



Civil Justice Subcommittee

Monday, April 4, 2011

2:15 PM

404 HOB

Action Packet

Dean Cannon
Speaker

Eric Eisnaugle
Chair

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

4/4/2011 2:15:00PM

Location: 404 HOB

Summary:

Civil Justice Subcommittee

Monday April 04, 2011 02:15 pm

HB 1187 Temporarily Deferred

Committee meeting was reported out: Monday, April 04, 2011 5:35:06PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

4/4/2011 2:15:00PM

Location: 404 HOB

Attendance:

	<i>Present</i>	<i>Absent</i>	<i>Excused</i>
Eric Eisnaugle (Chair)	X		
Mack Bernard	X		
Clay Ford	X		
Matt Gaetz	X		
Bill Hager	X		
Shawn Harrison	X		
Martin Kiar	X		
Larry Metz	X		
Kathleen Passidomo	X		
Darren Soto	X		
Cynthia Stafford	X		
Kelli Stargel	X		
Richard Steinberg	X		
W. Gregory Steube	X		
Michael Weinstein	X		
Totals:	15	0	0

Committee meeting was reported out: Monday, April 04, 2011 5:35:06PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

4/4/2011 2:15:00PM

Location: 404 HOB

HB 1187 : Civil Remedies Against Insurers

Temporarily Deferred

Appearances:

HB 1187

Wells, Charles (Lobbyist) - Proponent

Florida Justice Reform Institute

301 East Pine Street

Orlando FL

Phone: 407-843-8880

HB 1187

Swope, Dale (General Public) - Opponent

Taxpayers Against Insurance Bad Faith

1234 E 5th Ave

Tampa FL 33605

Phone: 813-273-0017

HB 1187

Herrle, William (Lobbyist) - Proponent

National Federation of Independent Business

110 E Jefferson St

Tallahassee FL 32301

Phone: (850)681-0416

HB 1187

Meros, George (Lobbyist) - Proponent

U.S. Chamber of Commerce

301 S. Bronough

Tallahassee FL 32302

Phone: 850-577-5487

HB 1187

Cunningham, Fred (General Public) - Opponent

President-Elect, FJA

2401 PGA Blvd, Suite 140

Palm Beach Gardens FL 33410

Phone: 561-625-6260

HB 1187

Kissane, Joe (Lobbyist) - Proponent

Florida Justice Reform Institute

4686 Sunbeam Rd

Jacksonville FL 32257

Phone: 904-672-4031

Committee meeting was reported out: Monday, April 04, 2011 5:35:06PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

4/4/2011 2:15:00PM

Location: 404 HOB

HB 1187

Perdue, Tamela (Lobbyist) - Proponent

Associated Industries of Florida

PO Box 784

Tallahassee FL 32302

Phone: (850)224-7173

HB 1187

Reeves, Teye (Lobbyist) - Waive In Support

Florida Chamber of Commerce

136 S. Bronough Street

Tallahassee FL

Phone: 850-521-1235

HB 1187

Webb, Katherine (Lobbyist) - Proponent

United Automobile Insurance Group

1313 NW 167th St

Miami Gardens FL 33169

Phone: (850)577-0398

HB 1187

Clem, Alexander (General Public) - Opponent

Florida Justice Association

20 N Orange Ave

Orlando FL 32801

Phone: 407-420-1414

Committee meeting was reported out: Monday, April 04, 2011 5:35:06PM

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

TP'd
4.4.11

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Baxley offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

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

624.155 Civil remedy.—

(1) As used in this section, the term "third-party claim" means a claim against an insured, by one other than the insured, on account of harm or damage allegedly caused by an insured and covered by a policy of liability insurance. The term "third-party claimant" is one making a third-party claim.

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

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

1. Section 626.9541(1)(i), (o), or (x);
2. Section 626.9551;

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20 3. Section 626.9705;

21 4. Section 626.9706;

22 5. Section 626.9707; or

23 6. Section 627.7283.

