



851654

LEGISLATIVE ACTION

Senate

.  
. .  
. .  
. .  
. .

House

---

Senator Martin moved the following:

**Senate Amendment (with title amendment)**

Delete lines 331 - 398

and insert:

(4) (a) In an action for bad faith failure to settle a liability insurance claim, including any such action brought under the common law, if the insurer initiates settlement negotiations by tendering the lesser of the policy limits or the amount demanded by the claimant in exchange for a general release of the insured within 90 days after receiving actual notice of the loss, the failure to tender the policy limits



851654

12 sooner does not constitute bad faith.

13 (b) If an insurer does not tender the lesser of the policy  
14 limits or the amount demanded by the claimant within the 90-day  
15 timeframe provided in paragraph (a), the existence of the 90-day  
16 timeframe and that no bad faith action could lie had the insurer  
17 tendered the lesser of policy limits or the amount demanded by  
18 the claimant pursuant to paragraph (a) is inadmissible in any  
19 action seeking to establish bad faith on the part of the  
20 insurer.

21 (c) If the insurer fails to tender pursuant to paragraph  
22 (a) within the 90-day period, any applicable statute of  
23 limitations is extended for an additional 90 days.

24 (5) In any bad faith action, whether such action is brought  
25 under this section or is based on the common-law remedy for bad  
26 faith:

27 (a) Mere negligence alone is insufficient to constitute bad  
28 faith.

29 (b) The focus of the bad faith claim is on the conduct of  
30 an insurer, but in determining whether the insurer actually  
31 could have settled the claim, the jury may consider the totality  
32 of the circumstances, including:

33 1. Whether any conditions placed on the settlement by the  
34 claimant were unreasonable or impossible to perform within the  
35 time permitted; and

36 2. Whether the insured failed to cooperate with the  
37 insurer's efforts to meet the conditions after being fully  
38 advised by the insurer about the purpose and importance of doing  
39 so.

40 (6) (a) If two or more third-party claimants have competing



851654

41 claims arising out of a single occurrence, which in total may  
42 exceed the available policy limits of an insured who may be  
43 liable to the third-party claimants, and the insurer initiates  
44 settlement negotiations by globally tendering the applicable  
45 policy limits in exchange for a general release of the insured  
46 within 90 days after receiving actual notice of the loss, the  
47 failure to tender policy limits sooner does not constitute bad  
48 faith.

49 (b) If an insurer does not globally tender the policy  
50 limits within the 90-day timeframe provided in paragraph (a),  
51 the existence of the 90-day timeframe and that no bad faith  
52 action could lie had the insurer tendered the lesser of policy  
53 limits or the amount demanded by the claimant pursuant to  
54 paragraph (a) is inadmissible in any action seeking to establish  
55 bad faith on the part of the insurer.

56 (c) If two or more third-party claimants have competing  
57 claims arising out of a single occurrence, which in total may  
58 exceed the available policy limits of an insured who may be  
59 liable to the third-party claimants, and the claimants are  
60 unwilling to globally settle within the policy limits,  
61 thereafter, the insurer must attempt to minimize the magnitude  
62 of possible excess judgments against the insured. The insurer is  
63 entitled to great discretion to decide how much to offer each  
64 respective claimant in its attempt to protect the insured. The  
65 insurer may, in its effort to minimize the excess liability of  
66 the insured, use its discretion to offer the full available  
67 policy limits to one or more claimants to the exclusion of other  
68 claimants and may leave the insured exposed to some liability  
69 after all the policy limits are paid. An insurer does not act in



851654

70 bad faith simply because it is unable to settle all claims in a  
71 competing claimant case.

72 (d) An insurer is not liable beyond the available policy  
73 limits for failure to pay all or any portion of the available  
74 policy limits to one or more of the third-party claimants if,  
75 pursuant to a binding arbitration that has been agreed to by the  
76 insurer and all the third-party claimants, the insurer makes the  
77 entire amount of the policy limits available for payment to the  
78 competing third-party claimants before a qualified arbitrator  
79 agreed to by the insurer and such third-party claimants at the  
80 expense of the insurer. The third-party claimants are entitled  
81 to a prorated share of the policy limits as determined by the  
82 arbitrator, who must consider the comparative fault, if any, of  
83 each third-party claimant and the total likely outcome at trial  
84 based upon the total of the economic and noneconomic damages  
85 submitted to the arbitrator for consideration. A third-party  
86 claimant whose claim is resolved by the arbitrator must execute  
87 and deliver a general release to the insured party whose claim  
88 is resolved by the proceeding.

89 (7)-(4) In any insurance bad faith action, whether brought  
90 under this section or the common law, upon adverse adjudication  
91 at trial or upon appeal, the authorized insurer shall be liable  
92 for damages, together

93  
94 ===== T I T L E A M E N D M E N T =====

95 And the title is amended as follows:

96 Delete line 17

97 and insert:

98 exceed policy limits; revising applicability and



851654

99 conditions for the award of damages, court costs, and  
100 attorney fees in certain civil actions; creating s.  
101 624.1552, F.S.;