A bill to be entitled

An act relating to insurance; amending s. 624.155, F.S.; revising requirements and procedures for the civil remedy notice provided to insurers and the Department of Financial Services; revising the timeframe for an insurer to pay damages or for certain circumstances to be corrected; revising the period the statute of limitations is tolled; creating a duty of good faith by persons claiming against an insurer; providing that an insurer does not violate its good faith duty to settle claims and is not liable for a certain failure if it meets certain conditions; providing a limitation on an insurer's liability to third-party claimants, under certain circumstances; requiring triers of fact, under certain circumstances, to consider whether insureds, claimants, or their representatives made good faith efforts to cooperate with insurers' investigations; requiring a reduction or elimination of damages awarded against an insurer for bad faith where the insured or claimant has also acted in bad faith; amending s. 624.422, F.S., requiring insurers to file with the department certain contact information for service of process; amending s. 627.736, F.S.; specifying information required as part of a pre-suit notice in motor vehicle personal

injury protection claims; requiring information relating to treatment and services provided to claimants; requiring the identification of payments in dispute; requiring claimants to substantially comply with notice requirements; prohibiting relief to claimants in certain circumstances; providing an effective date.

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

Section 1. Subsection (3) of section 624.155, Florida Statutes, is amended to read:

624.155 Civil remedy.—

(3)(a) As a condition precedent to bringing an action under this section, the department and the authorized insurer must have been given 60 days' written notice of the violation. Notice to the authorized insurer must be forwarded by the department to the insurer at the e-mail address designated by the insurer under s. 624.422.

(b) The notice 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, including the specific language of the statute, which the authorized insurer allegedly

violated.

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

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 claimant, she or he shall not be required to reference the specific policy language if the authorized insurer has not provided a copy of the policy to the 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.

(c)1. No action shall lie if, within 60 days after the insurer receives ~~filing~~ notice from the department in accordance with this subsection, the damages are paid or the circumstances giving rise to the violation are corrected.

2. A third-party claimant shall have no action under sub-paragraph (1)(b)1. if:

a. There is a single claimant in a liability claim and the insurer offers the lesser of policy limits or the claimant's demand prior to the end of the 60 days, including the period prior to the 60 days; or

b. If there are two or more claimants in a liability claim making claims arising out of a single occurrence which in total

exceed the available policy limits of one or more of the insured parties who may be liable to the 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 claimants, if within 90 days after receiving notice of the second claim or during the 60 days the insurer files an interpleader action under the Florida Rules of Civil Procedure. The 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.

(d) 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) The applicable statute of limitations for an action under this section shall be tolled for a period of 60 ~~65~~ days after the insurer receives from the department ~~by the mailing of~~ the notice required by this subsection ~~or the mailing of a subsequent notice required by this subsection~~.

(f) A notice required under this subsection may not be filed within 60 days after appraisal is invoked by any party in a residential property insurance claim.

(10)(a) The insured, claimant, or representative of the insured or claimant has a duty to act in good faith in furnishing information regarding the claim, in making demands of



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

the insurer, in setting deadlines, and in attempts to settle a claim. This duty does not create a separate cause of action and may only be used as a setoff against damages awarded pursuant to this subsection.

(b) In any action pursuant to sub-paragraph (1)(b)1.:

1. the trier of fact must consider whether the insured, claimant, or representative of the insured or claimant made good faith efforts to cooperate with the insurer in the investigation of the claim.

2. If the trier of fact finds that the insured, claimant, or representative of the insured or claimant did not act in good faith, the trier of fact must reasonably reduce the damages awarded against the insurer.

Section 2. Subsection (2) of section 624.422, Florida Statutes, is amended to read:

624.422 Service of process; appointment of Chief Financial Officer as process agent.—

(2) Prior to its authorization to transact insurance in this state, each insurer shall file with the department designation of the name and address of the person to whom process against it served upon the Chief Financial Officer is to be forwarded. Each insurer shall also file with the department designation of the name and e-mail address of the person to whom the department shall forward civil remedy notices filed under 624.155. The insurer may change a ~~the~~ designation at any time by

a new filing.

Section 3. Subsection (10) of section 627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(10) DEMAND LETTER.—

(a) As a condition precedent to filing any action for benefits or related relief under this section, written notice of an intent to initiate litigation must be provided to the insurer. Such notice may not be sent until the claim is overdue, including any additional time the insurer has to pay the claim pursuant to paragraph (4)(b).