24 (b) By the insurer's commission of any of the following
25 acts ~~by the insurer~~:

26 1. Acting arbitrarily and contrary to the insured's
27 interests in failing ~~Not attempting in good faith~~ to settle
28 claims within the policy limits if when, under all the
29 circumstances existing at the relevant time, it could and should
30 have done so, had it acted fairly and honestly toward its
31 insured ~~and with due regard for her or his interests~~;

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

35 3. Except as to liability coverages, failing to promptly
36 settle claims, when the obligation to settle a claim has become
37 reasonably clear, under one portion of the insurance policy
38 coverage in order to influence settlements under other portions
39 of the insurance policy coverage.

40
41 Notwithstanding the ~~provisions of the above to the contrary~~, a
42 person pursuing a remedy under this section need not prove that
43 such act was committed or performed with such frequency as to
44 indicate a general business practice.

45 (3) If a civil action is brought against an insurer
46 pursuant to subparagraph (2)(b)1.:

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47 (a) Only an insured or the insured's assignee may bring
48 such an action. However, a third-party claimant that failed or
49 refused to present a demand to settle under paragraph (3)(b) may
50 not recover under this subsection even with an assignment of the
51 insured's claim.

52 (b) With respect to a third-party claim, an insurer does
53 not violate the duty set forth in subparagraph (2)(b)1. if the
54 insurer does not receive a notice from the insured pursuant to
55 paragraph (3)(d) and the third-party claimant does not provide a
56 demand to settle which:

57 1. Is in writing, signed by the third-party claimant or the
58 claimant's authorized representative, and delivered to the
59 insurer and the insured;

60 2. States a specified amount within the insured's policy
61 limits for which the third-party claimant offers to settle its
62 claim in full and to release the insured from liability;

63 3. Is limited to one claimant and one line of coverage or,
64 if not so limited, separately designates a demand for each
65 claimant and each line of coverage, each of which may be
66 accepted independently;

67 4. Is submitted by a person having the legal authority to
68 accept payment and to execute the release, or, when court
69 approval of the settlement is necessary, by a person having
70 authority to settle contingent on court approval;

71 5. Does not contain any conditions for acceptance other
72 than payment of the specific amount demanded and compliance with
73 the disclosure requirements of s. 627.4137; and

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74 6. Includes a detailed explanation of the coverage and
75 liability issues and the facts giving rise to the claim,
76 including an explanation of injuries and damages claimed; the
77 names of known witnesses; and a listing and copy, if available,
78 of relevant documents, including medical records, which are
79 available to the third-party claimant or authorized
80 representative at the time of the demand to settle. The third-
81 party claimant and his or her representatives have a continuing
82 duty to supplement this information as it becomes available.

83 (c) With respect to a third-party claim, an insurer does
84 not violate the duty set forth in subparagraph (2)(b)1. if,
85 within 60 days after the insurer's receipt of the third-party
86 claimant's written demand to settle, or within 90 days after the
87 insurer's receipt of the notice of the claim, whichever is
88 later, the insurer offers to pay the lesser of:

89 1. The amount requested in the third-party claimant's
90 written demand to settle; or

91 2. The insured's policy limits, in exchange for a release
92 of liability.

93 (d) If a third-party claimant fails or refuses to provide a
94 demand to settle pursuant to paragraph (3)(b), but the insured
95 wishes that its insurer make a policy-limits offer, the insured
96 may, no sooner than thirty days after the incident giving rise
97 to the claim, notify the insurer in writing that the insured has
98 made a good-faith effort to seek a written demand from the
99 third-party claimant and to obtain all materials referenced in
100 subsection 3(b), that the third-party claimant has failed or
101 refused to comply, and that the insured requests that the

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102 insurer nonetheless offer policy limits. The insured must
103 simultaneously provide all information in its possession or
104 control referenced in paragraph (3)(b) and has a continuing duty
105 to supplement with additional information as it becomes
106 available. If, no later than ninety days after receipt of the
107 insured's written request pursuant to this subsection, the
108 insurer offers to settle for policy limits, the insurer does not
109 violate the duty under subparagraph (2)(b)1. If during this
110 period the third-party claimant submits a written demand, the
111 insurer has no less than sixty days from receipt of that written
112 demand to agree to settle for the lesser of the demanded amount
113 or policy limits without violating the duty under subparagraph
114 (2)(b)1. Nothing in this section prohibits or limits the
115 ability of the insurer to negotiate with a third-party claimant
116 or others to make offers or to settle claims before, during, or
117 after these time periods.

