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LEGISLATIVE ACTION

Senate

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House

Senator Burgess moved the following:

Senate Amendment (with title amendment)

Delete lines 1832 - 2094

and insert:

1. Except for a civil action for bad faith failure to settle a third-party claim subject to s. 624.156, not attempting in good faith to settle claims when, under all the circumstances, 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



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12 accompanied by a statement setting forth the coverage under
13 which payments are being made; ~~or~~

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

19 4. When handling a first-party claim under a motor vehicle
20 insurance policy, not attempting in good faith to settle such
21 claim pursuant to subparagraph 1. when such failure is caused by
22 a failure to communicate to an insured:

23 a. The name, telephone number, e-mail address, and mailing
24 address of the person who is adjusting the claim;

25 b. Any issues that may impair the insured's coverage;

26 c. Information that might resolve the issue in a prompt
27 manner;

28 d. Any basis for the insurer's rejection or nonacceptance
29 of any settlement demand or offer; or

30 e. Any needed extensions to respond to a time-limited
31 settlement offer.

32
33 Notwithstanding the provisions of the above to the contrary, a
34 person pursuing a remedy under this section need not prove that
35 such act was committed or performed with such frequency as to
36 indicate a general business practice.

37 (8) The civil remedy specified in this section does not
38 preempt any other remedy or cause of action provided for
39 pursuant to any other statute or pursuant to the common law of
40 this state. A ~~Any person is~~ may obtain a judgment under either



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41 ~~the common-law remedy of bad faith or this statutory remedy, but~~
42 ~~shall not be~~ entitled to a judgment under multiple bad faith
43 ~~both remedies, whether under statute or common law.~~ This section
44 shall not be construed to create a common-law cause of action.
45 The damages recoverable pursuant to this section shall include
46 those damages which are a reasonably foreseeable result of a
47 specified violation of this section by the authorized insurer
48 and may include an award or judgment in an amount that exceeds
49 the policy limits.

50 Section 35. Section 624.156, Florida Statutes, is created
51 to read:

52 624.156 Bad faith failure to settle actions against motor
53 vehicle insurers by third-party claimants.-

54 (1) SCOPE.-This section applies in all actions against any
55 insurer for bad faith failure to settle a third-party claim,
56 whether under statute or common law, for a loss arising out of
57 the ownership, maintenance, or use of a motor vehicle operated
58 or principally garaged in this state at the time of an accident,
59 regardless of whether the insurer is authorized to do business
60 in this state or issued a policy in this state.

61 (2) DUTY OF GOOD FAITH.-In handling claims, an insurer has
62 a duty to its insured to handle claims in good faith by
63 complying with the best practice standards of subsection (4).

64 (3) BAD FAITH FAILURE TO SETTLE.-"Bad faith failure to
65 settle" means an insurer's failure to meet its duty of good
66 faith, which is the proximate cause of the insurer not settling
67 a third-party claim when, under all the circumstances, the
68 insurer could and should have done so, had it acted fairly and
69 honestly toward its insured and with due regard for the



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70 insured's interests.

71 (4) BEST PRACTICE STANDARDS.—Upon the earlier of receiving
72 notice of a claim or, under subsection (6), a demand for
73 settlement, an insurer must do all of the following:

74 (a) Assign a duly licensed and appointed insurance adjuster
75 to investigate the claim and resolve any questions concerning
76 the existence or extent of the insured's coverage.

77 (b) Evaluate every claim fairly, honestly, and with due
78 regard for the interests of the insured, consider the extent of
79 the claimant's recoverable damages, and consider the information
80 in a reasonable and prudent manner.

81 (c) Request from the insured or claimant additional
82 relevant information the insurer reasonably deems necessary.

83 (d) Conduct all verbal and written communications with the
84 utmost honesty and complete candor.

85 (e) Make reasonable efforts to explain to persons not
86 represented by counsel matters requiring expertise beyond the
87 level normally expected of a layperson with no training in
88 insurance or claims-handling issues.

