

By Senator Brandes

24-00450C-20

2020924\_\_

1                   A bill to be entitled  
2       An act relating to civil actions against insurers;  
3       amending s. 624.155, F.S.; providing that, in third-  
4       party bad faith actions against insurers, insureds and  
5       claimants have the burden to prove that an insurer  
6       acted in reckless disregard for insured rights which  
7       resulted in damage to the insured or the claimant;  
8       providing that insured or claimant actions or  
9       inactions are relevant in bad faith actions;  
10      specifying an affirmative defense; specifying an  
11      insurer's duties to insureds; providing that an  
12      insurer is not liable if certain conditions are met;  
13      providing that an insurer is not liable beyond  
14      available policy limits as to certain competing third-  
15      party claims if it files an interpleader action within  
16      a certain timeframe; providing construction; providing  
17      an effective date.

18  
19 Be It Enacted by the Legislature of the State of Florida:

20  
21       Section 1. Subsection (1) of section 624.155, Florida  
22       Statutes, is amended, and subsections (10) and (11) are added to  
23       that section, to read:

24       624.155 Civil remedy.—

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

27       (a) By a violation of any of the following provisions by  
28       the insurer:

29       1. Section 626.9541(1)(i), (o), or (x);

24-00450C-20

2020924\_\_

- 30 2. Section 626.9551;
- 31 3. Section 626.9705;
- 32 4. Section 626.9706;
- 33 5. Section 626.9707; or
- 34 6. Section 627.7283.

35 (b) By the commission of any of the following acts by the  
 36 insurer:

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

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

44 3. Except as to liability coverages, failing to promptly  
 45 settle claims, when the obligation to settle a claim has become  
 46 reasonably clear, under one portion of the insurance policy  
 47 coverage in order to influence settlements under other portions  
 48 of the insurance policy coverage.

49  
 50 Notwithstanding paragraphs (a) and (b) ~~the provisions of the~~  
 51 ~~above to the contrary~~, a person pursuing a remedy under this  
 52 section need not prove that such act was committed or performed  
 53 with such frequency as to indicate a general business practice.

54 (10) Notwithstanding subsections (1)-(9), in an action for  
 55 third-party bad faith under this chapter or at common law:

56 (a) An insured or a claimant has the burden to prove that  
 57 the insurer acted in bad faith. An insured or a claimant must  
 58 prove that the insurer acted in reckless disregard for the

24-00450C-20

2020924\_\_

59 rights of any insured and that the reckless disregard caused  
60 damage to the insured or claimant.

61 (b) The actions or inactions of the insured or claimant are  
62 relevant in an action for bad faith. It is an affirmative  
63 defense to a claim for bad faith that the insured's or  
64 claimant's own conduct, in whole or in part, caused an excess  
65 judgment.

66 (c) An insurer must advise an insured of settlement  
67 opportunities, advise an insured as to the probable outcome of  
68 the litigation, warn an insured of the possibility of an excess  
69 judgment, advise an insured of steps to avoid an excess  
70 judgment, and defend an insured against a legal action when the  
71 complaint alleges facts that fairly and potentially bring the  
72 suit within policy coverage. An insurer is not liable if the  
73 insurer fulfills such obligations and the trier of fact finds  
74 that, within 45 days after receipt of the written notice of  
75 loss, the insurer stood ready and willing to settle for policy  
76 limits.

77 (11) If two or more third-party claimants in a liability  
78 claim make competing claims arising out of a single occurrence  
79 which in total exceed the available policy limits of one or more  
80 of the insured parties who may be liable to the third-party  
81 claimants, an insurer is not liable beyond the available policy  
82 limits for failure to pay all or any portion of the available  
83 policy limits to one or more of the third-party claimants if,  
84 within 90 days after receiving notice of the competing claims in  
85 excess of the available policy limits, the insurer files an  
86 interpleader action under the Florida Rules of Civil Procedure.  
87 The competing third-party claimants are entitled to a prorated

24-00450C-20

2020924\_\_

88 share of the policy limits as determined by the trier of fact.

89 An insurer's interpleader action does not alter or amend the

90 insurer's obligation to defend its insured.

91 Section 2. This act shall take effect July 1, 2020.