118 (e) An insurer has an affirmative defense to any such
119 action if the third-party claimant, the insured, or their
120 representatives fail to fully cooperate in providing all
121 relevant information and in presenting the claim.

122 (4) Notwithstanding the above, if two or more third-party
123 claimants make competing claims arising out of a single
124 occurrence, which in total exceed the available policy limits of
125 one or more of the insured parties who may be liable to the
126 third-party claimants, an insurer is not liable beyond the
127 available policy limits for failure to pay all or any portion of
128 the available policy limits to one or more of the third-party
129 claimants if, within 90 days after receiving notice of the

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130 competing claims in excess of the available policy limits, the
131 insurer:

132 (a) Files an interpleader action under the Florida Rules of
133 Civil Procedure. If the claims of the competing third-party
134 claimants are found to be in excess of the policy limits, the
135 third-party claimants are entitled to a prorated share of the
136 policy limits as determined by the trier of fact. An insurer's
137 interpleader action does not alter or amend the insurer's
138 obligation to defend its insured; or

139 (b) Pursuant to binding arbitration, makes the entire
140 amount of the policy limits available for payment to the
141 competing third-party claimants before a qualified arbitrator
142 selected by the insurer at the expense of the insurer. The
143 third-party claimants are entitled to a prorated share of the
144 policy limits as determined by the arbitrator, who shall
145 consider the comparative fault, if any, of each third-party
146 claimant, and the total likely outcome at trial based upon the
147 total of the economic and noneconomic damages submitted to the
148 arbitrator for consideration. A third-party claimant whose claim
149 is resolved by the arbitrator shall execute and deliver a
150 general release to the insured party whose claim is resolved by
151 the proceeding.

152 (5) After settlement of a third-party claim, the third-
153 party claimant's attorney is responsible for the satisfaction of
154 any liens from the settlement funds to the extent such
155 settlement funds are sufficient. If the third-party claimant is
156 not represented by counsel, the third-party claimant shall

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157 provide the insurer with a written accounting of all outstanding
158 liens.

159 (6) An insurer is not liable for amounts in excess of the
160 policy limits or of the award, whichever is less, if it makes
161 timely payment of an appraisal award.

162 (7) The fact that the insurer does not accept a demand to
163 settle or offer policy limits under paragraph (3)(c) or (3)(d),
164 pay an appraisal award under subsection (6), or file an
165 interpleader action or make policy limits available for
166 arbitration under subsection (4), during the times specified,
167 does not give rise to a presumption that the insurer acted in
168 bad faith.

169 (8)-(2) Any party may bring a civil action against an
170 unauthorized insurer if such party is damaged by a violation of
171 s. 624.401 by the unauthorized insurer.

172 (9)-(3)(a) Except for an action relating to a third-party
173 claim, as a condition precedent to bringing an action under this
174 section, the department and the authorized insurer must ~~be~~ have
175 ~~been~~ given 60 days' written notice of the violation. If the
176 department returns a notice for lack of specificity, the 60-day
177 time period ~~does~~ shall not begin until a proper notice is filed.

178 (a)-(b) The notice shall be on a form provided by the
179 department, sent by certified mail to the claim handler if known
180 or, if unknown, to the specific office handling the claim, and
181 ~~shall~~ state with specificity the following information, ~~and such~~
182 ~~other information as the department may require:~~

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183 1. The statutory provision, including the specific
184 language of the statute, which the authorized insurer allegedly
185 violated.

186 2. The facts and circumstances reasonably known to the
187 insurer giving rise to the violation, stated with specificity,
188 and the corrective action that the insurer needs to take to
189 remedy the alleged violation.

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

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

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

200 6. Such other information as the department may require.

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

208 ~~(c)-(d)~~ No action shall lie if, within 60 days after filing
209 notice, the damages are paid or the circumstances giving rise to
210 the violation are corrected.

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

214 ~~(e)(f)~~ The applicable statute of limitations for an action
215 under this section is ~~shall be~~ tolled for a ~~period of~~ 65 days by
216 the mailing of the notice ~~required by this subsection~~ or the
217 mailing of a subsequent notice ~~required by this subsection~~.

218 ~~(10)(4)~~ Upon adverse adjudication at trial or upon appeal,
219 the authorized insurer is ~~shall be~~ liable for damages, together
220 with court costs and reasonable attorney's fees incurred by the
221 plaintiff.

