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Jan. 28, 2020

Sen. Doug Broxson, Chairman
Sen. Darryl Ervin Rouson, Vice Chairman
Senate Committee on Banking and Insurance
320 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

In SUPPORT of S.B. 924, An act relating to civil actions against insurers

Chairman Broxson and Members of the Committee,

My name is R.J. Lehmann and I am director of finance, insurance and trade policy at the R Street Institute. R Street is a think tank devoted to pragmatic free-market solutions to public policy challenges and that has engaged on Florida property-casualty issues since our founding eight years ago.

I write you in support of S.B. 924, legislation to reform Florida's bad-faith statute. While insureds have statutory and common law rights in all 50 states to bring causes of action against their own insurers for failing to act in good faith in settling liability claims, Florida is one of just five states that also grants standing to third parties not named in the insurance contract to bring claims of bad faith against insurers. In the overwhelming majority of states, these kinds of allegations of unfair business practices on the part of insurers are instead policed via regulatory oversight and intervention.

S.B. 924, introduced by Sen. Jeffrey Brandes, would address several concerns with Florida's existing third-party bad-faith law. The bill would place the burden of proof on the claimant to demonstrate that an insurer acted with reckless disregard for an insured's rights in settling claims in a way that caused demonstrable harm to the claimant. It also would provide that a claimant's actions (or failure to act) during the claims-settlement process are relevant to claims of bad faith, while current law only details an insurer's responsibility to settle claims in good faith. In some circumstances, it would cap an insurer's liability to available policy limits, while current judgments for bad faith often may exceed policy limits.

This legislation would go a long way toward controlling litigation costs that have driven Florida's personal auto insurance premiums to become fifth-highest in the nation.¹ R Street has previously

¹ <https://www.carinsurance.com/state-car-insurance-rates>.

analyzed the effect that permitting third-party bad faith lawsuits had in California in the 1980s, where auto-liability claim filings increased by 82 percent and their severity grew by a factor of four during the years such suits were allowed.² California's availability and affordability crisis in auto insurance abated only once the state Supreme Court abolished such claims.

We believe Florida would see similar results from reforming its own bad-faith law. A 2018 study by the Insurance Research Council found that Florida's existing third-party bad-faith law adds an average of \$106 in claims costs for every insured vehicle in the state, or \$7.6 billion in additional claims costs over the past dozen years.³

In the coming weeks, this committee may also consider legislation repealing Florida's no-fault auto insurance system. We at R Street have endorsed S.B. 378 because it, unlike prior versions of no-fault repeal, would not make medical payments (MedPay) coverage mandatory. But we would underscore that whether the committee and Legislature ultimately opts to repeal or retain the existing no-fault system, S.B. 924 marks an essential step toward bringing the cost of auto insurance in Florida under control.

Sincerely,

R.J. Lehmann
R Street Institute

² <https://www.rstreet.org/2019/03/04/oregon-should-reject-third-party-bad-faith>.

³ https://www.insurance-research.org/sites/default/files/downloads/NR_IRC_FLbadfaith_SEPT2018.pdf.