

By Senator Thrasher

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1 A bill to be entitled
2 An act relating to civil remedies against insurers;
3 amending s. 624.155, F.S.; revising provisions
4 relating to civil actions against insurers; providing
5 a definition; revising the grounds for bringing an
6 action based on the insurer's failure to accept an
7 offer to settle within policy limits; providing who
8 may bring such an action; providing requirements for
9 bringing such an action; providing for the release of
10 an insured if the insurer offers to settle a third-
11 party claim within a specified time under certain
12 circumstances; providing that the insurer has an
13 affirmative defense if a third-party claimant or the
14 insured fails to cooperate with the insurer; providing
15 that an insurer is not liable for two or more claims
16 that exceed the policy limits if it files an
17 interpleader action or makes the policy limits
18 available under arbitration; specifying responsibility
19 for the payment of liens; providing that an insurer is
20 not liable for amounts in excess of the policy limits
21 if it makes timely payment of the appraisal amount;
22 providing that certain refusals to act by the insurer
23 are not presumptive evidence of bad faith; revising
24 requirements relating to the preaction notice of a
25 civil action sent to the Department of Financial
26 Regulation and the insurer; specifying work-product
27 protection requirements; prohibiting an award of fees
28 and costs from including any form of multiplier or
29 enhancement; providing that the provisions of the act

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replace the common law; amending s. 627.311, F.S.;
conforming a cross-reference; deleting an obsolete
provision; amending s. 627.727, F.S.; revising and
limiting the damages that are recoverable from an
uninsured motorist carrier in a civil action;
providing for severability; providing an effective
date.

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

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

624.155 Civil remedy.—

(1) 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.

(2)~~(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:~~

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59 1. Acting in gross disregard of the insured's interest by
60 failing to accept a ~~Not attempting in~~ good faith written demand
61 to settle claims within the policy limits if ~~when,~~ under all the
62 circumstances existing at the relevant time, it could and should
63 have done so, had it acted fairly and honestly toward its
64 insured ~~and with due regard for her or his interests;~~

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

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

73
74 Notwithstanding the ~~provisions of the above to the contrary,~~ a
75 person pursuing a remedy under this section need not prove that
76 such act was committed or performed with such frequency as to
77 indicate a general business practice.

78 (3) If a civil action is brought against an insurer
79 pursuant to subparagraph (2) (b) 1.:

80 (a) Only an insured or the insured's assignee may bring
81 such an action.

82 (b) With respect to a third-party claim, an insurer does
83 not violate the duty set forth in subparagraph (2) (b) 1. if the
84 third-party claimant does not provide a demand to settle which:

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

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88 2. States that it is a demand to settle made pursuant to
89 this section;

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

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

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

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

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

111 (c) With respect to a third-party claim, an insurer does
112 not violate the duty set forth in subparagraph (2)(b)1. if,
113 within 60 days after the insurer's receipt of the third-party
114 claimant's written demand to settle, or within 90 days after the
115 insurer's receipt of the notice of the claim, whichever is
116 later, the insurer offers to pay the lesser of:

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

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

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

125 (4) Notwithstanding subsection (3), if two or more third-
126 party claimants make competing claims arising out of a single
127 occurrence, which in total exceed the available policy limits of
128 one or more of the insured parties who may be liable to the
129 third-party claimants, an insurer is not liable beyond the
130 available policy limits for failure to pay all or any portion of
131 the available policy limits to one or more of the third-party
132 claimants if, within 90 days after receiving notice of the
133 competing claims in excess of the available policy limits, the
134 insurer:

135 (a) Files an interpleader action under the Florida Rules of
136 Civil Procedure. If the claims of the competing third-party
137 claimants are found to be in excess of the policy limits, the
138 third-party claimants are entitled to a prorated share of the
139 policy limits as determined by the trier of fact. An insurer's
140 interpleader action does not alter or amend the insurer's
141 obligation to defend its insured; or

142 (b) Pursuant to binding arbitration, makes the entire
143 amount of the policy limits available for payment to the
144 competing third-party claimants before a qualified arbitrator
145 selected by the insurer at the expense of the insurer. The

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146 third-party claimants are entitled to a prorated share of the
147 policy limits as determined by the arbitrator, who shall
148 consider the comparative fault, if any, of each third-party
149 claimant, and the total likely outcome at trial based upon the
150 total of the economic and noneconomic damages submitted to the
151 arbitrator for consideration. A third-party claimant whose claim
152 is resolved by the arbitrator shall execute and deliver a
153 general release to the insured party whose claim is resolved by
154 the proceeding.