222 ~~(11)(5)~~ ~~No~~ Punitive damages may not ~~shall~~ be awarded under
223 this section unless the acts giving rise to the violation occur
224 with such frequency as to indicate a general business practice
225 and these acts are:

226 (a) Willful, wanton, and malicious;

227 (b) In reckless disregard for the rights of any insured;

228 or

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

231
232 Any person who pursues a claim under this subsection must ~~shall~~
233 post in advance the costs of discovery. Such costs shall be
234 awarded to the authorized insurer if ~~no~~ punitive damages are not
235 awarded to the plaintiff.

236 ~~(12)(6)~~ This section does ~~shall~~ not be ~~construed to~~
237 authorize a class action suit against an authorized insurer or a
238 civil action against the commission, the office, or the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1187 (2011)

Amendment No. 1

239 department or any of their employees, or ~~to~~ create a cause of
240 action if ~~when~~ an authorized health insurer refuses to pay a
241 claim for reimbursement on the ground that the charge for a
242 service was unreasonably high or that the service provided was
243 not medically necessary.

244 ~~(13)(7) In the absence of expressed language to the~~
245 ~~contrary,~~ This section does ~~shall~~ not be construed to authorize
246 a civil action or create a cause of action against an authorized
247 insurer or its employees who, in good faith, release information
248 about an insured or an insurance policy to a law enforcement
249 agency in furtherance of an investigation of a criminal or
250 fraudulent act relating to a motor vehicle theft or a motor
251 vehicle insurance claim.

252 (14) The civil remedies specified in this section are the
253 sole remedies and causes of action for extracontractual damages
254 for bad-faith failure to settle under an insurance contract. Any
255 related common-law causes of action are replaced and superseded
256 by this section. The provisions of this section apply to all
257 cases brought pursuant to this section unless specifically
258 controlled by s. 766.1185.

259 ~~(8) The civil remedy specified in this section does not~~
260 ~~preempt any other remedy or cause of action provided for~~
261 ~~pursuant to any other statute or pursuant to the common law of~~
262 ~~this state. Any person may obtain a judgment under either the~~
263 ~~common-law remedy of bad faith or this statutory remedy, but~~
264 ~~shall not be entitled to a judgment under both remedies. This~~
265 ~~section shall not be construed to create a common-law cause of~~
266 ~~action. The damages recoverable pursuant to this section shall~~

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267 ~~include those damages which are a reasonably foreseeable result~~
268 ~~of a specified violation of this section by the authorized~~
269 ~~insurer and may include an award or judgment in an amount that~~
270 ~~exceeds the policy limits.~~

271 ~~(15)(9)~~ A surety issuing a payment or performance bond on
272 the construction or maintenance of a building or roadway project
273 is not an insurer for purposes of subsection (2) ~~(1)~~.

274 Section 2. Paragraph (k) of subsection (3) of section
275 627.311, Florida Statutes, is amended to read:

276 627.311 Joint underwriters and joint reinsurers; public
277 records and public meetings exemptions.-

278 (3) The office may, after consultation with insurers
279 licensed to write automobile insurance in this state, approve a
280 joint underwriting plan for purposes of equitable apportionment
281 or sharing among insurers of automobile liability insurance and
282 other motor vehicle insurance, as an alternate to the plan
283 required in s. 627.351(1). All insurers authorized to write
284 automobile insurance in this state shall subscribe to the plan
285 and participate therein. The plan shall be subject to continuous
286 review by the office which may at any time disapprove the entire
287 plan or any part thereof if it determines that conditions have
288 changed since prior approval and that in view of the purposes of
289 the plan changes are warranted. Any disapproval by the office
290 shall be subject to the provisions of chapter 120. The Florida
291 Automobile Joint Underwriting Association is created under the
292 plan. The plan and the association:

293 ~~(k)1-~~ Shall have no liability, and no cause of action ~~of~~
294 ~~any nature shall arise~~ against any member insurer or its agents

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295 or employees, agents or employees of the association, members of
296 the board of governors of the association, the Chief Financial
297 Officer, or the office or its representatives for any action
298 taken by them in the performance of their duties or
299 responsibilities under this subsection. Such immunity does not
300 apply to actions for or arising out of a breach of any contract
301 or agreement pertaining to insurance, or any willful tort.

