard for the rights of a beneficiary  
165 under a life insurance contract.

166  
167 Any person who pursues a claim under this subsection shall post  
168 in advance the costs of discovery. Such costs shall be awarded

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169 | to the authorized insurer if no punitive damages are awarded to  
170 | the plaintiff.

171 |       ~~(7)(6)~~ This section shall not be construed to authorize a  
172 | class action suit against an authorized insurer or a civil  
173 | action against the commission, the office, or the department or  
174 | any of their employees, or to create a cause of action when an  
175 | authorized health insurer refuses to pay a claim for  
176 | reimbursement on the ground that the charge for a service was  
177 | unreasonably high or that the service provided was not medically  
178 | necessary.

179 |       ~~(8)(7)~~ In the absence of expressed language to the  
180 | contrary, this section shall not be construed to authorize a  
181 | civil action or create a cause of action against an authorized  
182 | insurer or its employees who, in good faith, release information  
183 | about an insured or an insurance policy to a law enforcement  
184 | agency in furtherance of an investigation of a criminal or  
185 | fraudulent act relating to a motor vehicle theft or a motor  
186 | vehicle insurance claim.

187 |       ~~(9)(8)~~ Except as provided in subsection (3), the civil  
188 | remedy specified in this section does not preempt any other  
189 | remedy or cause of action provided for pursuant to any other  
190 | statute or pursuant to the common law of this state. Any person  
191 | may obtain a judgment under either the common-law remedy of bad  
192 | faith or this statutory remedy, but shall not be entitled to a  
193 | judgment under both remedies. This section shall not be  
194 | construed to create a common-law cause of action. The damages  
195 | recoverable pursuant to this section shall include those damages  
196 | which are a reasonably foreseeable result of a specified

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197 violation of this section by the authorized insurer and may  
198 include an award or judgment in an amount that exceeds the  
199 policy limits.

200 (10)~~(9)~~ A surety issuing a payment or performance bond on  
201 the construction or maintenance of a building or roadway project  
202 is not an insurer for purposes of subsection (1).

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