

HOUSE BILL 735

Introduced by Measure, et al.

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| 2/09 | Introduced                               |
| 2/09 | Referred to Judiciary                    |
| 2/11 | First Reading                            |
| 2/19 | Hearing                                  |
| 2/23 | Committee Report--Bill Passed as Amended |
| 2/26 | 2nd Reading Passed                       |
| 2/27 | 3rd Reading Passed                       |
|      | Transmitted to Senate                    |
| 2/27 | First Reading                            |
| 2/27 | Referred to Business & Industry          |
| 3/07 | Rereferred to Judiciary                  |
| 3/12 | Hearing                                  |
| 4/01 | Tabled in Committee                      |

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HOUSE BILL NO. 735

INTRODUCED BY Maury Park

Maury Park

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN INSURANCE POLICY THAT PROVIDES COVERAGE FOR MEDICAL EXPENSES, LOSS OF EARNINGS, OR PROPERTY DAMAGE TO CONTAIN A PROVISION REQUIRING PAYMENT OF CLAIMS WHEN LIABILITY IS REASONABLY CLEAR; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1.** Prompt payment of damages. (1)

An insurance policy that provides coverage for medical expenses, loss of earnings, or property damage must contain a provision requiring the insurer to pay to a claimant, within policy limits, medical expenses, loss of earnings, and property damage at the time when liability has become reasonably clear.

(2) The payment of damages under subsection (1) may not

operate as a release of liability for other damage claims.

NEW SECTION. **Section 2.** Codification instruction.

[Section 1] is intended to be codified as an integral part of Title 33, chapter 15, part 3, and the provisions of Title 33, chapter 15, part 3, apply to [section 1].

NEW SECTION. **Section 3.** Applicability. [This act]

applies to all insurance policies issued or renewed on or

1 after October 1, 1991.

-End-



INTRODUCED BILL  
HB 735

APPROVED BY COMMITTEE  
ON JUDICIARY

HOUSE BILL NO. 735

INTRODUCED BY MEASURE, PECK, TOOLE, COHEN, BROOKE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN INSURANCE  
~~POLICY--THAT--PROVIDES--COVERAGE~~ INSURER TO REIMBURSE AN  
INSURED OR THIRD-PARTY CLAIMANT FOR MEDICAL EXPENSES, LOSS  
OF EARNINGS, OR PROPERTY DAMAGE ~~TO--CONTAIN--A--PROVISION~~  
~~REQUIRING--PAYMENT--OF--CLAIMS~~ WHEN LIABILITY IS REASONABLY  
CLEAR; AMENDING SECTIONS 33-18-201 AND 33-18-242, MCA; AND  
PROVIDING AN APPLICABILITY IMMEDIATE EFFECTIVE DATE."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

**Section 1.** Section 33-18-201, MCA, is amended to read:

"33-18-201. Unfair claim settlement practices prohibited. No person may, with such frequency as to indicate a general business practice, do any of the following:

- (1) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;
- (2) fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
- (3) fail to adopt and implement reasonable standards

for the prompt investigation of claims arising under insurance policies;

(4) refuse to pay claims without conducting a reasonable investigation based upon all available information;

(5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(7) compel insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(8) attempt to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

(9) attempt to settle claims on the basis of an application which was altered without notice to or knowledge or consent of the insured;

(10) make claims payments to insureds or beneficiaries not accompanied by statements setting forth the coverage under which the payments are being made;

1 (11) make known to insureds or claimants a policy of  
 2 appealing from arbitration awards in favor of insureds or  
 3 claimants for the purpose of compelling them to accept  
 4 settlements or compromises less than the amount awarded in  
 5 arbitration;

6 (12) delay the investigation or payment of claims by  
 7 requiring an insured, claimant, or physician of either to  
 8 submit a preliminary claim report and then requiring the  
 9 subsequent submission of formal proof of loss forms, both of  
 10 which submissions contain substantially the same  
 11 information;

12 (13) fail to promptly settle claims, if liability has  
 13 become reasonably clear, under one portion of the insurance  
 14 policy coverage in order to influence settlements under  
 15 other portions of the insurance policy coverage; or

16 (14) fail to promptly provide a reasonable explanation  
 17 of the basis in the insurance policy in relation to the  
 18 facts or applicable law for denial of a claim or for the  
 19 offer of a compromise settlement; or

20 (15) fail to promptly pay medical expenses, loss of  
 21 earnings, or property damage when liability is reasonably  
 22 clear."