302 ~~2. Notwithstanding the requirements of s. 624.155(3)(a),~~
303 ~~as a condition precedent to bringing an action against the plan~~
304 ~~under s. 624.155, the department and the plan must have been~~
305 ~~given 90 days' written notice of the violation. If the~~
306 ~~department returns a notice for lack of specificity, the 90-day~~
307 ~~time period shall not begin until a proper notice is filed. This~~
308 ~~notice must comply with the information requirements of s.~~
309 ~~624.155(3)(b). Effective October 1, 2007, this subparagraph~~
310 ~~shall expire unless reenacted by the Legislature prior to that~~
311 ~~date.~~

312 Section 3. If any provision of this act or its application
313 to any person or circumstance is held invalid, the invalidity
314 does not affect other provisions or applications of the act
315 which can be given effect without the invalid provision or
316 application, and to this end the provisions of this act are
317 severable.

318 Section 4. This act shall take effect July 1, 2011.

319

320

321

322

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

Amendment No. 1

323 Remove the entire title and insert:
324 An act relating to civil remedies against insurers; amending s.
325 624.155, F.S.; revising provisions relating to civil actions
326 against insurers; providing a definition; revising the grounds
327 for bringing an action based on the insurer's failure to accept
328 an offer to settle within policy limits; providing who may bring
329 such an action; providing requirements for bringing such an
330 action; providing that the insurer has an affirmative defense if
331 a third-party claimant or the insured fails to cooperate with
332 the insurer; providing that an insurer is not liable for two or
333 more claims that exceed the policy limits if it files an
334 interpleader action or makes the policy limits available under
335 arbitration; specifying responsibility for the payment of liens;
336 providing that an insurer is not liable for amounts in excess of
337 the policy limits if it makes timely payment of the appraisal
338 amount; providing that certain refusals to act by the insurer
339 are not presumptive evidence of bad faith; revising requirements
340 relating to the preaction notice of a civil action sent to the
341 Department of Financial Regulation and the insurer; providing
342 that the provisions of the act replace the common law; amending
343 s. 627.311, F.S.; conforming a cross-reference; deleting an
344 obsolete provision; providing for severability; providing an
345 effective date.

Amendment No. 1a

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

*Withdrawn
4.4.11*

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Gaetz offered the following:

3
4 **Substitute Amendment for Amendment (1) by Representative**
5 **Baxley (with title amendment)**

6 Remove everything after the enacting clause and insert:
7 Section 1. Section 624.155, Florida Statutes, is amended
8 to read:

9 624.155 Civil remedy.—

10 (1) As used in this section, the term "third-party claim"
11 means a claim against an insured, by one other than the insured,
12 on account of harm or damage allegedly caused by an insured and
13 covered by a policy of liability insurance. The term "third-
14 party claimant" is one making a third-party claim.

15 (2)~~(1)~~ Any person may bring a civil action against an
16 insurer if ~~when~~ such person is damaged:

17 (a) By the insurer's a violation of ~~any of~~ the following
18 ~~provisions by the insurer:~~

19 1. Section 626.9541(1)(i), (o), or (x);

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- 20 2. Section 626.9551;
- 21 3. Section 626.9705;
- 22 4. Section 626.9706;
- 23 5. Section 626.9707; or
- 24 6. Section 627.7283.

25 (b) By the insurer's commission of any of the following
26 acts ~~by the insurer~~:

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

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

34 3. Except as to liability coverages, failing to promptly
35 settle claims, when the obligation to settle a claim has become
36 reasonably clear, under one portion of the insurance policy
37 coverage in order to influence settlements under other portions
38 of the insurance policy coverage.

39
40 Notwithstanding the ~~provisions of the above to the contrary~~, a
41 person pursuing a remedy under this section need not prove that
42 such act was committed or performed with such frequency as to
43 indicate a general business practice.

44 (3) If a civil action is brought against an insurer
45 pursuant to subparagraph (2)(b)1.:

46 (a) Only an insured or the insured's assignee may bring
47 such an action.

