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LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 624.155, Florida Statutes, is amended to read:

624.155 Civil remedy.—

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

(a) By the insurer's ~~a~~ violation of ~~any of~~ the following ~~provisions by the insurer~~:

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

2. Section 626.9551;

3. Section 626.9705;

4. Section 626.9706;

5. Section 626.9707; or

6. Section 627.7283.

(b) By the insurer's commission of any of the following acts ~~by the insurer~~:

1. Acting arbitrarily and contrary to the insured's interests in failing ~~Not attempting in good faith~~ to settle claims within the policy limits if ~~when~~, under all the circumstances existing at the relevant time, it could and should have done so, had it acted fairly and honestly toward its insured ~~and with due regard for her or his interests~~;

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

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

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

(2) If a civil action is brought against an insurer pursuant to subparagraph (1)(b)1., or based on a common law claim for a bad faith failure to settle:

(a) Only an insured or the insured's assignee may bring

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such action.

(b) With respect to a third-party claim, an insurer does not violate the duty to attempt in good faith to settle on behalf of its insured if the third-party claimant does not provide a demand to settle which:

1. Is in writing, signed by the third-party claimant or the claimant's authorized representative, and delivered to the insurer and the insured;

2. States a specified amount within the insured's policy limits for which the third-party claimant offers to settle its claim in full and to release the insured from liability;

3. Is limited to one claimant and one line of coverage or, if not so limited, separately designates a demand for each claimant and each line of coverage, each of which may be accepted independently;

4. Is submitted by a person having the legal authority to accept payment and to execute the release;

5. Does not contain any conditions for acceptance other than payment of the specific amount demanded and compliance with the disclosure requirements of s. 627.4137; and

6. Includes a detailed explanation of the coverage and liability issues and the facts giving rise to the claim, including an explanation of injuries and damages claimed; the names of known witnesses; and a listing and copy, if available, of relevant documents, including medical records, which are available to the third-party claimant or authorized representative at the time of the demand to settle. The third-party claimant and his or her representatives have a continuing duty to supplement this information as it becomes available.

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(c) With respect to a third-party claim, an insured does not violate the duty to attempt in good faith to settle on behalf of its insured if, within 60 days after the notice of claim, 60 days after the insurer's receipt of the third-party claimant's written demand to settle, or 30 days after the accident or incident giving rise to the claim, whichever is later, the insurer offers to pay the lesser of:

1. The amount requested in the third-party claimant's written demand to settle; or

2. The insured's policy limits, in exchange for a release of liability.

(d) An insurer has an affirmative defense to any such action if the third-party claimant, the insured, or their representatives fail to fully cooperate in providing all relevant information and in presenting the claim.

(3) Notwithstanding statutory or common law requirements, if two or more third-party claimants make competing claims arising out of a single occurrence, which in total exceed the available policy limits of one or more of the insured parties who may be liable to the third-party claimants, an insurer is not liable beyond the available policy limits for failure to pay all or any portion of the available policy limits to one or more of the third-party claimants if, within 90 days after receiving notice of the competing claims in excess of the available policy limits, the insurer:

(a) Files an interpleader action under the Florida Rules of Civil Procedure. If the claims of the competing third-party claimants are found to be in excess of the policy limits, the third-party claimants are entitled to a prorated share of the

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policy limits as determined by the trier of fact. An insurer's interpleader action does not alter or amend the insurer's obligation to defend its insured; or

(b) Pursuant to binding arbitration agreed to by all parties, makes the entire amount of the policy limits available for payment to the competing third-party claimants before a qualified arbitrator selected by the insurer at the expense of the insurer. The third-party claimants are entitled to a prorated share of the policy limits as determined by the arbitrator, who shall consider the comparative fault, if any, of each third-party claimant, and the total likely outcome at trial based upon the total of the economic and noneconomic damages submitted to the arbitrator for consideration. A third-party claimant whose claim is resolved by the arbitrator shall execute and deliver a general release to the insured party whose claim is resolved by the proceeding.

(4) After settlement of a third-party claim, the third-party claimant's attorney is responsible for the satisfaction of any liens from the settlement funds to the extent such settlement funds are sufficient. If the third-party claimant is not represented by counsel, the third-party claimant shall provide the insurer with a written accounting of all outstanding liens.

(5) An insurer is not liable for amounts in excess of the policy limits or of the award, whichever is less, if it makes timely payment of an appraisal award.

