

HOUSE BILL 652

Introduced by Whalen, et al.

2/06	Introduced
2/06	Referred to Judiciary
2/07	First Reading
2/19	Hearing
2/22	Tabled in Committee

1 House BILL NO. 652
 2 INTRODUCED BY Whalen ~~Wilson~~ ~~Trotter~~

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW
 5 RELATING TO BAD FAITH ACTIONS AGAINST INSURERS; PROVIDING
 6 THAT A THIRD-PARTY CLAIMANT'S BAD FAITH ACTION AGAINST AN
 7 INSURER MAY BE BROUGHT AT THE SAME TIME AS THE UNDERLYING
 8 SUIT ON LIABILITY; ALLOWING BIFURCATION OF THE CLAIMS ONLY
 9 IN LIMITED CIRCUMSTANCES; PROVIDING THAT THE RULES OF
 10 EVIDENCE AND THE RULES OF CIVIL PROCEDURE MUST BE STRICTLY
 11 CONSTRUED WITH REGARD TO BAD FAITH CLAIMS AGAINST INSURERS;
 12 REVISING THE STATUTE OF LIMITATIONS FOR A BAD FAITH SUIT BY
 13 A THIRD-PARTY CLAIMANT; AND AMENDING SECTION 33-18-242,
 14 MCA."
 15

16 WHEREAS, the Legislature has enacted mandatory motor
 17 vehicle liability insurance requirements in section
 18 61-6-301, MCA; and

19 WHEREAS, compulsory motor vehicle liability insurance
 20 protects the general traveling public by requiring all
 21 drivers to carry liability insurance; and

22 WHEREAS, the primary purpose of compulsory motor vehicle
 23 liability insurance is to compensate innocent victims who
 24 have been injured by the negligence of financially
 25 irresponsible motorists; and

1 WHEREAS, the purpose of compulsory motor vehicle
 2 liability insurance is different from that of ordinary
 3 liability insurance the purpose of which is to save harmless
 4 the tortfeasor himself; and

5 WHEREAS, the injured person's rights against the insurer
 6 are not derived through the insured as in the case of
 7 voluntary insurance; and

8 WHEREAS, the injured person's rights are statutory and
 9 become absolute on the occurrence of an injury covered by
 10 the policy; and

11 WHEREAS, after adoption of section 61-6-301, MCA, the
 12 party sought to be protected by law is not the insured, but
 13 the injured claimant.

14 THEREFORE, it is appropriate for the Legislature to
 15 revise the law relating to bad faith actions against
 16 insurers to provide that a third-party claimant's bad faith
 17 action against an insurer may be brought at the same time as
 18 the underlying suit on liability.

19
 20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 **Section 1.** Section 33-18-242, MCA, is amended to read:
 22 "33-18-242. Independent cause of action -- burden of
 23 proof. (1) An insured or a third-party claimant has an
 24 independent cause of action against an insurer for actual
 25 damages caused by the insurer's violation of subsection-~~(1)~~;

1 ~~(4)~~~~(5)~~~~(6)~~~~(9)~~~~or-(13)~~ of 33-18-201.

2 (2) In an action under this section, a plaintiff is not
3 required to prove that the violations were of such frequency
4 as to indicate a general business practice.

5 (3) An insured who has suffered damages as a result of
6 the handling of an insurance claim may bring an action
7 against the insurer for breach of the insurance contract,
8 for fraud, or pursuant to this section, but not under any
9 other theory or cause of action. An insured may not bring an
10 action for bad faith in connection with the handling of an
11 insurance claim.

12 (4) In an action under this section, the court or jury
13 may award such damages as were proximately caused by the
14 violation of ~~subsection-(1)-(4)-(5)-(6)-(9)-or-(13)~~ of
15 33-18-201. Exemplary damages may also be assessed in
16 accordance with 27-1-221.

17 (5) An insurer may not be held liable under this
18 section if the insurer had a reasonable basis in law or in
19 fact for contesting the claim or the amount of the claim,
20 whichever is in issue.

21 (6) ~~(a)~~ An insured or a third-party claimant may file
22 an action under this section, together with any other cause
23 of action the insured or third-party claimant has against
24 the insurer. Actions may be bifurcated for trial where
25 ~~justice--so--requires~~ upon application of a party and only

1 upon an affirmative showing that bifurcation is necessary to
2 preserve the substantial rights of the requesting party. The
3 requesting party shall prove that his substantial rights
4 will be irrevocably harmed if bifurcation is not granted. It
5 is not grounds for bifurcation that absent the bad faith
6 claim against an insurer, the prohibition against the
7 mention of insurance would otherwise apply. At the time of
8 trial, all competent evidence relevant to the issues raised
9 by a third-party claimant must be allowed and the rules of
10 evidence must be liberally construed to allow the claimant
11 every benefit of meeting his burden of proof. The
12 application of Rule 56(c) of the Montana Rules of Civil
13 Procedure must be strictly construed with regard to claims
14 under this section in order to preserve a party's
15 constitutional right to a jury trial.

16 ~~(b)--A-third-party-claimant-may-not-file-an-action-under~~
17 ~~this-section-until--after--the--underlying--claim--has--been~~
18 ~~settled--or--a--judgment-entered-in-favor-of-the-claimant-on~~
19 ~~the-underlying-claim.~~

20 (7) The period prescribed for commencement of an action
21 under this section is-

22 ~~(a)--for-an-insured,~~ within 2 years from the date of the
23 violation of 33-18-201; ~~and~~

24 ~~(b)--for-a-third-party-claimant,~~ within ~~1~~ year from ~~the~~
25 ~~date--of--the--settlement-of-or-the-entry-of-judgment-on-the~~

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1 ~~underlying-claim.~~

2 (8) As used in this section, an insurer includes a
3 person, firm, or corporation utilizing self-insurance to pay
4 claims made against them."

-End-