Amendment No. 1a

48 (b) With respect to a third-party claim, a third-party
49 claimant wishing to settle within policy limits shall provide a
50 demand to settle which:

51 1. Is in writing, signed by the third-party claimant or
52 the claimant's authorized representative, and delivered to the
53 insurer and the insured;

54 2. States a specified amount within the insured's policy
55 limits for which the third-party claimant offers to settle its
56 claim in full and to release the insured from liability;

57 3. Is limited to one claimant and one line of coverage or,
58 if not so limited, separately designates a demand for each
59 claimant and each line of coverage, each of which may be
60 accepted independently;

61 4. Is submitted by a person having the legal authority to
62 accept payment and to execute the release, or, when court
63 approval of the settlement is necessary, by a person having
64 authority to settle contingent on court approval;

65 5. Does not contain any conditions for acceptance other
66 than payment of the specific amount demanded and compliance with
67 the disclosure requirements of s. 627.4137; and

68 6. Includes a detailed explanation of the coverage and
69 liability issues and the facts giving rise to the claim,
70 including an explanation of injuries and damages claimed; the
71 names of known witnesses; and a listing and copy, if available,
72 of relevant documents, including medical records, which are
73 available to the third-party claimant or authorized
74 representative at the time of the demand to settle. The third-

Amendment No. 1a

75 party claimant and his or her representatives have a continuing
76 duty to supplement this information as it becomes available.

77 (c) With respect to a third-party claim, an insurer does
78 not violate the duty set forth in subparagraph (2)(b)1. if,
79 within 60 days after the insurer's receipt of the third-party
80 claimant's written demand to settle, or within 90 days after the
81 insurer's receipt of the notice of the claim, whichever is
82 sooner, the insurer offers to pay the lesser of:

83 1. the amount request in the third-party claimant's
84 written demand to settle; or

85 2. the insured's policy limits, in exchange for a release
86 of liability.

87 (d) If a third-party claimant fails or refuses to provide
88 a demand to settle pursuant to subsection (3)(b), but the
89 insured wishes that its insurer made a policy-limits offer, the
90 insured shall request in writing that the insurer nonetheless
91 offer policy limits.

92 (e) An insurer has an affirmative defense to any such
93 action if the third-party claimant, the insured, or their
94 representatives fail to fully cooperate in providing all
95 relevant information and in presenting the claim.

96 (4) Notwithstanding the above, if, two or more third-party
97 claimants make competing claims arising our of a single
98 occurrence, which in total exceed the available policy limits of
99 one or more of the insured parties who may be liable to the
100 third-party claimants, an insurer is not liable beyond the
101 available policy limits for failure to pay all or any portion of
102 the available policy limits to one or more of the third-party

Amendment No. 1a

103 claimants if, within 90 days after receiving notice of the
104 competing claims in excess of the available policy limits, the
105 insurer:

106 (a) Files an interpleader action under the Florida Rules
107 of Civil Procedure. If the claims of the competing third-party
108 claimants are found to be in excess of the policy limits, the
109 third-party claimants are entitled to a prorated share of the
110 policy limits as determined by the trier of fact. An insurer's
111 interpleader action does not alter or amend the insurer's
112 obligation to defend its insured; or

113 (b) Pursuant to binding arbitration, makes the entire
114 amount of the policy limits available for payment to the
115 competing third-party claimants before a qualified arbitrator
116 selected by the insurer as the expense of the insurer. The
117 third-party claimants are entitled to a prorated share of the
118 policy limits as determined by the arbitrator, who shall
119 consider the comparative fault, if any, of each third-party
120 claimant, and the total likely outcome at trial based upon the
121 total of the economic and noneconomic damages submitted to the
122 arbitrator for consideration. A third-party claimant whose
123 claim is resolved by the arbitrator shall execute and deliver a
124 general release to the insured party whose claim is resolved by
125 the proceeding.

126 (5) After settlement of a third-party claim, the third-
127 party claimant's attorney is responsible for the satisfaction of
128 any liens from the settlement funds to the extent such
129 settlement funds are sufficient. If the third-party claimant is
130 not represented by counsel, the third-party claimant shall

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131 provide the insurer with a written accounting of all outstanding
132 liens.

133 (6) an insurer is not liable for amounts in excess of the
134 policy limits or of the award, whichever is less, if it makes
135 timely payment of an appraisal award.