89 (f) Retain all written communications and note and retain
90 all verbal communications in a reasonable manner for a period of
91 not less than 5 years after completion of the claim adjustment.

92 (g) Provide the insured, upon request, with all
93 nonprivileged communications related to the insurer's handling
94 of the claim.

95 (h) Provide, at the insurer's expense, reasonable
96 accommodations necessary to communicate effectively with an
97 insured covered under the Americans with Disabilities Act.

98 (i) In handling third-party claims, communicate to an



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99 insured:

100 1. The identity of any other person or entity the insurer
101 has reason to believe may be liable;

102 2. The insurer's evaluation of the claim;

103 3. The likelihood and possible extent of an excess
104 judgment;

105 4. Steps the insured can take to avoid exposure to an
106 excess judgment;

107 5. Requests for financial affidavits and an explanation of
108 the consequences of an insured's failure to submit a financial
109 affidavit; and

110 6. Any demands for settlement under subsection (6) or
111 settlement offers.

112 (j)1. When a single claim arises out of a single
113 occurrence, the insurer must give fair consideration to a
114 settlement offer that is not unreasonable under the facts and
115 settle, if possible, when a reasonably prudent person, faced
116 with the prospect of paying the total recovery, would do so.
117 When liability is clear, and the claimant's injuries are so
118 serious that a judgment in excess of the policy limits is
119 likely, the insurer must continue settlement negotiations after
120 a claimant withdraws a settlement demand under subparagraph
121 (6) (c)1.

122 2. When multiple claims arise out of a single occurrence,
123 the combined value of all claims exceeds the total of all
124 applicable policy limits, and the claimants are all unwilling to
125 settle cumulatively within the policy limits, the insurer must
126 attempt to minimize the magnitude of possible excess judgments
127 against the insured. In such circumstances, the insurer is



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128 entitled to great discretion to decide how much to offer each
129 respective claimant in its attempt to protect the insured. The
130 insurer may, in its effort to minimize the excess liability of
131 the insured, use its discretion to offer the full available
132 policy limits to one or more claimants to the exclusion of
133 others and may leave the insured exposed to some liability after
134 all the policy limits are paid.

135 (5) CONDITIONS PRECEDENT.—It is a condition precedent to
136 filing an action against an insurer for bad faith failure to
137 settle a third-party claim that the claimant must:

138 (a) Serve a written demand for settlement, as provided in
139 subsection (6), within the full available policy limits of
140 liability in exchange for a release of further liability against
141 the insured; and

142 (b) Unless expressly waived by the insurer, obtain a final
143 judgment in excess of the policy limits against the insured or
144 the insured's estate, bankruptcy trustee, or successor in
145 interest.

146 (6) DEMAND FOR SETTLEMENT.—

147 (a) A claimant may not place any conditions on acceptance
148 of a demand for settlement other than electing the right to
149 receive a financial affidavit that complies with the
150 requirements of subsection (7). If the claimant exercises such
151 right, the claimant may withdraw the demand for settlement
152 pursuant to paragraph (c). A demand for settlement must be
153 served upon the insurer by certified mail at the address
154 designated by the insurer with the Department of Financial
155 Services under s. 624.422(2).

156 (b) A demand for settlement must do all of the following:



