

## **Florida Proposed Legislation – House Bill 427**

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Of course, in Florida an insurer can be found to have acted in bad faith for failing to settle a claim when it could have and should have settled. A claimant seeking *statutory* relief for an alleged bad faith violation must comply with the conditions precedent set forth in Florida Statute §624.155. As a condition precedent to filing a statutory bad faith action in the state of Florida, Florida Statute §624.155 requires the claimant to provide the insurer with sixty (60) days written notice of the alleged violation and provides that “no action shall lie, if within the (60) days after filing the notice, the damages are paid or the circumstances giving rise to the violation are corrected.”

In Florida, however, there are currently no such notice or cure provisions related to claims for *common law* bad faith. On October 20, 2011, Representative Kathleen Passidomo introduced House Bill 427, seeking to extend the notice and cure provisions Florida Statute §624.155 to Florida common law bad faith claims. House Bill 427 proposes that before bringing a common law bad faith action against an insurer, the party bringing the action must first provide to the Department of Insurance and insurer prior written notification of a specified number of days, and that the circumstances giving rise to certain statutory or common law based violations are cured by specific monetary tenders by an insurer. The proposed legislation also requires that the notice relating to the bringing of a common law claim of bad faith must specify the specific common-law duty violated by the insurer and the amount of money that the insurer has failed to tender or pay if the alleged violation includes such failure.

House Bill 427 was filed on October 20, 2011 and was referred to the House Committee on Civil Justice, the House Committee on Banking and Insurance, and the House Committee on the Judiciary. The bill is currently before these committees. Proponents of the bill argue that it will allow insurers a reasonable time to investigate and settle liability claims without litigation. Proponents of the bill point to the fact that increased civil litigation increases premiums for insurance. Business proponents of the legislation also argue that increased litigation costs businesses indirectly because management and employees’ time is diverted to the defense of lawsuits.

Opponents of House Bill 427, including the Florida Justice Association (a group that represents plaintiffs’ attorneys) argue that the statute chips away at Florida’s bad faith statutes which are designed to protect the public against the practices of insurers seeking to evade contractual obligations and harm policyholders. They view the proposed bill as a “get out of jail free card” for insurers, in that an insurer will be allowed to cure any unethical practices by making payment within sixty days. Opponents aver bad faith is often not discovered until long after the incident occurs.

Bad faith reform has been discussed in Florida for many years, and was a significant topic of debate during the 2011 legislative session. As we head into 2012, it remains to be seen whether this bill will be signed into law and accomplish the bad faith

reform that is being pushed by various groups seeking to protect the insurance industry. We will follow the progression of this Florida bill and provide any appropriate updates.