



799160

LEGISLATIVE ACTION

Senate

.  
. .  
. .  
. .  
. .

House

---

The Committee on Banking and Insurance (Passidomo) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 1677 - 1949

and insert:

Section 33. Paragraph (b) of subsection (1) and subsection (8) of section 624.155, Florida Statutes, are amended to read:

624.155 Civil remedy.—

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

(b) By the commission of any of the following acts by the



799160

11 insurer:

12       1. Except for a third-party bad faith failure to settle a  
13 claim subject to s. 624.156, not attempting in good faith to  
14 settle claims when, under all the circumstances, it could and  
15 should have done so, had it acted fairly and honestly toward its  
16 insured and with due regard for her or his interests;

17       2. Making claims payments to insureds or beneficiaries not  
18 accompanied by a statement setting forth the coverage under  
19 which payments are being made; ~~or~~

20       3. Except as to liability coverages, failing to promptly  
21 settle claims, when the obligation to settle a claim has become  
22 reasonably clear, under one portion of the insurance policy  
23 coverage in order to influence settlements under other portions  
24 of the insurance policy coverage; or

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

29           a. Information on who is adjusting the claim;

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

31           c. Information that might resolve the issue in a prompt  
32 manner;

33           d. Any basis for the insurer's rejection or nonacceptance  
34 of any settlement offer; or

35           e. Any needed extensions to respond to a time-limited  
36 settlement offer.

37

38 Notwithstanding the provisions of the above to the contrary, a  
39 person pursuing a remedy under this section need not prove that



799160

40 such act was committed or performed with such frequency as to  
41 indicate a general business practice.

42 (8) The civil remedy specified in this section does not  
43 preempt any other remedy or cause of action provided for  
44 pursuant to any other statute or pursuant to the common law of  
45 this state. ~~A Any person is may obtain a judgment under either~~  
46 ~~the common law remedy of bad faith or this statutory remedy, but~~  
47 ~~shall not be~~ entitled to a judgment under multiple bad faith  
48 ~~both~~ remedies, whether under statute or common law. This section  
49 shall not be construed to create a common-law cause of action.  
50 The damages recoverable pursuant to this section shall include  
51 those damages which are a reasonably foreseeable result of a  
52 specified violation of this section by the authorized insurer  
53 and may include an award or judgment in an amount that exceeds  
54 the policy limits.

55 Section 34. Section 624.156, Florida Statutes, is created  
56 to read:

57 624.156 Bad faith failure to settle actions against motor  
58 vehicle insurers by third-party claimants.-

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

66 (2) DUTY OF GOOD FAITH.-In handling claims, an insurer  
67 stands as a fiduciary for its insured and must handle claims in  
68 good faith. The insurer shall comply with the best practice



799160

69 standards of subsection (4) using the same degree of care and  
70 diligence as a person of ordinary care and prudence would  
71 exercise in the management of his or her own business.

72 (3) BAD FAITH FAILURE TO SETTLE.—“Bad faith failure to  
73 settle” means an insurer’s failure to settle a claim when, under  
74 all the circumstances, it could and should have done so, had it  
75 acted fairly and honestly toward its insured and with due regard  
76 for the insured’s interests.

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

80 (a) Assign a duly licensed and appointed insurance adjuster  
81 to investigate the claim and resolve any questions concerning  
82 the existence or extent of the insured’s coverage.

83 (b) Evaluate every claim fairly, honestly, and with due  
84 regard for the interests of its insured, consider the full  
85 extent of the claimant’s recoverable damages, and consider the  
86 information in a reasonable and prudent manner.

87 (c) Request from the insured or claimant additional  
88 relevant information deemed necessary.

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

91 (e) Make reasonable efforts to explain to nonattorneys  
92 matters requiring expertise beyond the level normally expected  
93 of a layperson with no training in insurance or claims-handling  
94 issues.