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- 157 1. Identify the:
- 158 a. Date and location of loss;
- 159 b. Name, address, and date of birth of the claimant;
- 160 c. Name of each insured to whom the demand for settlement
161 is directed; and
- 162 d. Legal and factual basis of the claim.
- 163 2. Provide a reasonably detailed description of the
164 claimant's:
- 165 a. Known injuries caused or aggravated by the incident on
166 which the claim is based;
- 167 b. Medical treatment causally related to the incident on
168 which the claim is based; and
- 169 c. Type and amount of known damages incurred and, if any,
170 the damages the claimant reasonably anticipates incurring in the
171 future.
- 172 3. State the amount of the demand for settlement.
- 173 4. Place no conditions on acceptance of the demand for
174 settlement other than electing the right to receive a financial
175 affidavit that complies with the requirements of subsection (7).
- 176 5. State whether the demand for settlement is conditioned
177 on the receipt of a financial affidavit meeting the requirements
178 of subsection (7), and if so, must include a request for such
179 financial affidavit.
- 180 6. Provide that the claimant and the claimant's attorney
181 will use the financial affidavit only for the purpose of
182 determining the insured's assets and liabilities and will not
183 publicly disseminate any information in the financial affidavit.
- 184 7. Provide a physical address, an e-mail address, and a
185 facsimile number for further communications, including, but not



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186 limited to, responses to the demand for settlement.

187 8. Release the insured from any further liability upon the
188 insurer's acceptance of a demand for settlement which is not
189 withdrawn pursuant to paragraph (c) or accepted pursuant to
190 paragraph (d).

191 (c) A claimant may withdraw a demand for settlement made
192 pursuant to this subsection within 7 days after receiving from
193 the insurer:

194 1. The insured's financial affidavit; or

195 2. Notice pursuant to subparagraph (7)(b)2. of the
196 insured's failure to complete the financial affidavit.

197 (d) If an insured refuses to provide to the insurer a
198 financial affidavit that complies with subsection (7), the
199 insurer may accept the demand for settlement without requiring a
200 release of the insured. An insurer that accepts the demand for
201 settlement pursuant to this paragraph does not have any further
202 duty to defend the insured and may not be held liable for
203 damages to the insured if the claimant thereafter obtains an
204 excess judgment against the insured.

205 (7) FINANCIAL AFFIDAVIT.—

206 (a) If a financial affidavit is requested pursuant to
207 subsection (6), the insured has 30 days after the insurer's
208 acceptance of the claimant's demand for settlement to provide
209 the completed affidavit to the insurer. If the insured is
210 incapacitated or deceased, a financial affidavit may be
211 completed by the insured's estate, bankruptcy trustee, successor
212 in interest, or an agent of the insured granted a power of
213 attorney. The affidavit shall be on a form adopted by rule by
214 the department unless such form is not adopted by the



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215 department.

216 (b) No later than 35 days after an insurer accepts a demand
217 for settlement which requests a financial affidavit, the insurer
218 shall provide to the claimant or, when the claimant is
219 represented by counsel, to the claimant's attorney:

220 1. The completed financial affidavit; or

221 2. Notice of the insured's failure to provide the requested
222 financial affidavit.

223 (c) A financial affidavit must include all of the
224 following:

225 1. The insured's assets at the time of the loss, including:

226 a. Cash, stocks, bonds, and nonretirement-based mutual
227 funds;

228 b. Nonhomestead real property;

229 c. All registered vehicles;

230 d. All bank accounts;

231 e. An estimated net accounting of all other assets; and

232 f. Any additional information included by the department.

233 2. The insured's liabilities, including:

234 a. Mortgage debt;

235 b. Credit card debt;

236 c. Child support and alimony payments;

237 d. Other liabilities; and

238 e. Any additional information included by the department.

239 3. For a corporate entity, information on its balance
240 sheet, including the corporate entity's:

241 a. Cash, property, equipment, and inventory;

242 b. Liabilities, including obligations, rent, money owed to
243 vendors, payroll, and taxes;



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244 c. Other information relevant to understanding the entity's
245 capital and net worth; and

246 d. Any additional information included by the department.

247 4. A list of all insurance policies, stating the name of
248 the insurer and policy number of each policy, which could
249 provide coverage for the claim stated in the demand for
250 settlement served pursuant to subsection (6).

251 5. For natural persons, a statement of whether the insured
252 was acting in the course and scope of employment at the time of
253 the incident giving rise to the claim set forth in the demand
254 for settlement served pursuant to subsection (6) and, if so,
255 providing the name and contact information for that employer.