23 **Section 2.** Section 33-18-242, MCA, is amended to read:

24 "33-18-242. Independent cause of action -- burden of  
 25 proof. (1) An insured or a third-party claimant has an

1 independent cause of action against an insurer for actual  
 2 damages caused by the insurer's violation of subsection (1),  
 3 (4), (5), (6), (9), or (13), or (15) of 33-18-201.

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

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

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

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

23 (6) (a) An insured may file an action under this  
 24 section, together with any other cause of action the insured  
 25 has against the insurer. Actions may be bifurcated for trial

1 where justice so requires.

2 (b) A third-party claimant may not file an action under  
3 this section until after the underlying claim has been  
4 settled or a judgment entered in favor of the claimant on  
5 the underlying claim.

6 (7) The period prescribed for commencement of an action  
7 under this section is:

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

10 (b) for a third-party claimant, within 1 year from the  
11 date of the settlement of or the entry of judgment on the  
12 underlying claim.

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

16 NEW SECTION. **Section 3.** Effective date. [This act] is  
17 effective on passage and approval.

-End-

HOUSE BILL NO. 735

INTRODUCED BY MEASURE, PECK, TOOLE, COHEN, BROOKE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN INSURANCE POLICY--THAT--PROVIDES--COVERAGE INSURER TO REIMBURSE AN INSURED OR THIRD-PARTY CLAIMANT FOR MEDICAL EXPENSES, LOSS OF EARNINGS, OR PROPERTY DAMAGE ~~TO--CONTAIN--A--PROVISION~~ REQUIRING--PAYMENT--OF--CLAIMS WHEN LIABILITY IS REASONABLY CLEAR; AMENDING SECTIONS 33-18-201 AND 33-18-242, MCA; AND PROVIDING AN APPLICABILITY IMMEDIATE EFFECTIVE DATE."

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(Refer to Introduced Bill)

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for the prompt investigation of claims arising under insurance policies;

(4) refuse to pay claims without conducting a reasonable investigation based upon all available information;

(5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(7) compel insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(8) attempt to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

(9) attempt to settle claims on the basis of an application which was altered without notice to or knowledge or consent of the insured;

(10) make claims payments to insureds or beneficiaries not accompanied by statements setting forth the coverage under which the payments are being made;

1 (11) make known to insureds or claimants a policy of  
2 appealing from arbitration awards in favor of insureds or  
3 claimants for the purpose of compelling them to accept  
4 settlements or compromises less than the amount awarded in  
5 arbitration;

6 (12) delay the investigation or payment of claims by  
7 requiring an insured, claimant, or physician of either to  
8 submit a preliminary claim report and then requiring the  
9 subsequent submission of formal proof of loss forms, both of  
10 which submissions contain substantially the same  
11 information;

12 (13) fail to promptly settle claims, if liability has  
13 become reasonably clear, under one portion of the insurance  
14 policy coverage in order to influence settlements under  
15 other portions of the insurance policy coverage; or

16 (14) fail to promptly provide a reasonable explanation  
17 of the basis in the insurance policy in relation to the  
18 facts or applicable law for denial of a claim or for the  
19 offer of a compromise settlement; or

20 (15) fail to promptly pay medical expenses, loss of  
21 earnings, or property damage when liability is reasonably  
22 clear."

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4 (2) In an action under this section, a plaintiff is not  
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6 as to indicate a general business practice.

7 (3) An insured who has suffered damages as a result of  
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9 against the insurer for breach of the insurance contract,  
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11 other theory or cause of action. An insured may not bring an  
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18 accordance with 27-1-221.

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

23 (6) (a) An insured may file an action under this  
24 section, together with any other cause of action the insured  
25 has against the insurer. Actions may be bifurcated for trial

1 where justice so requires.

2 (b) A third-party claimant may not file an action under  
3 this section until after the underlying claim has been  
4 settled or a judgment entered in favor of the claimant on  
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6 (7) The period prescribed for commencement of an action  
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