95 (f) Save all written communications and note and save all  
96 verbal communications in a reasonable manner.

97 (g) Provide the insured, upon request, with all



799160

98 nonprivileged communications related to the insurer's handling  
99 of the claim.

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

103 (i) In handling third-party claims, communicate to an  
104 insured:

105 1. The identity of any other person or entity the insurer  
106 knows may be liable;

107 2. The insurer's activity on and evaluation of the claim;

108 3. The likelihood and possible extent of an excess  
109 judgment;

110 4. Steps the insured can take to avoid exposure to an  
111 excess judgment;

112 5. Requests for examinations under oath and an explanation  
113 of the consequences of an insured's failure to submit to an  
114 examination under oath; and

115 6. Any demands for settlement under subsection (6) or  
116 settlement offers.

117 (j) When a loss involves multiple claimants and the  
118 claimants are unwilling to settle cumulatively within the policy  
119 limits and release the insured from further liability, in  
120 addition to fulfilling the requirements of paragraphs (a)-(i),  
121 attempt to minimize the risk of excess judgments against the  
122 insured and settle as many claims as possible within the policy  
123 limits in exchange for a release of the insured from further  
124 liability.

125 (5) CONDITIONS PRECEDENT.—It is a condition precedent to  
126 filing a third-party action for bad faith failure to settle



799160

127 against an insurer that the claimant must:  
128 (a) Serve a demand for settlement, as provided in  
129 subsection (6), within the insurer's limits of liability in  
130 exchange for a release of further liability against the insured;  
131 and  
132 (b) Obtain a final judgment in excess of the policy limits  
133 against the insured.  
134 (6) DEMAND FOR SETTLEMENT.—A demand for settlement must do  
135 all of the following:  
136 (a) Identify the:  
137 1. Date and location of loss;  
138 2. Name, address, and date of birth of the claimant;  
139 3. Name of each insured to whom the demand for settlement  
140 is directed; and  
141 4. Legal and factual basis of the claim.  
142 (b) Provide a reasonably detailed description of the  
143 claimant's:  
144 1. Known injuries caused or aggravated by the incident on  
145 which the claim is based;  
146 2. Medical treatment causally related to the incident on  
147 which the claim is based; and  
148 3. Type and amount of known damages incurred and, if any,  
149 the damages the claimant reasonably anticipates incurring in the  
150 future.  
151 (c) State the amount of the demand for settlement.  
152 (d) State whether the demand for settlement is conditioned  
153 on the completion of an examination under oath, as authorized by  
154 subsection (8).  
155 (e) Provide a physical address, an e-mail address, and a



799160

156 facsimile number for further communications, including, but not  
157 limited to, responses to the demand for settlement.

158 (f) Release the insured from any further liability upon the  
159 insurer's acceptance of a demand for settlement which is not  
160 withdrawn pursuant to paragraph (8) (e) or paragraph (8) (g), or  
161 accepted pursuant to paragraph (8) (f).

162 (g) Be served upon the insurer by certified mail at the  
163 address designated by the insurer with the Department of  
164 Financial Services under s. 624.422(2).

165 (7) LIMITATIONS ON CONDITIONS OF ACCEPTANCE OF A DEMAND.—A  
166 claimant may not place any conditions on acceptance of a demand  
167 for settlement other than electing the right to examine the  
168 insured under oath regarding any of the following:

169 (a) Whether the insured has the ability to satisfy a claim  
170 for damages in excess of the insurer's limits of liability.

171 (b) Whether any other person or entity may have actual or  
172 potential direct or vicarious liability for the insured's  
173 negligence.

174 (c) Whether any other insurance exists which may cover some  
175 or all of the damages sustained by the claimant.

176 (8) EXAMINATION UNDER OATH.—After serving a demand for  
177 settlement, a claimant may examine the insured under oath, on  
178 one occasion for a period of time not to exceed 2 hours,  
179 regarding only the issues in subsection (7).