256 (d) The department shall adopt by rule a form for the
257 affidavit as provided in this section. The form must include all
258 information specified in paragraph (c) and any additional
259 information that the department finds necessary for a claimant
260 to determine an insured's assets and liabilities.

261 (8) SAFE HARBORS.—

262 (a) When one claim arises out of a single occurrence, an
263 insurer is not liable in a bad faith failure to settle action if
264 the insurer complies with the best practices standards in
265 paragraphs (4)(b) and (i) and subparagraph (4)(j)1. and tenders
266 its policy limits within 60 days after receiving a demand for
267 settlement under subsection (6). In a claim where the insured's
268 liability is clear and the claimant's injuries are so serious
269 that a judgment in excess of the policy limits is likely, this
270 safe harbor applies only if the insurer continues, until the
271 trier of fact renders an excess judgment against the insured, to
272 tender policy limits in exchange for a release of the insured.



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273 An insurer that meets the requirements of this paragraph is not
274 liable in a bad faith failure to settle action.

275 (b) When multiple claims arise out of a single occurrence
276 and the combined value of all claims exceeds the total of all
277 applicable policy limits, if the insurer globally tenders all
278 applicable policy limits to one or more of the known claimants
279 within 60 days after it receives notice of the loss and complies
280 with the best practices standards in paragraphs (4)(b) and (i)
281 and subparagraph (4)(j)2., such insurer is not liable in a bad
282 faith failure to settle action. This paragraph does not require
283 that an insurer automatically tender policy limits within 60
284 days in every multiclaimant case.

285 (9) RELEASE.—An insurer that accepts a demand for
286 settlement under subsection (6) is entitled to a release of the
287 insured, except as provided in paragraph (6)(d).

288 (10) BURDEN OF PROOF.—In any action for bad faith failure
289 to settle:

290 (a) The claimant must prove by the preponderance of the
291 evidence that the insurer failed to comply with one or more of
292 the best practice standards of subsection (4) and thereby
293 violated its duty of good faith to the insured.

294 (b) If the claimant meets its burden of proof established
295 in paragraph (a), a rebuttable presumption is created that the
296 insurer's failure to comply with the best practice standards is
297 the proximate cause of the insurer's bad faith failure to settle
298 a third-party claim. To rebut this presumption, the insurer must
299 prove by the preponderance of the evidence that:

300 1. The insurer's violation of one or more best practice
301 standards was not the proximate cause of the excess judgment; or



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302 2. The insurer availed itself of a safe harbor under
303 subsection (8).

304 (c) In determining whether an insurer in bad faith failed
305 to settle, the trier of fact shall consider all of the
306 following:

307 1. Whether the insurer failed to settle a claim when, under
308 all the circumstances, it could and should have done so, had it
309 acted fairly and honestly toward the insured and with due regard
310 for the insured's interests.

311 2. Whether the insurer complied with the best practice
312 standards of subsection (4) using the same degree of care and
313 diligence as a person of ordinary care and prudence would
314 exercise in the management of his or her own business.

315 3. Whether the claimant or insured misrepresented material
316 facts to the insurer or made material omissions of fact to the
317 insurer.

318 4. Whether the insured denied liability or requested that
319 the case be defended after the insurer fully advised the insured
320 as to the facts and risks.

321 5. Whether the claimant or insured failed to provide
322 relevant information to the insurer on a timely basis.

323 6. Whether the insurer timely informed the insured of a
324 demand to settle within the limits of coverage, the right to
325 retain personal counsel, and the risk of litigation.

326 7. The insurer's willingness to negotiate with the claimant
327 in anticipation of settlement.

328 8. The amount of damages the claimant incurred or was
329 likely to incur in the future under the facts known or
330 reasonably available at the time of the insurer's response.



