

Amendment No. 2

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WITHDRAWN	_____	(Y/N)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		

1 Committee/Subcommittee hearing bill: Commerce Committee
 2 Representative Santiago offered the following:

Amendment (with title amendment)

Remove lines 44-243 and insert:

the insurer under s. 624.422. The 60 days shall begin tolling when the department receives an e-mail notice of receipt from the insurer.

(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.

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

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

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

25 5. A statement that the notice is given in order to
26 perfect the right to pursue the civil remedy authorized by this
27 section.

28 6. Proof of the insured's legal liability and damages which
29 have become clear with supporting documentation.

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

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

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

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40 b. If there are two or more claimants in a liability claim
41 making claims arising out of a single occurrence which in total
42 exceed the available policy limits of one or more of the insured
43 parties who may be liable to the claimants, an insurer is not
44 liable beyond the available policy limits for failure to pay all
45 or any portion of the available policy limits to one or more of
46 the claimants, if within 90 days after receiving notice of the
47 second claim or during the 60 days the insurer files an
48 interpleader action under the Florida Rules of Civil Procedure.
49 The claimants are entitled to a prorated share of the policy
50 limits as determined by the trier of fact. An insurer's
51 interpleader action does not alter or amend the insurer's
52 obligation to defend its insured. Upon disbursement of
53 interplead funds, claimants who receive said funds shall execute
54 releases in favor of the insured party or parties.

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

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

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

66 (10) The insured, claimant, or representative of the
67 insured or claimant has a duty to act in good faith in
68 furnishing information regarding the claim, in making demands of
69 the insurer, in setting deadlines, and in attempts to settle a
70 claim. This duty does not create a separate cause of action and
71 may only be used as a defense against damages awarded pursuant
72 to this subsection. It shall be a defense to a claim of bad
73 faith that the claimant, claimant's representative or the
74 insured failed to make good faith efforts to cooperate with the
75 insurer in the investigation of the claim.

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

78 624.422 Service of process; appointment of Chief Financial
79 Officer as process agent.—

80 (2) Prior to its authorization to transact insurance in
81 this state, each insurer shall file with the department
82 designation of the name and address of the person to whom
83 process against it served upon the Chief Financial Officer is to
84 be forwarded. Each insurer shall also file with the department
85 designation of the name and e-mail address of the person to whom
86 the department shall forward civil remedy notices filed under s.

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87 624.155. The insurer may change a ~~the~~ designation at any time by
88 a new filing.

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

91 627.736 Required personal injury protection benefits;
92 exclusions; priority; claims.—

93 (10) DEMAND LETTER.—

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

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

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

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

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112 3. Where ~~To the extent~~ applicable, the name of any medical
113 provider who rendered to an insured the treatment, services,
114 accommodations, or supplies that form the basis of such claim
115 against the insurer. The notice shall be accompanied by; and an
116 itemized statement identifying each treatment, service or
117 accommodation provided to the insured, and shall specify for
118 each such treatment, service or accommodation on a line item
119 basis as previously billed to the insurer ~~specifying each exact~~
120 ~~amount,~~ the date of each treatment, service, or accommodation,
121 the CPT code, and the amount charged, and the amount paid ~~type~~
122 ~~of benefit claimed to be due.~~ A completed form satisfying the
123 requirements of paragraph (5) (d) or the lost-wage statement
124 previously submitted, as applicable, shall be included with ~~may~~
125 ~~be used as~~ the itemized statement. To the extent that the demand
126 involves an insurer's withdrawal of payment under paragraph
127 (7) (a) for future treatment not yet rendered, the claimant shall
128 attach a copy of the insurer's notice withdrawing such payment
129 and an itemized statement of the type, frequency, and duration
130 of future treatment claimed to be reasonable and medically
131 necessary.