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

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

165 (7) The fact that the insurer does not accept a demand to
166 settle or offer policy limits under paragraph (3)(c), pay an
167 appraisal award under subsection (6), or file an interpleader
168 action or make policy limits available for arbitration under
169 subsection (4) during the times specified does not give rise to
170 a presumption that the insurer acted in bad faith.

171 (8)~~(2)~~ Any party may bring a civil action against an
172 unauthorized insurer if such party is damaged by a violation of
173 s. 624.401 by the unauthorized insurer.

174 (9)~~(3)(a)~~ Except for an action relating to a third-party

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175 claim, as a condition precedent to bringing an action under this
176 section, the department and the authorized insurer must be ~~have~~
177 ~~been~~ given 60 days' written notice of the violation. If the
178 department returns a notice for lack of specificity, the 60-day
179 time period does ~~shall~~ not begin until a proper notice is filed.

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

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

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

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

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

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

200 6. Such other information as the department may require.

201 (b) ~~(c)~~ Within 20 days after ~~of~~ receipt of the notice, the
202 department may return any notice that does not provide the
203 specific information required by this section, ~~and the~~

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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~~.

(10) With respect to:

(a) A first-party claim, the insurer does not owe a fiduciary duty to the insured and retains the right to protect materials covered by the work-product privilege found within the claim processing file. The privilege must yield to inspection if an appropriate showing is made under the Florida Rules of Civil Procedure. The attorney-client privilege remains absolute.

(b) A third-party claim, until a claim or action for payment on a policy of insurance is final, all files of an insurer, including papers, communications, investigatory reports, or other documents in the insurer's files are the insurer's work product and immune from production or discovery. Thereafter, discovery shall be determined in accordance with the Florida Rules of Civil Procedure. Communications between an insurer and its counsel which are protected under s. 90.502

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remain protected.

~~(11)-(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. An award of fees and costs may not include any form of multiplier or enhancement.

~~(12)-(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.

~~(13)-(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.

~~(14)-(7)~~ ~~In the absence of expressed language to the contrary,~~ This section does ~~shall~~ not ~~be construed to~~ authorize

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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.

(15) The civil remedies specified in this section are the sole remedies and causes of action for extracontractual damages for bad-faith failure to settle under an insurance contract. Any related common-law causes of action are replaced and superseded by this section. The provisions of this section apply to all cases brought pursuant to this section unless specifically controlled by s. 766.1185.

~~(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. Any person may obtain a judgment under either the common-law remedy of bad faith or this statutory remedy, but shall not be entitled to a judgment under both remedies. This section shall not be construed to create a common-law cause of action. The damages recoverable pursuant to this section shall include those damages 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.~~

(16)~~(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 (2) ~~(1)~~.

Section 2. Paragraph (k) of subsection (3) of section

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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~~

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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. Subsection (10) of section 627.727, Florida Statutes, is amended to read:

627.727 Motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection.—

(10) The damages recoverable from an uninsured motorist carrier in an action brought under s. 624.155 ~~shall~~ include the total amount of the claimant's damages, including the amount in excess of the policy limits but not exceeding two times the policy limits, any interest on unpaid benefits, and reasonable attorney's fees and costs, ~~and any damages caused by a violation of a law of this state~~. The total amount of the claimant's damages is recoverable whether caused by an insurer or by a third-party tortfeasor.

Section 4. 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 5. This act shall take effect July 1, 2011.