

HB 427

2012

1                   A bill to be entitled  
2           An act relating to civil remedies against insurers;  
3           amending s. 624.155, F.S.; requiring that before  
4           bringing a common-law bad faith action against an  
5           insurer, the party bringing the action must first  
6           provide to the department and insurer prior written  
7           notification of a specified number of days; requiring  
8           that a notice relating to the bringing of a common-law  
9           claim of bad faith must specify the common-law duty  
10          violated by the insurer; requiring a notice to specify  
11          the amount of moneys that an insurer has failed to  
12          tender or pay if the specific statutory or common-law  
13          based violation includes such failure; providing that  
14          the circumstances giving rise to certain statutory or  
15          common-law based violations are corrected by  
16          specifically described monetary tenders by an insurer;  
17          providing that either a third-party claimant or  
18          insured is entitled to a general release under certain  
19          circumstances; providing that the applicable statute  
20          of limitations is tolled for a specified period of  
21          time when certain notices alleging a common-law based  
22          violation are mailed; revising provisions to conform  
23          to changes made by the act relating to statutory or  
24          common-law based actions being brought against  
25          insurers; providing an effective date.

26  
27   Be It Enacted by the Legislature of the State of Florida:  
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29 Section 1. Subsections (3) and (8) of section 624.155,  
 30 Florida Statutes, are amended to read:

31 624.155 Civil remedy.—

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

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

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

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

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

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

55 5. A statement that the notice is given in order to  
 56 perfect the right to pursue the civil remedy authorized by this

57 | section or by the common law.

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

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

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

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

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

83 | ~~(e)(f)~~ The applicable statute of limitations for an action  
 84 | under this section or based on the common-law claim of bad faith

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85 shall be tolled for a period of 65 days by the mailing of the  
86 notice required by this subsection or the mailing of a  
87 subsequent notice required by this subsection.

88 (8) Except as provided in subsection (3), the civil remedy  
89 specified in this section does not preempt any other remedy or  
90 cause of action provided for pursuant to any other statute or  
91 pursuant to the common law of this state. Any person may obtain  
92 a judgment under either the common-law remedy of bad faith or  
93 this statutory remedy, but shall not be entitled to a judgment  
94 under both remedies. This section shall not be construed to  
95 create a common-law cause of action. The damages recoverable  
96 pursuant to this section shall include those damages which are a  
97 reasonably foreseeable result of a specified violation of this  
98 section by the authorized insurer and may include an award or  
99 judgment in an amount that exceeds the policy limits.

100 Section 2. This act shall take effect July 1, 2012.