136 (7) The fact that the insurer does not accept a demand to
137 settle or offer policy limits under paragraph (3)(c) or (3)(d),
138 pay an appraisal award under subsection (6), or file an
139 interpleader action or make policy limits available for
140 arbitration under subsection (4) during the times specified does
141 not give rise to a presumption that the insurer acted in bad
142 faith.

143 (8)-(2) Any party may bring a civil action against an
144 unauthorized insurer if such party is damaged by a violation of
145 s. 624.401 by the unauthorized insurer.

146 (9)-(3)-(a) Except for an action relating to a third-party
147 claim, as a condition precedent to bringing an action under this
148 section, the department and the authorized insurer must have
149 been given 60 days' written notice of the violation. If the
150 department returns a notice for lack of specificity, the 60-day
151 time period shall not begin until a proper notice is filed.

152 (a)-(b) The notice shall be on a form provided by the
153 department and shall state with specificity the following
154 information, and such other information as the department may
155 require:

156 1. The statutory provision, including the specific
157 language of the statute, which the authorized insurer allegedly
158 violated.

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159 2. The facts and circumstances giving rise to the
160 violation.

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

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

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

171 ~~(b)-(e)~~ Within 20 days of receipt of the notice, the
172 department may return any notice that does not provide the
173 specific information required by this section, and the
174 department shall indicate the specific deficiencies contained in
175 the notice. A determination by the department to return a notice
176 for lack of specificity shall be exempt from the requirements of
177 chapter 120.

178 ~~(c)-(d)~~ No action shall lie if, within 60 days after filing
179 notice, the damages are paid or the circumstances giving rise to
180 the violation are corrected.

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

184 ~~(e)-(f)~~ The applicable statute of limitations for an action
185 under this section shall be tolled for a period of 65 days by

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186 the mailing of the notice required by this subsection or the
187 mailing of a subsequent notice required by this subsection.

188 ~~(10)~~(4) Upon adverse adjudication at trial or upon appeal,
189 the authorized insurer is ~~shall be~~ liable for damages, together
190 with court costs and reasonable attorney's fees incurred by the
191 plaintiff.

192 ~~(11)~~(5) ~~No~~ Punitive damages may not ~~shall~~ be awarded under
193 this section unless the acts giving rise to the violation occur
194 with such frequency as to indicate a general business practice
195 and these acts are:

196 (a) Willful, wanton, and malicious;

197 (b) In reckless disregard for the rights of any insured;

198 or

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

201
202 Any person who pursues a claim under this subsection must ~~shall~~
203 post in advance the costs of discovery. Such costs shall be
204 awarded to the authorized insurer if ~~no~~ punitive damages are not
205 awarded to the plaintiff.

206 ~~(12)~~(6) This section does ~~shall not be construed to~~
207 authorize a class action suit against an authorized insurer or a
208 civil action against the commission, the office, or the
209 department or any of their employees, or ~~to~~ create a cause of
210 action if ~~when~~ an authorized health insurer refuses to pay a
211 claim for reimbursement on the ground that the charge for a
212 service was unreasonably high or that the service provided was
213 not medically necessary.

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214 ~~(13)(7) In the absence of expressed language to the~~
215 ~~contrary,~~ This section does ~~shall~~ not be construed to authorize
216 a civil action or create a cause of action against an authorized
217 insurer or its employees who, in good faith, release information
218 about an insured or an insurance policy to a law enforcement
219 agency in furtherance of an investigation of a criminal or
220 fraudulent act relating to a motor vehicle theft or a motor
221 vehicle insurance claim.

222 (14) The civil remedies specified in this section are the
223 sole remedies and causes of action for extracontractual damages
224 for bad-faith failure to settle under an insurance contract. Any
225 related common-law causes of action are replaced and superseded
226 by this section. The provisions of this section apply to all
227 cases brought pursuant to this section unless specifically
228 controlled by s. 766.1185.

