

1 A bill to be entitled
 2 An act relating to duty of good faith; amending s.
 3 624.155, F.S.; removing violation of the duty of good
 4 faith from claims for civil remedies; creating s.
 5 624.156, F.S.; providing administrative remedy for
 6 violation of the duty of good faith; providing
 7 applicability; providing requirement for notice before
 8 a complaint can be filed; providing requirements for
 9 complaints; requiring the Department of Financial
 10 Services to determine the sufficiency of complaints;
 11 providing procedures for administrative hearing of
 12 complaints; providing procedures for judicial review
 13 of administrative orders; authorizing rulemaking by
 14 the Division of Administrative Hearings; providing for
 15 judicial enforcement; providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Paragraph (b) of subsection (1) of section
 20 624.155, Florida Statutes, is amended to read:

21 624.155 Civil remedy.—

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

24 (b) By the commission of any of the following acts by the
 25 insurer:

26 | ~~1. Not attempting in good faith to settle claims when,~~
 27 | ~~under all the circumstances, it could and should have done so,~~
 28 | ~~had it acted fairly and honestly toward its insured and with due~~
 29 | ~~regard for her or his interests;~~

30 | 1.2. Making claims payments to insureds or beneficiaries
 31 | not accompanied by a statement setting forth the coverage under
 32 | which payments are being made; or

33 | 2.3. Except as to liability coverages, failing to promptly
 34 | settle claims, when the obligation to settle a claim has become
 35 | reasonably clear, under one portion of the insurance policy
 36 | coverage in order to influence settlements under other portions
 37 | of the insurance policy coverage.

38 |
 39 | Notwithstanding the provisions of the above to the contrary, a
 40 | person pursuing a remedy under this section need not prove that
 41 | such act was committed or performed with such frequency as to
 42 | indicate a general business practice.

43 | Section 2. Section 624.156, Florida Statutes, is created
 44 | to read:

45 | 624.156 Duty of good faith; action for violation of duty.-

46 | (1) An insurance company must attempt in good faith to
 47 | settle a claim when, under all the circumstances, it could and
 48 | should have done so, had it acted fairly and honestly toward its
 49 | insured and with due regard for her or his interests.

50 | (2) (a) This section applies to any allegation:

51 1. That an insurance company has not complied with the
52 duty of good faith.

53 2. Recognized in general law or common law.

54 3. Filed by an insured or a third-party beneficiary to an
55 insurance contract.

56 (b) This section provides the sole legal remedy for any
57 allegation described in this subsection.

58 (3) The notice requirements of s. 624.155(3) apply to an
59 action by the insured against the insurer pursuant to this
60 section.

61 (4) Any person claiming a violation by an insurance
62 company of the duty of good faith described in this section may
63 file an administrative complaint with the department pursuant to
64 this section. The complaint must:

65 (a) If filed by the insured, show that the notice required
66 by subsection (3) has been provided and that the time for
67 resolution has expired.

68 (b) State with specificity the action or inaction by the
69 insurance company alleged to have not complied with the duty of
70 good faith.

71 (5) After receiving a complaint, the department must,
72 within 20 days, determine whether the complaint meets the
73 requirements of subsection (4). If the complaint does not meet
74 the requirements, the department must promptly dismiss it
75 without prejudice and notify the complainant. If the department

76 determines the complaint meets the requirements of subsection
77 (4), it shall refer the complaint to the Division of
78 Administrative Hearings for a hearing, and the following
79 procedures will apply:

80 (a) The department shall provide written notice to the
81 insurer that the complaint is being referred to the Division of
82 Administrative Hearings.

83 (b) Within 90 days after the Division of Administrative
84 Hearings receives the complaint, an administrative law judge
85 shall hold a hearing to determine if there has been a breach of
86 duty and if there are any damages.

87 (c) Within 30 days after the date of the hearing, the
88 administrative law judge shall enter an order, which must, at a
89 minimum, include:

90 1. Findings of fact, including a determination of whether
91 the insurer violated the duty of good faith, and if so, a
92 determination of the amount of damages.

93 2. Conclusions of law.

94 3. A statement of the right to appeal the order pursuant
95 to subsection (6).

96 (d) In conducting the hearing under this subsection, the
97 administrative law judge is not bound by technical or formal
98 rules of procedure but may conduct the hearing in such manner as
99 to best ascertain the rights of the parties.

100 (6) Either party may seek review of an order of an

101 administrative law judge entered pursuant to this section, which
102 shall be by appeal to the First District Court of Appeal. The
103 appeal shall be filed in accordance with the Florida Rules of
104 Appellate Procedure. The department shall be given notice of any
105 appellate proceedings in the district court and shall have the
106 right to intervene in such proceedings.

107 (7) The Division of Administrative Hearings may adopt
108 rules to establish procedures for hearings governed by this
109 section.

110 (8) Within 30 days after an administrative law judge
111 enters an order pursuant to this section, the insurer must pay
112 damages as required by the order, unless the insurer appeals the
113 order, in which case the insurer must pay damages within 30 days
114 after all appeals are final.

115 (9) If an insurer does not timely pay damages as required
116 under subsection (8), any circuit court of this state within the
117 jurisdiction of which the insurer resides or transacts business,
118 upon application by an aggrieved party, may issue an order
119 directing the insurer to show cause why a writ of execution, or
120 such other process as may be necessary to enforce the terms of
121 such order, shall not be issued, and, unless such cause is
122 shown, the court may issue a writ of execution or such other
123 process or final order as may be necessary to enforce the terms
124 of such order of the administrative law judge.

125 Section 3. This act shall take effect July 1, 2019.