180 (a) The claimant may request that the insured bring to the  
181 examination relevant documents in the insured's possession,  
182 custody, or control, including, but not limited to, credit  
183 reports, insurance policies, bank statements, tax returns,  
184 deeds, titles, and other proof of assets or liabilities.



799160

185       (b) The claimant may not examine the insured regarding  
186 liability.

187       (c) The claimant, the insurer, and the insured shall  
188 cooperate in scheduling the examination under oath. The insurer  
189 shall notify the insured of the date, time, and location of the  
190 examination under oath.

191       (d) The examination under oath must occur within 30 days  
192 after the insurer's acceptance of the settlement demand.

193       (e) The claimant may withdraw the demand for settlement if  
194 the insured refuses to submit to an examination under oath.

195       (f) If the insured refuses to submit to an examination  
196 under oath, the insurer may accept the demand for settlement  
197 without requiring a release of the insured. An insurer that  
198 accepts the demand for settlement pursuant to this paragraph  
199 does not have any further duty to defend the insured and may not  
200 be held liable for damages to the insured if the claimant  
201 thereafter obtains an excess judgment against the insured.

202       (g) Within 7 days after the examination under oath, the  
203 claimant may withdraw the demand for settlement.

204       (9) SAFE HARBOR.—In any third-party action for bad faith  
205 failure to settle, an insurer may not be held liable if it  
206 tenders its policy limits within 30 days of receiving a demand  
207 for settlement under subsection (6).

208       (10) RELEASE.—An insurer that accepts a demand for  
209 settlement under subsection (6) shall be entitled to a release  
210 of its insured, except as provided in paragraph (8)(f).

211       (11) BURDEN OF PROOF.—In any third-party action for bad  
212 faith failure to settle, the claimant must prove by the  
213 preponderance of the evidence that the insurer violated its duty





799160

214 of good faith under subsection (2) and that the insurer in bad  
215 faith failed to settle, as defined in subsection (3).

216 (a) In determining whether an insurer violated its duty of  
217 good faith under subsection (2) and in bad faith failed to  
218 settle, as defined in subsection (3), the trier of fact shall  
219 consider all of the following:

220 1. Whether the insurer complied with the best practice  
221 standards of subsection (4) using the same degree of care and  
222 diligence as a person of ordinary care and prudence would  
223 exercise in the management of his or her own business.

224 2. Whether the insurer failed to settle a claim when, under  
225 all the circumstances, it could and should have done so, had it  
226 acted fairly and honestly toward its insured and with due regard  
227 for the insured's interests.

228 3. Whether the claimant or insured failed to provide  
229 relevant information to the insurer on a timely basis.

230 4. Whether the claimant or insured misrepresented material  
231 facts to the insurer or made material omissions of fact to the  
232 insurer.

233 5. Whether the insured denied liability or requested that  
234 the case be defended after the insurer fully advised the insured  
235 as to the facts and risks.

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

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

241 8. The amount of damages the claimant incurred or was  
242 likely to incur in the future under the facts known or



799160

243 reasonably available at the time of the insurer's response.

244 9. If applicable, whether there were multiple third-party  
245 claimants seeking, in the aggregate, compensation in excess of  
246 the policy limits from the insured; and, if so, whether the  
247 insurer breached its duty to attempt to minimize the magnitude  
248 of possible excess judgments against the insured and to attempt  
249 to settle as many claims as possible within the policy limits in  
250 exchange for a release of the insured from further liability.

251 10. Additional factors that the court determines to be  
252 relevant.

253 (b) The trier of fact, in determining whether an insurer in  
254 bad faith failed to settle, must be informed that an excess  
255 judgment occurred but may not be informed of the amount of the  
256 excess judgment.

257 (12) DAMAGES.—An insurer that is found to have violated its  
258 duty of good faith under subsection (2) and in bad faith failed  
259 to settle, as defined in subsection (3), is liable for the  
260 amount of any excess judgment. No other damages, including but  
261 not limited to punitive damages, may be awarded in a third-party  
262 bad faith failure to settle action.