132 4. The identification of all line items that the claimant
133 contends to be in dispute because of an insurer's non-payment or
134 underpayment, the legal or factual basis for the claimant's
135 position that the insurer's underpayment payment or non-payment
136 is incorrect, the CPT code, and the amount that the clamant

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137 contends that the insurer is required to pay to fully resolve
138 the dispute, including the specific amount of the statutory
139 penalty, interest and postage to be paid pursuant to paragraphs
140 (d) and (e).

141 5. To the extent that an insurer has denied a claim on the
142 basis that benefits are exhausted, the notice shall specify any
143 treatment, service or accommodation that claimant contends to
144 have been improperly paid, the amount of the asserted improper
145 payment, and the amount that the insurer is required to pay to
146 claimant to resolve the dispute.

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

153 (d)~~(e)~~ Each notice required by this subsection must comply
154 with the requirements of paragraphs (b) and (c) and must be
155 delivered to the insurer by United States certified or
156 registered mail, return receipt requested. A notice that does
157 not comply with the requirements of paragraphs (b) and (c) shall
158 not trigger an insurer's obligations under (e). Such postal
159 costs shall be reimbursed by the insurer if requested by the
160 claimant in the notice, when the insurer pays the claim. Such
161 notice must be sent to the person and address specified by the

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162 insurer for the purposes of receiving notices under this
163 subsection. Each licensed insurer, whether domestic, foreign, or
164 alien, shall file with the office the name and address of the
165 designated person to whom notices must be sent which the office
166 shall make available on its Internet website. The name and
167 address on file with the office pursuant to s. 624.422 is deemed
168 the authorized representative to accept notice pursuant to this
169 subsection if no other designation has been made.

170 (e) ~~(d)~~ If, within 30 days after receipt of notice by the
171 insurer, the overdue claim specified in a the notice that
172 complies with paragraphs (b) and (c) is paid by the insurer
173 together with applicable interest and a penalty of 10 percent of
174 the overdue amount paid by the insurer, subject to a maximum
175 penalty of \$250, no action may be brought against the insurer.
176 If the demand involves an insurer's withdrawal of payment under
177 paragraph (7) (a) for future treatment not yet rendered, no
178 action may be brought against the insurer if, within 30 days
179 after its receipt of the notice, the insurer mails to the person
180 filing the notice a written statement of the insurer's agreement
181 to pay for such treatment in accordance with the notice and to
182 pay a penalty of 10 percent, subject to a maximum penalty of
183 \$250, when it pays for such future treatment in accordance with
184 the requirements of this section. To the extent the insurer
185 determines not to pay any amount demanded, the penalty is not
186 payable in any subsequent action. For purposes of this

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187 subsection, payment or the insurer's agreement shall be treated
188 as being made on the date a draft or other valid instrument that
189 is equivalent to payment, or the insurer's written statement of
190 agreement, is placed in the United States mail in a properly
191 addressed, postpaid envelope, or if not so posted, on the date
192 of delivery. The insurer is not obligated to pay any attorney
193 fees if the insurer pays the claim or mails its agreement to pay
194 for future treatment within the time prescribed by this
195 subsection.

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

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

202 1. If a compliant notice is not sent to an insurer;

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

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

208
209 Any action filed or prosecuted by or on behalf of a claimant
210 seeking benefits or related relief under this section in
211 violation of this paragraph shall entitle an insurer to recover

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212 its reasonable legal fees, costs and disbursements related to
213 the defense of any such action against the claimant and its
214 counsel.

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

218

Remove lines 18-31 and insert:

219

with insurers' investigations; creating an affirmative defense

220

where the insured or claimant has acted in bad faith; amending

221

s. 624.422, F.S., requiring insurers to file with the department

222

certain contact information for service of process; amending s.

223

627.736, F.S.; specifying information required as part of a pre-

224

suit notice in motor vehicle personal injury protection claims;

225

requiring information relating to treatment and services

226

provided to claimants; requiring the identification of payments

227

in dispute; requiring claimants to comply with notice

228

requirements; prohibiting relief to claimants in certain

229

circumstances; awarding attorney's fees in certain

230

circumstances; providing an