

By Senator Oelrich

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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.; requiring that before
4 bringing a common-law bad faith action against an
5 insurer, the party bringing the action must first
6 provide to the Department of Financial Services and
7 the insurer prior written notification of a specified
8 number of days; requiring that a notice relating to
9 the bringing of a common-law claim of bad faith must
10 specify the common-law duty violated by the insurer;
11 requiring a notice to specify the amount of moneys
12 that an insurer has failed to tender or pay if the
13 specific statutory or common-law-based violation
14 includes such failure; providing that the
15 circumstances giving rise to certain statutory or
16 common-law-based violations are corrected by
17 specifically described monetary tenders by an insurer;
18 providing that either a third-party claimant or
19 insured is entitled to a general release under certain
20 circumstances; providing that the applicable statute
21 of limitations is tolled for a specified period of
22 time when certain notices alleging a common-law-based
23 violation are mailed; revising provisions to conform
24 to changes made by the act relating to statutory or
25 common-law-based actions being brought against
26 insurers; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Subsections (3) and (8) of section 624.155,
31 Florida Statutes, are amended to read:

32 624.155 Civil remedy.—

33 (3)~~(a)~~ As a condition precedent to bringing an action
34 either under this section or based on the common-law claim of
35 bad faith, the department and the authorized insurer must have
36 been given 60 days' written notice of the violation. If the
37 department returns a notice for lack of specificity, the 60-day
38 time period shall not begin until a proper notice is filed.

39 (a)~~(b)~~ The notice shall be on a form provided by the
40 department and shall state with specificity the following
41 information, and such other information as the department may
42 require:

43 1. The statutory provision or common-law duty, including
44 the specific language of the statute, if applicable, which the
45 authorized insurer allegedly violated.

46 2. The facts and circumstances giving rise to the violation
47 and, if the violation includes failure to pay or tender moneys,
48 the amount of such moneys.

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

50 4. Reference to specific policy language that is relevant
51 to the violation, if any. If the person bringing the civil
52 action is a third-party ~~third-party~~ claimant, she or he shall
53 not be required to reference the specific policy language if the
54 authorized insurer has not provided a copy of the policy to the
55 third-party ~~third-party~~ claimant pursuant to written request.

56 5. A statement that the notice is given in order to perfect
57 the right to pursue the civil remedy authorized by this section
58 or by the common law.

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

66 ~~(c)(d)~~ No action shall lie if, within 60 days after filing
67 notice, the damages are paid or the circumstances giving rise to
68 the violation are corrected. If the alleged violation is based
69 on this section or on the common-law claim of bad faith, the
70 insurer's tender of either the amount demanded in the notice or
71 the applicable policy limits constitutes correction of the
72 circumstances giving rise to the violation. In third-party
73 liability claims:

74 1. If the claimant files the notice, the insured is
75 entitled to a general release from the claimant upon the
76 insurer's tender of the amount demanded in the notice or the
77 applicable policy limits.

78 2. If the insured files the notice and the claimant accepts
79 the insurer's tender, the insured is entitled to a general
80 release from the claimant.

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

84 ~~(e)(f)~~ The applicable statute of limitations for an action
85 under this section or based on the common-law claim of bad faith
86 shall be tolled for a period of 65 days by the mailing of the
87 notice required by this subsection or the mailing of a

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88 subsequent notice required by this subsection.

89 (8) Except as provided in subsection (3), the civil remedy
90 specified in this section does not preempt any other remedy or
91 cause of action provided for pursuant to any other statute or
92 pursuant to the common law of this state. Any person may obtain
93 a judgment under either the common-law remedy of bad faith or
94 this statutory remedy, but shall not be entitled to a judgment
95 under both remedies. This section shall not be construed to
96 create a common-law cause of action. The damages recoverable
97 pursuant to this section shall include those damages which are a
98 reasonably foreseeable result of a specified violation of this
99 section by the authorized insurer and may include an award or
100 judgment in an amount that exceeds the policy limits.

101 Section 2. This act shall take effect July 1, 2012.