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331 9. If applicable, whether there were multiple third-party
332 claimants seeking, in the aggregate, compensation in excess of
333 the policy limits from the insured; and, if so, whether the
334 insurer breached its duty to attempt to minimize the magnitude
335 of possible excess judgments against the insured and to attempt
336 to settle as many claims as possible within the policy limits in
337 exchange for a release of the insured from further liability. In
338 such circumstances, the insurer is entitled to great discretion
339 to decide how much to offer each respective claimant in its
340 attempt to protect the insured. In its effort to minimize the
341 excess liability of the insured, the insurer may use its
342 discretion to offer the full available policy limits to one or
343 more claimants to the exclusion of others and may leave the
344 insured exposed to some liability after all the policy limits
345 are paid. An insurer does not act in bad faith simply because it
346 is unable to settle all claims in a multiple claimant case. It
347 is a defense to any such claim if the insurer establishes that
348 it used its discretion for the benefit of its insureds and
349 complied with the other best practice standards of this section.

350 10. Additional factors that the court determines to be
351 relevant.

352 (d) The trier of fact, in determining whether an insurer in
353 bad faith failed to settle, must be informed that an excess
354 judgment occurred but may not be informed of the amount of the
355 excess judgment.

356 (11) DAMAGES.—If the trier of fact finds that a claimant
357 has met its burden of proof, an insurer is liable for the amount
358 of any excess judgment. No other damages, including, but not
359 limited to, punitive damages, may be awarded.



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

And the title is amended as follows:

Delete lines 110 - 174

and insert:

settle third-party claim actions against any insurer for a loss arising out of the ownership, maintenance, or use of a motor vehicle under specified circumstances; providing that insurers have a duty of good faith; defining the term "bad faith failure to settle"; specifying best practice standards for insurers upon receiving notice of a claim or a demand for settlement; specifying certain requirements for insurer communications to an insured in handling third-party claims; specifying requirements for the insurer when single and multiple claims arise out of a single occurrence under certain conditions; specifying conditions precedent for claimants filing bad faith failure to settle third-party claim actions; prohibiting claimants from placing conditions on acceptance of a demand for settlement other than electing the right to receive a financial affidavit; specifying requirements for and information that must be included in a demand for settlement; requiring a demand for settlement to release the insured from liability under certain conditions; authorizing a claimant to withdraw a demand for settlement after receiving certain information from an insurer within a



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389 certain timeframe; providing that an insurer does not
390 have a further duty to defend if it accepts a demand
391 for settlement under certain conditions; specifying
392 requirements for insureds providing financial
393 affidavits requested by insurers; requiring insurers
394 that accept demands for settlement which request
395 financial affidavits to provide certain information to
396 claimants; specifying requirements for information
397 that must be included in a financial affidavit;
398 requiring the department to adopt a form for financial
399 affidavits by rule; providing that insurers may not be
400 held liable in certain third-party bad faith failure
401 to settle actions if they comply with best practice
402 standards and tender policy limits within a certain
403 timeframe; specifying conditions for applicability of
404 such safe harbor; providing construction; providing
405 that insurers may not be held liable in certain third-
406 party bad faith failure to settle actions involving
407 multiple claims if such insurers globally tender
408 policy limits within a certain timeframe; specifying
409 that insurers that accept demands for settlement are
410 entitled to releases of their insureds; providing an
411 exception; requiring claimants to prove in any bad
412 faith failure to settle action by a preponderance of
413 the evidence that the insurer violated its duty of
414 good faith by failing to comply with best practice
415 standards; providing for a rebuttable presumption;
416 specifying factors for the trier of fact to consider
417 in determining whether an insurer in bad faith failed



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418 to settle; providing that an insurer has discretion in
419 offers to claimants; providing construction; providing
420 for a defense to claims of bad faith under certain
421 circumstances; requiring the trier of fact to be
422 informed of an excess judgment; prohibiting disclosure
423 of certain judgment information to the trier of fact;
424 limiting damages under certain circumstances;
425 providing that judgment creditors must