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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Lee) recommended the following:

Senate Amendment (with title amendment)

Between lines 1506 and 1507

insert:

Section 33. Subsection (1) of section 624.155, Florida Statutes, is amended, and subsection (10) is added to that section, to read:

624.155 Civil remedy.—

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



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11 (a) By a violation of any of the following provisions by
12 the insurer:

- 13 1. Section 626.9541(1) (i), (o), or (x);
- 14 2. Section 626.9551;
- 15 3. Section 626.9705;
- 16 4. Section 626.9706;
- 17 5. Section 626.9707; or
- 18 6. Section 627.7283.

19 (b) By the commission of any of the following acts by the
20 insurer:

21 1. Not attempting in good faith to settle claims when,
22 under the totality of all the circumstances, it could and should
23 have done so, had it acted fairly and honestly toward its
24 insured and with due regard for her or his interests;

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

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

33
34 Notwithstanding paragraphs (a) and (b) ~~the provisions of the~~
35 ~~above to the contrary~~, a person pursuing a remedy under this
36 section need not prove that such act was committed or performed
37 with such frequency as to indicate a general business practice.

38 (10) The provisions of this subsection apply to an action
39 against a motor vehicle insurer for third-party bad faith under



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40 this chapter or at common law.

41 (a) It is a condition precedent to such action that the
42 insurer first receive written notice that the insurer has
43 violated its duty to act in good faith toward its insured. A
44 notice shall state with specificity the alleged violation and
45 the facts and circumstances giving rise to the violation. The
46 insurer's receipt of written notice does not preclude subsequent
47 written notices that an insurer violated its duty to act in good
48 faith toward its insured. The insurer shall save and document
49 any notice.

50 (b) In handling claims, an insurer stands as a fiduciary
51 for its insured. Accordingly, an insurer shall act in good faith
52 toward its insured throughout the entirety of the claim.

53 (c) A bad faith failure to settle means an insurer's
54 failure to settle a claim when, under the totality of the
55 circumstances, it could and should have done so had it acted
56 fairly, honestly, and with due regard for the interests of an
57 insured. The claimant has the burden to establish through the
58 greater weight of the evidence that specific conduct by the
59 insurer is the cause or substantial cause of the insurer's bad
60 faith failure to settle.

61 1. An insurer's negligent actions alone are insufficient to
62 establish the insurer's bad faith failure to settle, but an
63 insurer's negligent actions are relevant when considering the
64 totality of the circumstances.

65 2. The actions or inactions of the insured or claimant are
66 relevant in an action for a bad faith failure to settle. An
67 insurer may assert as a defense that the conduct of the insured
68 or claimant caused, in whole or in part, the failure to settle



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69 the claim.

70 (d) No action against a motor vehicle insurer for third-
71 party bad faith shall lie if, within 45 days after the motor
72 vehicle insurer receives notice pursuant to paragraph (a), the
73 insurer cures the circumstances giving rise to the alleged
74 breach of duty of good faith to the insured. A third party may
75 proceed with a bad faith action against the insurer if the
76 insurer fails to cure the violation within this period.

77 (e) Paragraph (d) does not create a duty that the insurer
78 must offer policy limits or the amount of a demand that is less
79 than policy limits within 45 days after it receives notice under
80 paragraph (a). However, the absence of such offer may be
81 considered as part of the totality of the circumstances in
82 determining whether the insurer in bad faith failed to settle.

83 (f) If two or more third-party claimants in a liability
84 claim make competing claims arising out of a single occurrence
85 which in total exceed the available policy limits of one or more
86 of the insured parties who may be liable to third party
87 claimants, a motor vehicle insurer is not liable beyond the
88 available policy limits for failure to pay all or any portion of
89 the available policy limits to one or more of the third-party
90 claimants if such insurer continues to comply with its good
91 faith duties to its insured throughout the entirety of the
92 claim, including the pendency of an interpleader action filed
93 under the Florida Rules of Civil Procedure within 90 days after
94 receiving notice of the competing claims in excess of the
95 available policy limits. The competing third-party claimants are
96 entitled to a prorated share of the policy limits as determined
97 by the trier of fact.



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99 ===== T I T L E A M E N D M E N T =====

100 And the title is amended as follows:

101 Delete line 89

102 and insert:

103 professions; amending s. 624.155, F.S.; providing
104 applicability; requiring that a civil remedy notice be
105 provided to a motor vehicle insurer before a third-
106 party bad faith action is brought against the insurer;
107 specifying requirements for the notice; providing
108 construction relating to the notice; requiring the
109 insurer to save and document any notice; providing
110 construction relating to an insurer's duty of good
111 faith, a bad faith failure to settle, the claimant's
112 burden of proof, negligent actions of an insurer, and
113 actions or inactions of the insured or claimant;
114 providing that such bad faith actions are barred if
115 the insurer cures certain circumstances within a
116 certain timeframe; providing that an insurer is not
117 liable beyond policy limits in certain third-party
118 claims if it meets certain conditions; providing that
119 competing third-party claimants are entitled to a
120 prorated share of policy limits as determined by the
121 trier of fact; amending s. 626.9541, F.S.; conforming
122 a