(6) The fact that the insurer does not accept a demand to settle or offer policy limits under paragraph (2)(c), pay an appraisal award under subsection (5), or file an interpleader

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action or make policy limits available for arbitration under subsection (3) during the times specified does not give rise to a presumption that the insurer acted in bad faith.

(7) ~~(2)~~ Any party may bring a civil action against an unauthorized insurer if such party is damaged by a violation of s. 624.401 by the unauthorized insurer.

(8) ~~(3)(a)~~ Except for an action relating to a third-party claim, as a condition precedent to bringing an action under this section, the department and the authorized insurer must be ~~have been~~ given 60 days' written notice of the violation. If the department returns a notice for lack of specificity, the 60-day time period does ~~shall~~ not begin until a proper notice is filed.

(a) ~~(b)~~ The notice shall be on a form provided by the department, sent by certified mail to the claim handler if known or, if unknown, to the specific office handling the claim, and ~~shall~~ state with specificity the following information~~, and such other information as the department may require~~:

1. The statutory provision, including the specific language of the statute, which the authorized insurer allegedly violated.

2. The facts and circumstances reasonably known to the insurer giving rise to the violation, stated with specificity, and the corrective action that the insurer needs to take to remedy the alleged violation.

3. The name of any individual involved in the violation.

4. Reference to specific policy language that is relevant to the violation, if any. ~~If the person bringing the civil action is a third party claimant, she or he shall not be required to reference the specific policy language if the authorized insurer has not provided a copy of the policy to the~~

~~third party claimant pursuant to written request.~~

5. A statement that the notice is given in order to perfect the right to pursue the civil remedy authorized by this section.

6. Such other information as the department may require.

(b) ~~(c)~~ Within 20 days after ~~of~~ receipt of the notice, the department may return any notice that does not provide the specific information required by this section~~,~~ and ~~the department shall~~ indicate the specific deficiencies contained in the notice. A determination by the department to return a notice for lack of specificity is ~~shall be~~ exempt from ~~the requirements of~~ chapter 120.

(c) ~~(d)~~ No action shall lie if, within 60 days after filing notice, the damages are paid or the circumstances giving rise to the violation are corrected.

(d) ~~(e)~~ The authorized insurer that is the recipient of the ~~a~~ notice must ~~filed pursuant to this section shall~~ report to the department on the disposition of the alleged violation.

(e) ~~(f)~~ The applicable statute of limitations for an action under this section is ~~shall be~~ tolled for ~~a period of~~ 65 days by the mailing of the notice ~~required by this subsection~~ or the mailing of a subsequent notice ~~required by this subsection~~.

(9) ~~(4)~~ Upon adverse adjudication at trial or upon appeal, the authorized insurer is ~~shall be~~ liable for damages, together with court costs and reasonable attorney's fees incurred by the plaintiff.

(10) ~~(5)~~ ~~No~~ Punitive damages may not ~~shall~~ be awarded under this section unless the acts giving rise to the violation occur with such frequency as to indicate a general business practice and these acts are:

(a) Willful, wanton, and malicious;

(b) In reckless disregard for the rights of any insured; or

(c) In reckless disregard for the rights of a beneficiary under a life insurance contract.

Any person who pursues a claim under this subsection must ~~shall~~ post in advance the costs of discovery. Such costs shall be awarded to the authorized insurer if ~~no~~ punitive damages are not awarded to the plaintiff.

(11) ~~(6)~~ This section does ~~shall~~ not ~~be construed to~~ authorize a class action suit against an authorized insurer or a civil action against the commission, the office, or the department or any of their employees, or ~~to~~ create a cause of action if ~~when~~ an authorized health insurer refuses to pay a claim for reimbursement on the ground that the charge for a service was unreasonably high or that the service provided was not medically necessary.

(12) ~~(7) In the absence of expressed language to the contrary,~~ This section does ~~shall~~ not ~~be construed to~~ authorize a civil action or create a cause of action against an authorized insurer or its employees who, in good faith, release information about an insured or an insurance policy to a law enforcement agency in furtherance of an investigation of a criminal or fraudulent act relating to a motor vehicle theft or a motor vehicle insurance claim.