263 (13) ENFORCEMENT.—If a judgment creditor has served a  
264 demand for settlement under subsection (6), and the judgment  
265 exceeds the insured's limits of liability, the judgment creditor  
266 must be subrogated to the rights of the insured against the  
267 insurer for common law bad faith.

268 (14) LIMITATION ON MULTIPLE REMEDIES.—A person is not  
269 entitled to a judgment under multiple bad faith remedies,  
270 whether under statute or common law.

271



799160

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

273 And the title is amended as follows:

274 Delete lines 93 - 160

275 and insert:

276 providing an exception to the circumstances under  
277 which a person who is damaged may bring a civil action  
278 against an insurer; adding a cause of action against  
279 insurers in certain circumstances; providing that a  
280 person is not entitled to judgments under multiple bad  
281 faith remedies; creating s. 624.156, F.S.; providing  
282 that the section applies to bad faith failure to  
283 settle actions against any insurer brought by a third  
284 party for a loss arising out of the ownership,  
285 maintenance, or use of a motor vehicle under specified  
286 circumstances; providing that insurers have a duty of  
287 good faith; defining the term "bad faith failure to  
288 settle"; specifying best practice standards for  
289 insurers upon receiving notice of a claim or a demand  
290 for settlement; specifying certain requirements for  
291 insurer communications to an insured in handling  
292 third-party claims; specifying requirements for the  
293 insurer when a loss involves multiple claimants under  
294 certain conditions; specifying conditions precedent  
295 for claimants filing third-party bad faith failure to  
296 settle actions; specifying requirements for  
297 information that must be included in a demand for  
298 settlement; requiring a demand for settlement to  
299 release the insured from liability under certain  
300 conditions; requiring the demand for settlement be



301 served upon the insurer at the address designated with  
302 the Department of Financial Services; prohibiting  
303 claimants from placing conditions on acceptance of a  
304 demand for settlement other than electing the right to  
305 examine the insured under oath regarding certain  
306 information; authorizing claimants to examine insureds  
307 under oath under certain conditions; authorizing the  
308 claimant to request the insured bring relevant  
309 documents to the examination under oath; prohibiting  
310 the claimant from examining the insured under oath  
311 regarding liability; requiring the claimant, insurer,  
312 and insured to cooperate in scheduling the examination  
313 under oath; specifying the timeframe within which the  
314 examination must take place; authorizing the claimant  
315 to withdraw the demand for settlement if the insured  
316 refuses to submit to an examination under oath;  
317 authorizing an insurer to accept a demand for  
318 settlement if the insured refuses to submit to an  
319 examination under oath; absolving an insurer of a duty  
320 to defend and of liability under certain  
321 circumstances; specifying the timeframe within which a  
322 claimant may withdraw a demand for settlement;  
323 providing that insurers may not be held liable in a  
324 third-party bad faith failure to settle action if they  
325 tender policy limits within a certain timeframe;  
326 specifying that insurers that accept demands for  
327 settlement are entitled to releases of their insureds;  
328 providing an exception; requiring claimants to prove  
329 in any third-party bad faith failure to settle action



799160

330 by a preponderance of the evidence that the insurer  
331 violated its duty of good faith and in bad faith  
332 failed to settle; specifying factors for the trier of  
333 fact to consider in determining whether an insurer  
334 violated its duty of good faith and in bad faith  
335 failed to settle; requiring the trier of fact to be  
336 informed of an excess judgment; prohibiting disclosure  
337 of certain judgment information to the trier of fact;  
338 limiting damages in third-party bad faith failure to  
339 settle actions; providing that judgment creditors must  
340 be subrogated to the rights of the insured under  
341 certain circumstances; prohibiting multiple bad faith  
342 remedies; amending s.