By Senator Thrasher

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A bill to be entitled

An act relating to civil remedies against insurers; amending s. 624.155, F.S.; requiring a party bringing a common-law claim of bad faith against an insurer to first provide written notification to the Department of Financial Services and the insurer; requiring that such notice specify the common-law duty violated by the insurer and specify the amount of moneys that an insurer has failed to pay if the violation includes such failure; providing that a violation based on certain statutory or common-law claim is corrected by payment of certain monetary tenders by an insurer; providing that in a third-party liability claim, an insured is entitled to a general release under certain circumstances; providing that the applicable statute of limitations is tolled if certain notices alleging a violation of common law are mailed; providing that third-party claimants having competing claims are entitled to a prorated share of policy limits under certain circumstances if the insurer files an interpleader action within a certain time period; revising provisions to conform to changes made by the act; making technical and grammatical changes; providing an effective date.

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

Section 1. Section 624.155, Florida Statutes, is amended to read:

624.155 Civil remedy.—

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

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

1. Section 626.9541(1)(i), (o), or (x);
2. Section 626.9551;
3. Section 626.9705;
4. Section 626.9706;
5. Section 626.9707; or
6. Section 627.7283.

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

1. 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 accompanied by a statement setting forth the coverage under which payments are being made; or
3. Except as to liability coverages, failing to promptly settle claims, when the obligation to settle a claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

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

(2) Any party may bring a civil action against an unauthorized insurer if such party is damaged by a violation of s. 624.401 by the unauthorized insurer.

(3)~~(a)~~ As a condition precedent to bringing an action under this section or based on a common-law claim of bad faith, the department and the authorized insurer must be ~~have been~~ given 60 days' written notice of the violation. If the department returns a notice for lack of specificity, the 60-day time period does ~~shall~~ not begin until a proper notice is filed.

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

1. The statutory provision or common-law duty, including the specific language of the statute, if applicable, which the authorized insurer allegedly violated.

2. The facts and circumstances giving rise to the violation and, if the violation includes failure to pay or tender moneys, the amount of such moneys.

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

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

5. A statement that the notice is given in order to perfect

the right to pursue the civil remedy authorized by this section or common law.

(b)~~(c)~~ Within 20 days after ~~of~~ receipt of the notice, the department may return any notice that does not provide the specific information required by this section~~,~~ and ~~the department~~ shall indicate the specific deficiencies contained in the notice. A determination by the department to return a notice for lack of specificity is ~~shall be~~ exempt from ~~the requirements of~~ chapter 120.

(c)~~(d)~~ No action shall lie if, within 60 days after filing notice, the damages are paid or the circumstances giving rise to the violation are corrected. If the alleged violation is based on this section or on the common-law claim of bad faith, the insurer's tender of the amount demanded in the notice or the applicable policy limits constitutes correction of the circumstances giving rise to the violation. In a third-party liability claim:

1. If the claimant files the notice, the insured is entitled to a general release from the claimant upon the insurer's tender of the amount demanded in the notice or the applicable policy limits.

2. If the insured files the notice and the claimant accepts the insurer's tender, the insured is entitled to a general release from the claimant.

3. The notice may be filed by the claimant or the insured at any time after the incident giving rise to the claimant's liability claim against the insured. The denial of a claim by the insurer is not a precondition for the filing of the notice by the insured or claimant.

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

(e)~~(f)~~ The applicable statute of limitations for an action under this section or an action based on a common-law claim of bad faith is ~~shall be~~ tolled for ~~a period of~~ 65 days by the mailing of the notice required by this subsection or the mailing of a subsequent notice required by this subsection.

(4) If two or more third-party claimants make competing claims arising out of a single incident, which in total exceed the available policy limits of one or more of the insured parties who may be liable to the third-party claimants, an insurer is not liable beyond the available policy limits for failure to pay all or any portion of the available policy limits to one or more of the third-party claimants if, within 90 days after receiving notice of the competing claims, the insurer files an interpleader action under the Florida Rules of Civil Procedure. If the claims of the competing third-party claimants are found to be in excess of the policy limits, the third-party claimants are entitled to a prorated share of the policy limits as determined by the trier of fact. An insurer’s interpleader action does not alter or amend the insurer’s obligation to defend its insured.

(5)~~(4)~~ Upon adverse adjudication at trial or upon appeal, the authorized insurer is ~~shall be~~ liable for damages, together with court costs and reasonable attorney ~~attorney’s~~ fees incurred by the plaintiff.

(6)~~(5) No~~ Punitive damages may not ~~shall~~ be awarded under this section unless the acts giving rise to the violation occur

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with such frequency as to indicate a general business practice and these acts are:

(a) Willful, wanton, and malicious;

(b) In reckless disregard for the rights of an ~~any~~ insured; or

(c) In reckless disregard for the rights of a beneficiary under a life insurance contract.

Any person who pursues a claim under this subsection must ~~shall~~ post ~~in advance~~ the costs of discovery in advance. Such costs shall be awarded to the authorized insurer if ~~no~~ punitive damages are not awarded to the plaintiff.

(7) ~~(6)~~ This section does ~~shall~~ not ~~be construed to~~ authorize a class action suit against an authorized insurer or a civil action against the commission, the office, or the department or any of their employees, or ~~to~~ create a cause of action if ~~when~~ an authorized health insurer refuses to pay a claim for reimbursement on the ground that the charge for a service was unreasonably high or that the service provided was not medically necessary.

(8) ~~(7)~~ In the absence of expressed language to the contrary, this section does ~~shall~~ not ~~be construed to~~ authorize a civil action or create a cause of action against an authorized insurer or its employees who, in good faith, release information about an insured or an insurance policy to a law enforcement agency in furtherance of an investigation of a criminal or fraudulent act relating to a motor vehicle theft or a motor vehicle insurance claim.

(9) ~~(8)~~ Except as provided in subsection (3), the civil

remedy specified in this section does not preempt any other remedy or cause of action provided ~~for~~ pursuant to any other statute or pursuant to the common law of this state. A ~~Any~~ person may obtain a judgment under ~~either~~ the common-law remedy of bad faith or this statutory remedy, but is ~~shall~~ not ~~be~~ entitled to a judgment under both remedies. This section does ~~shall~~ not ~~be construed to~~ create a common-law cause of action. The damages recoverable pursuant to this section include ~~shall include~~ those damages that ~~which~~ are a reasonably foreseeable result of a specified violation of this section by the authorized insurer and may include an award or judgment in an amount that exceeds the policy limits.

(10) ~~(9)~~ A surety issuing a payment or performance bond on the construction or maintenance of a building or roadway project is not an insurer for purposes of subsection (1).

Section 2. This act shall take effect July 1, 2013.