(13) ~~(8)~~ The civil remedy specified in this section does not preempt any other remedy or cause of action provided for pursuant to any other statute or pursuant to the common law of this state. The legal standard established in subsection

(1)(b)(1) and the provisions of subsections (2)-(6) apply equally and without limitation or exception to all common law remedies and causes of action for bad faith failure to settle, regardless of legal theory, and to actions brought pursuant to this section. To prevent circumvention of this section by resort to common-law causes of action, all prior judicial decisions inconsistent with the provisions of this section are disapproved. These include, but are expressly not limited to, *Macola v. Gov't Employees Ins. Co.*, 953 So.2d 451, 457 (Fla. 2006), *Berges v. Infinity Ins. Co.*, 896 So.2d 665, 668 (Fla. 2004), and *Powell v. Prudential Property & Cas. Ins. Co.*, 584 So.2d 12 (Fla. 3rd DCA, 1991). Any person may obtain a judgment under ~~either~~ the common-law remedy for ~~of~~ bad faith or this statutory remedy, but is ~~shall~~ not ~~be~~ entitled to a judgment under both remedies. This section does ~~shall~~ not ~~be construed to~~ create a common-law cause of action. The damages recoverable pursuant to this section ~~shall~~ include those damages that ~~which~~ are a reasonably foreseeable result of a specified violation of this section by the authorized insurer and may include an award or judgment in an amount that exceeds the policy limits.

(14) ~~(9)~~ A surety issuing a payment or performance bond on the construction or maintenance of a building or roadway project is not an insurer for purposes of subsection (1).

(15) As used in the section, the term "third-party claim" means a claim against an insured, by one other than the insured, on account of harm or damage allegedly caused by an insured and covered by a policy of liability insurance.

Section 2. Paragraph (k) of subsection (3) of section 627.311, Florida Statutes, is amended to read:

627.311 Joint underwriters and joint reinsurers; public records and public meetings exemptions.—

(3) The office may, after consultation with insurers licensed to write automobile insurance in this state, approve a joint underwriting plan for purposes of equitable apportionment or sharing among insurers of automobile liability insurance and other motor vehicle insurance, as an alternate to the plan required in s. 627.351(1). All insurers authorized to write automobile insurance in this state shall subscribe to the plan and participate therein. The plan shall be subject to continuous review by the office, which may at any time disapprove the entire plan or any part thereof if it determines that conditions have changed since prior approval and that in view of the purposes of the plan changes are warranted. Any disapproval by the office shall be subject to the provisions of chapter 120. The Florida Automobile Joint Underwriting Association is created under the plan. The plan and the association:

(k)~~1.~~ Shall have no liability, and no cause of action ~~of any nature shall arise~~ against any member insurer or its agents or employees, agents or employees of the association, members of the board of governors of the association, the Chief Financial Officer, or the office or its representatives for any action taken by them in the performance of their duties or responsibilities under this subsection. Such immunity does not apply to actions for or arising out of a breach of any contract or agreement pertaining to insurance, or any willful tort.

~~2. Notwithstanding the requirements of s. 624.155(3)(a), as a condition precedent to bringing an action against the plan under s. 624.155, the department and the plan must have been~~

~~given 90 days' written notice of the violation. If the department returns a notice for lack of specificity, the 90-day time period shall not begin until a proper notice is filed. This notice must comply with the information requirements of s. 624.155(3)(b). Effective October 1, 2007, this subparagraph shall expire unless reenacted by the Legislature prior to that date.~~

Section 3. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 4. This act shall take effect July 1, 2011.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to civil remedies against insurers; amending s. 624.155, F.S.; revising provisions relating to civil actions against insurers; revising the grounds for bringing an action based on the insurer's failure to accept an offer to settle within policy limits; providing who may bring such an action; providing requirements for bringing such an action; providing for the release of an insured if the insurer offers to settle a third-party claim within a


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specified time under certain circumstances; providing that the insurer has an affirmative defense if a third-party claimant or the insured fails to cooperate with the insurer; providing that an insurer is not liable for two or more claims that exceed the policy limits if it files an interpleader action or makes the policy limits available under arbitration; specifying responsibility for the payment of liens; providing that an insurer is not liable for amounts in excess of the policy limits if it makes timely payment of the appraisal amount; providing that certain refusals to act by the insurer are not presumptive evidence of bad faith; revising requirements relating to the preaction notice of a civil action sent to the Department of Financial Regulation and the insurer; providing for the relationship of the act to the common law and prior judicial decisions; providing a definition for "third-party claim"; amending s. 627.311, F.S.; conforming a cross-reference; deleting an obsolete provision; providing for severability; providing an effective date.