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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2021	.	
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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



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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



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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



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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



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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



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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



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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.



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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



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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



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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.

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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



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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.