

By Senator Brandes

24-00373B-19

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1 A bill to be entitled
2 An act relating to the Fair Settlement Act; providing
3 a short title; amending s. 624.155, F.S.; revising
4 circumstances under which the Department of Financial
5 Services and an authorized insurer must be given a
6 certain presuit notice; deleting a provision that
7 tolls the period for providing the notice under
8 certain circumstances; requiring such notices to
9 include the specific amount of money constituting a
10 cure of the violation; deleting a provision
11 authorizing the department to return deficient
12 notices; requiring insureds, claimants, or any person
13 acting on their behalf to provide insurers with
14 written notices of loss as a condition precedent to
15 bad faith actions; providing that an insurer does not
16 violate its good faith duty to settle claims and is
17 not liable for a certain failure if it meets certain
18 conditions; providing a limitation on an insurer's
19 liability to third-party claimants, under certain
20 circumstances, if it files an interpleader action
21 within a certain timeframe; providing construction;
22 requiring triers of fact, under certain circumstances,
23 to consider whether insureds, claimants, or their
24 representatives made good faith efforts to cooperate
25 with insurers' investigations; providing an effective
26 date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. This act may be cited as the "Fair Settlement
31 Act."

32 Section 2. Subsection (3) of section 624.155, Florida
33 Statutes, is amended, subsections (10), (11), and (12) are added
34 to that section, and paragraph (b) of subsection (1) of that
35 section is republished, to read:

36 624.155 Civil remedy.—

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

39 (b) By the commission of any of the following acts by the
40 insurer:

41 1. Not attempting in good faith to settle claims when,
42 under all the circumstances, it could and should have done so,
43 had it acted fairly and honestly toward its insured and with due
44 regard for her or his interests;

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

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

53
54 Notwithstanding the provisions of the above to the contrary, a
55 person pursuing a remedy under this section need not prove that
56 such act was committed or performed with such frequency as to
57 indicate a general business practice.

58 (3) (a) Except as provided in subsection (10), as a

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59 condition precedent to bringing an action under this section,
60 the department and the authorized insurer must be ~~have been~~
61 given 60 days' written notice of the violation. ~~If the~~
62 ~~department returns a notice for lack of specificity, the 60-day~~
63 ~~time period shall not begin until a proper notice is filed.~~

64 (b) The notice shall be on a form provided by the
65 department and shall state with specificity the following
66 information, and such other information as the department may
67 require:

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

70 2. The facts and circumstances giving rise to the
71 violation.

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

73 4. Reference to specific policy language that is relevant
74 to the violation, if any. If the person bringing the civil
75 action is a third-party ~~third party~~ claimant, she or he shall
76 not be required to reference the specific policy language if the
77 authorized insurer has not provided a copy of the policy to the
78 third-party ~~third party~~ claimant pursuant to written request.

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

81 6. The specific amount of money that constitutes a cure of
82 the alleged violation.

83 (c) ~~Within 20 days of receipt of the notice, the department~~
84 ~~may return any notice that does not provide the specific~~
85 ~~information required by this section, and the department shall~~
86 ~~indicate the specific deficiencies contained in the notice. A~~
87 ~~determination by the department to return a notice for lack of~~

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88 ~~specificity shall be exempt from the requirements of chapter~~
89 ~~120.~~

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

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

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

100 (10) As a condition precedent to a statutory or common law
101 action for a bad faith failure to settle a liability insurance
102 claim, the insured, the claimant, or any person acting on behalf
103 of the insured or the claimant must provide the insurer with a
104 written notice of loss. The insurer does not violate the duty to
105 attempt in good faith to settle the claim and is not liable for
106 a bad faith failure to settle under this section or the common
107 law if the insurer:

108 (a) Complies with a request for a disclosure statement
109 described in s. 627.4137; and

110 (b) Within 45 days after receipt of the written notice of
111 loss, offers to pay the insured or the claimant the lesser of
112 the amount the insured or the claimant is willing to accept or
113 the limits of the liability coverage applicable to the insured's
114 or the claimant's claim in exchange for full release of the
115 insured from any liability arising from the incident and the
116 notice of loss.

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117 (11) If two or more third-party claimants in a liability
118 claim make competing claims arising out of a single occurrence
119 which in total exceed the available policy limits of one or more
120 of the insured parties who may be liable to the third-party
121 claimants, an insurer is not liable beyond the available policy
122 limits for failure to pay all or any portion of the available
123 policy limits to one or more of the third-party claimants, if
124 within 90 days after receiving notice of the competing claims in
125 excess of the available policy limits, the insurer files an
126 interpleader action under the Florida Rules of Civil Procedure.
127 The competing third-party claimants are entitled to a prorated
128 share of the policy limits as determined by the trier of fact.
129 An insurer's interpleader action does not alter or amend the
130 insurer's obligation to defend its insured.

131 (12) In evaluating whether an insurer committed an act
132 under subparagraph (1)(b)1., the trier of fact must consider
133 whether the insured, claimant, or representative of the insured
134 or claimant made good faith efforts to cooperate with the
135 insurer in the investigation of the claim.

136 Section 3. This act shall take effect July 1, 2019.