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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/11/2021	.	
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The Committee on Rules (Brandes) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 1932 - 2023

and insert:

5. Other than for transportation network companies as defined in s. 627.748, requests for examinations under oath and an explanation of the consequences of an insured's failure to submit to an examination under oath; and

6. Any demands for settlement under subsection (6) or settlement offers.

(j) When a loss involves multiple claimants and the



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12 claimants are unwilling to settle cumulatively within the policy  
13 limits and release the insured from further liability, in  
14 addition to fulfilling the requirements of paragraphs (a)-(i),  
15 attempt to minimize the risk of excess judgments against the  
16 insured and settle as many claims as possible within the policy  
17 limits in exchange for a release of the insured from further  
18 liability.

19 (5) CONDITIONS PRECEDENT.—It is a condition precedent to  
20 filing a third-party action for bad faith failure to settle  
21 against an insurer that the claimant must:

22 (a) Serve a demand for settlement, as provided in  
23 subsection (6), within the insurer's limits of liability in  
24 exchange for a release of further liability against the insured;  
25 and

26 (b) Obtain a final judgment in excess of the policy limits  
27 against the insured.

28 (6) DEMAND FOR SETTLEMENT.—A demand for settlement must do  
29 all of the following:

30 (a) Identify the:

31 1. Date and location of loss;

32 2. Name, address, and date of birth of the claimant;

33 3. Name of each insured to whom the demand for settlement  
34 is directed; and

35 4. Legal and factual basis of the claim.

36 (b) Provide a reasonably detailed description of the  
37 claimant's:

38 1. Known injuries caused or aggravated by the incident on  
39 which the claim is based;

40 2. Medical treatment causally related to the incident on



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41 which the claim is based; and

42 3. Type and amount of known damages incurred and, if any,  
43 the damages the claimant reasonably anticipates incurring in the  
44 future.

45 (c) State the amount of the demand for settlement.

46 (d) State whether the demand for settlement is conditioned  
47 on the completion of an examination under oath, as authorized by  
48 subsection (8).

49 (e) Provide a physical address, an e-mail address, and a  
50 facsimile number for further communications, including, but not  
51 limited to, responses to the demand for settlement.

52 (f) Release the insured from any further liability upon the  
53 insurer's acceptance of a demand for settlement which is not  
54 withdrawn pursuant to paragraph (8) (e) or paragraph (8) (g) or  
55 accepted pursuant to paragraph (8) (f).

56 (g) Be served upon the insurer by certified mail at the  
57 address designated by the insurer with the Department of  
58 Financial Services under s. 624.422(2).

59 (7) LIMITATIONS ON CONDITIONS OF ACCEPTANCE OF A DEMAND.—A  
60 claimant may not place any conditions on acceptance of a demand  
61 for settlement other than electing the right to examine the  
62 insured under oath regarding any of the following:

63 (a) Whether the insured has the ability to satisfy a claim  
64 for damages in excess of the insurer's limits of liability.

65 (b) Whether any other person or entity may have actual or  
66 potential direct or vicarious liability for the insured's  
67 negligence.

68 (c) Whether any other insurance exists that may cover some  
69 or all of the damages sustained by the claimant.



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70       (8) EXAMINATION UNDER OATH.—After serving a demand for  
71 settlement, a claimant may examine the insured under oath, on  
72 one occasion for a period of time not to exceed 2 hours,  
73 regarding only the issues in subsection (7).

74       (a) The claimant may request that the insured bring to the  
75 examination relevant documents in the insured's possession,  
76 custody, or control, including, but not limited to, credit  
77 reports, insurance policies, bank statements, tax returns,  
78 deeds, titles, and other proof of assets or liabilities.

79       (b) Except as provided in paragraph (7)(b), the claimant  
80 may not examine the insured regarding liability.

81       (c) The claimant, the insurer, and the insured shall  
82 cooperate in scheduling the examination under oath. The insurer  
83 shall notify the insured of the date, time, and location of the  
84 examination under oath.

85       (d) The examination under oath must occur within 30 days  
86 after the insurer's acceptance of the settlement demand.

87       (e) The claimant may withdraw the demand for settlement if  
88 the insured refuses to submit to an examination under oath.

89       (f) If the insured refuses to submit to an examination  
90 under oath, the insurer may accept the demand for settlement  
91 without requiring a release of the insured. An insurer that  
92 accepts the demand for settlement pursuant to this paragraph  
93 does not have any further duty to defend the insured and may not  
94 be held liable for damages to the insured if the claimant  
95 thereafter obtains an excess judgment against the insured.

96       (g) Within 7 days after the examination under oath, the  
97 claimant may withdraw the demand for settlement.

98       (h) Nothing in this section applies to transportation



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99 network companies as defined in s. 627.748.

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

102 And the title is amended as follows:

103       Between lines 149 and 150

104 insert:

105       providing applicability;