

1 A bill to be entitled  
2 An act relating to civil actions against insurers;  
3 amending s. 624.155, F.S.; authorizing an insured to bring  
4 a civil action against an insurer when the insured is  
5 damaged by the commission of certain acts by the insurer;  
6 requiring the insured and any person demanding settlement  
7 to cooperate with the insurer with regard to facilitating  
8 the settlement; revising notice requirements related to  
9 such civil actions; requiring that notice of such actions  
10 contain certain information; deleting an exemption for a  
11 third-party claimant; requiring the Department of  
12 Financial Services to return such notice within a  
13 specified period after receipt under certain  
14 circumstances; providing that no action shall lie if  
15 damages are paid or the circumstances giving rise to the  
16 insurer's violation are corrected within a specified  
17 period; extending the period for which the applicable  
18 statute of limitations may be tolled under certain  
19 circumstances; providing for the preemption of other civil  
20 remedies; requiring that an insured prove, by clear and  
21 convincing evidence, that the insurer's refusal to settle  
22 was unreasonable in an action arising from an allegation  
23 that the insurer failed to settle a claim for liability  
24 insurance coverage; providing that the insurer of an  
25 insured or insureds is not liable for extracontractual  
26 damages for failing to pay the insurer's policy limits  
27 under certain circumstances; providing that an insurer  
28 that tenders its policy limits is entitled to a release

29 | from its insured if the claimant accepts the tender;  
 30 | providing circumstances under which a civil cause of  
 31 | action does not exist; providing that an insured is not  
 32 | prohibited from assigning the cause of action to an  
 33 | injured third-party claimant for the insurer's failure to  
 34 | act fairly and honestly toward its insured and with due  
 35 | regard for the insured's interest; providing for  
 36 | applicability; providing an effective date.

37 |

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

39 |

40 | Section 1. Subsections (1), (3), and (8) of section  
 41 | 624.155, Florida Statutes, are amended, and subsections (10)  
 42 | through (15) are added to that section, to read:

43 | 624.155 Civil remedy.--

44 | (1) An insured ~~Any person~~ may bring a civil action against  
 45 | an insurer when such insured ~~person~~ is damaged:

46 | (a) By a violation of any of the following provisions by  
 47 | the insurer:

- 48 | 1. Section 626.9541(1)(i), (o), or (x);
- 49 | 2. Section 626.9551;
- 50 | 3. Section 626.9705;
- 51 | 4. Section 626.9706;
- 52 | 5. Section 626.9707; or
- 53 | 6. Section 627.7283.

54 | (b) By the commission of any of the following acts by the  
 55 | insurer:

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56 1. Not attempting in good faith to settle claims when,  
57 under all the circumstances, it could and should have done so,  
58 had it acted fairly and honestly toward its insured and with due  
59 regard for her or his interests. However, both the insured and  
60 any person asserting a demand for such settlement owe a similar  
61 duty to the insurer to cooperate fully with the insurer, and it  
62 is a defense to any action brought under this section if the  
63 court finds that the insured or other person demanding  
64 settlement failed to cooperate fully with regard to facilitating  
65 the settlement;

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

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

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

79 (3) (a) As a condition precedent to bringing an action  
80 under this section, the department and the authorized insurer  
81 must have been given 90 ~~60~~ days' written notice of the  
82 violation. If the department returns a notice for lack of

83 | specificity, the 90-day ~~60-day~~ time period shall not begin until  
 84 | a proper notice is filed.

85 | (b) The notice shall be on a form provided by the  
 86 | department and shall state with specificity the following  
 87 | information, and such other information as the department may  
 88 | require:

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

92 | 2. The facts and circumstances giving rise to the  
 93 | violation and any amount in dispute.

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

95 | 4. Reference to specific policy language that is relevant  
 96 | to the violation, if any. ~~If the person bringing the civil  
 97 | action is a third party claimant, she or he shall not be  
 98 | required to reference the specific policy language if the  
 99 | authorized insurer has not provided a copy of the policy to the  
 100 | third party claimant pursuant to written request.~~

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

104 | (c) Within 30 ~~20~~ days after the date on which the  
 105 | department receives ~~of receipt of~~ the notice, the department  
 106 | shall ~~may~~ return any notice that does not provide the specific  
 107 | information required by this section, and the department shall  
 108 | indicate the specific deficiencies contained in the notice. A  
 109 | determination by the department to return a notice for lack of

110 specificity is ~~shall be~~ exempt from the requirements of chapter  
 111 120.

112 (d) No action shall lie if, within 90 ~~60~~ days after filing  
 113 notice, the damages are paid or the circumstances giving rise to  
 114 the violation are corrected.

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

118 (f) The applicable statute of limitations for an action  
 119 under this section shall be tolled for a period of 95 ~~65~~ days by  
 120 the mailing of the notice required by this subsection or the  
 121 mailing of a subsequent notice required by this subsection.

122 (8) The civil remedy specified in this section preempts  
 123 all ~~does not preempt any other remedies or causes~~ remedy or  
 124 cause of action for extracontractual damages for failing to  
 125 settle under an insurance contract that are provided for  
 126 pursuant to any other statute or pursuant to the common law of  
 127 this state. Any person may obtain a judgment under either the  
 128 common-law remedy of bad faith or this statutory remedy, but  
 129 shall not be entitled to a judgment under both remedies. This  
 130 section does ~~shall not be construed to~~ create a common-law cause  
 131 of action. The damages recoverable pursuant to this section  
 132 shall include those damages which are a reasonably foreseeable  
 133 result of a specified violation of this section by the  
 134 authorized insurer and may include an award or judgment in an  
 135 amount that exceeds the policy limits.

136 (10) In any action against an insurer arising from an  
 137 allegation that the insurer failed to settle a claim for

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138 liability insurance coverage, the insured has the burden to  
139 prove, by clear and convincing evidence, that the insurer's  
140 refusal to settle was unreasonable.

141 (11) If multiple claimants seek compensation from the same  
142 insured or multiple insureds or if a single claimant seeks  
143 compensation from multiple insureds for damages arising from the  
144 same occurrence, and such compensation in the aggregate exceeds  
145 the policy limits of the insurer, the insurer of the insured or  
146 insureds is not liable for extracontractual damages for failing  
147 to pay the insurer's policy limits if the insurer makes a  
148 written offer of its policy limits within the timeframe set  
149 forth in this section to all known potential claimants in  
150 exchange for releases of all claims against all insureds or  
151 tenders such limits to the court for apportionment to the  
152 claimants.

153 (12) An insurer that tenders its policy limits is entitled  
154 to a release from its insured if the claimant accepts the  
155 tender.

156 (13) A cause of action does not exist under this section  
157 if an insurer remedies the alleged violation contained in the  
158 notice issued under subsection (3) within 90 days after the date  
159 on which such notice was issued if such notice meets all  
160 requirements of that subsection.

161 (14) This section does not prohibit an insured from  
162 assigning the cause of action to an injured third-party claimant  
163 for the insurer's failure to act fairly and honestly toward its  
164 insured or with due regard for the insured's interest.

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165 |           (15) This section applies to all actions involving medical  
166 | malpractice claims unless such claims arise under or are  
167 | controlled by s. 766.1185.

168 |           Section 2. This act shall take effect July 1, 2009.