229 ~~(8) The civil remedy specified in this section does not~~
230 ~~preempt any other remedy or cause of action provided for~~
231 ~~pursuant to any other statute or pursuant to the common law of~~
232 ~~this state. Any person may obtain a judgment under either the~~
233 ~~common-law remedy of bad faith or this statutory remedy, but~~
234 ~~shall not be entitled to a judgment under both remedies. This~~
235 ~~section shall not be construed to create a common-law cause of~~
236 ~~action. The damages recoverable pursuant to this section shall~~
237 ~~include those damages which are a reasonably foreseeable result~~
238 ~~of a specified violation of this section by the authorized~~
239 ~~insurer and may include an award or judgment in an amount that~~
240 ~~exceeds the policy limits.~~

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241 ~~(15)(9)~~ A surety issuing a payment or performance bond on
242 the construction or maintenance of a building or roadway project
243 is not an insurer for purposes of subsection (2) ~~(1)~~.

244 Section 2. Paragraph (k) of subsection (3) of section
245 627.311, Florida Statutes, is amended to read:

246 627.311 Joint underwriters and joint reinsurers; public
247 records and public meetings exemptions.-

248 (3) The office may, after consultation with insurers
249 licensed to write automobile insurance in this state, approve a
250 joint underwriting plan for purposes of equitable apportionment
251 or sharing among insurers of automobile liability insurance and
252 other motor vehicle insurance, as an alternate to the plan
253 required in s. 627.351(1). All insurers authorized to write
254 automobile insurance in this state shall subscribe to the plan
255 and participate therein. The plan shall be subject to continuous
256 review by the office which may at any time disapprove the entire
257 plan or any part thereof if it determines that conditions have
258 changed since prior approval and that in view of the purposes of
259 the plan changes are warranted. Any disapproval by the office
260 shall be subject to the provisions of chapter 120. The Florida
261 Automobile Joint Underwriting Association is created under the
262 plan. The plan and the association:

263 ~~(k)1.~~ Shall have no liability, and no cause of action ~~of~~
264 ~~any nature shall arise~~ against any member insurer or its agents
265 or employees, agents or employees of the association, members of
266 the board of governors of the association, the Chief Financial
267 Officer, or the office or its representatives for any action
268 taken by them in the performance of their duties or

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269 responsibilities under this subsection. Such immunity does not
270 apply to actions for or arising out of a breach of any contract
271 or agreement pertaining to insurance, or any willful tort.

272 ~~2. Notwithstanding the requirements of s. 624.155(3) (a),~~
273 ~~as a condition precedent to bringing an action against the plan~~
274 ~~under s. 624.155, the department and the plan must have been~~
275 ~~given 90 days' written notice of the violation. If the~~
276 ~~department returns a notice for lack of specificity, the 90-day~~
277 ~~time period shall not begin until a proper notice is filed. This~~
278 ~~notice must comply with the information requirements of s.~~
279 ~~624.155(3) (b). Effective October 1, 2007, this subparagraph~~
280 ~~shall expire unless reenacted by the Legislature prior to that~~
281 ~~date.~~

282 Section 3. If any provision of this act or its application
283 to any person or circumstance is held invalid, the invalidity
284 does not affect other provisions or applications of the act
285 which can be given effect without the invalid provision or
286 application, and to this end the provisions of this act are
287 severable.

288 Section 4. This act shall take effect July 1, 2011.

289

290

291

292 **T I T L E A M E N D M E N T**

293 Remove the entire title and insert:

294 An act relating to civil remedies against insurers; amending s.
295 624.155, F.S.; revising provisions relating to civil actions
296 against insurers; providing a definition; revising the grounds

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297 for bringing an action based on the insurer's failure to accept
298 an offer to settle within policy limits; providing who may bring
299 such an action; providing requirements for bringing such an
300 action; providing that the insurer has an affirmative defense if
301 a third-party claimant or the insured fails to cooperate with
302 the insurer; providing that an insurer is not liable for two or
303 more claims that exceed the policy limits if it files an
304 interpleader action or makes the policy limits available under
305 arbitration; specifying responsibility for the payment of liens;
306 providing that an insurer is not liable for amounts in excess of
307 the policy limits if it makes timely payment of the appraisal
308 amount; providing that certain refusals to act by the insurer
309 are not presumptive evidence of bad faith; revising requirements
310 relating to the preaction notice of a civil action sent to the
311 Department of Financial Regulation and the insurer; providing
312 that the provisions of the act replace the common law; amending
313 s. 627.311, F.S.; conforming a cross-reference; deleting an
314 obsolete provision; providing for severability; providing an
315 effective date.