(b) The notice must state that it is a "demand letter under s. 627.736" and state the following with specificity:

1. The name of the insured on whose behalf ~~upon which~~ such benefits are being sought and, if the claimant is not the insured, the notice shall include, ~~including~~ a copy of the assignment signed by the insured prior to the delivery of any such treatment, service or accommodation, and giving rights to the claimant to seek benefits ~~if the claimant is not the insured~~.

2. The claim number and ~~or~~ policy number upon which such claim was originally submitted to the insurer by either the claimant or the insured.

3. Where ~~To the extent~~ applicable, the name of any

medical provider who rendered to an insured the treatment, services, accommodations, or supplies that form the basis of such claim against the insurer. The notice shall be accompanied by~~; and~~ an itemized statement identifying each treatment, service or accommodation provided to the insured, and shall specify for each such treatment, service or accommodation on a line item basis as previously billed to the insurer ~~specifying each exact amount,~~ the date of each treatment, service, or accommodation, and the amount charged ~~type of benefit claimed to be due~~. A completed form satisfying the requirements of paragraph (5)(d) or the lost-wage statement previously submitted, as applicable, shall be included with ~~may be used as~~ the itemized statement. To the extent that the demand involves an insurer's withdrawal of payment under paragraph (7)(a) for future treatment not yet rendered, the claimant shall attach a copy of the insurer's notice withdrawing such payment and an itemized statement of the type, frequency, and duration of future treatment claimed to be reasonable and medically necessary.

4. The identification of all line items that the claimant contends to be in dispute because of an insurer's non-payment or underpayment, the legal or factual basis for the claimant's position that the insurer's underpayment payment or non-payment is incorrect, and the amount that the clamant contends that the insurer is required to pay to fully

resolve the dispute, including the specific amount of the statutory penalty, interest and postage to be paid pursuant to paragraphs (d) and (e).

(c) If the claimant contends that the insured had an emergency medical condition, the notice shall be accompanied by documentation demonstrating that the insured to whom the treatment, services or accommodation was provided sustained an emergency medical condition. The documentation shall be from a provider identified in sub-paragraphs (1)(a)(1) or (1)(a)(2).

(d) ~~(c)~~ Each notice required by this subsection must substantially comply with the requirements of paragraphs (b) and (c) and must be delivered to the insurer by United States certified or registered mail, return receipt requested. A notice that does not substantially comply with the requirements of paragraphs (b) and (c) shall not trigger an insurer's obligations under (e). Such postal costs shall be reimbursed by the insurer if requested by the claimant in the notice, when the insurer pays the claim. Such notice must be sent to the person and address specified by the insurer for the purposes of receiving notices under this subsection. Each licensed insurer, whether domestic, foreign, or alien, shall file with the office the name and address of the designated person to whom notices must be sent which the office shall make available on its Internet website. The name and address

on file with the office pursuant to s. 624.422 is deemed the authorized representative to accept notice pursuant to this subsection if no other designation has been made.

(e) ~~(d)~~ If, within 30 days after receipt of notice by the insurer, the overdue claim specified in a ~~the~~ notice that substantially complies with paragraphs (b) and (c) is paid by the insurer together with applicable interest and a penalty of 10 percent of the overdue amount paid by the insurer, subject to a maximum penalty of $250, no action may be brought against the insurer. If the demand involves an insurer's withdrawal of payment under paragraph (7)(a) for future treatment not yet rendered, no action may be brought against the insurer if, within 30 days after its receipt of the notice, the insurer mails to the person filing the notice a written statement of the insurer's agreement to pay for such treatment in accordance with the notice and to pay a penalty of 10 percent, subject to a maximum penalty of $250, when it pays for such future treatment in accordance with the requirements of this section. To the extent the insurer determines not to pay any amount demanded, the penalty is not payable in any subsequent action. For purposes of this subsection, payment or the insurer's agreement shall be treated as being made on the date a draft or other valid instrument that is equivalent to payment, or the insurer's written statement of agreement, is placed in the United States mail in a properly addressed,

postpaid envelope, or if not so posted, on the date of delivery. The insurer is not obligated to pay any attorney fees if the insurer pays the claim or mails its agreement to pay for future treatment within the time prescribed by this subsection.

(f) ~~(e)~~ The applicable statute of limitation for an action under this section shall be tolled for 30 business days by the mailing of a ~~the~~ notice required by this subsection.

(g) No action shall be filed or prosecuted by or on behalf of a claimant seeking benefits or related relief against an insurer:

1. if a substantially compliant notice is not sent to an insurer;

2. the insurer issued full payment to the claimant in response to a notice within the time frame prescribed by paragraph (e); or

3. asserting a claim of non-payment or underpayment of benefits not identified in the notice.

Section 4. This act shall take effect July 1, 2020.