

HOUSE BILL NO. 240
INTRODUCED BY THOMAS

IN THE HOUSE

JANUARY 16, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & LABOR.

JANUARY 23, 1987 ON MOTION, REREFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 21, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 23, 1987 PRINTING REPORT.

FEBRUARY 24, 1987 SECOND READING, DO PASS.

ON MOTION, RULES SUSPENDED AND BILL
PLACED ON THIRD READING THIS DAY.

THIRD READING, PASSED.
AYES, 75; NOES, 25.

TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 2, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & INDUSTRY.

MARCH 13, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 17, 1987 ON MOTION, CONSIDERATION PASSED
FOR THE DAY.

MARCH 18, 1987 SECOND READING, CONCURRED IN.

MARCH 20, 1987 THIRD READING, CONCURRED IN.
AYES, 49; NOES, 0.

RETURNED TO HOUSE.

MARCH 21, 1987

IN THE HOUSE

RECEIVED FROM SENATE.

SENT TO ENROLLING.

1 House BILL NO. 240
2 INTRODUCED BY Thomas

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
5 SUSPENSION OF LEGAL PROCEEDINGS IN CERTAIN INSURANCE CLAIM
6 SETTLEMENT CASES; INCREASING THE FINE THAT MAY BE IMPOSED
7 FOR VIOLATION OF THE INSURANCE CODE; AMENDING SECTIONS
8 33-1-317, 33-18-201, AND 33-18-241, MCA; AND PROVIDING AN
9 APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 33-1-317, MCA, is amended to read:

13 "33-1-317. Penalty imposed by commissioner. The
14 commissioner may, after having conducted a hearing pursuant
15 to 33-1-701, impose a fine not to exceed the sum of ~~\$57,000~~
16 \$25,000 upon a person found to have violated any provision
17 of this code, except 33-30-1012, or regulation duly
18 promulgated by the commissioner, except that the fine
19 imposed upon agents or adjusters shall not exceed \$500. Said
20 fine shall be in addition to all other penalties imposed by
21 the laws of this state and shall be collected by the
22 commissioner in the name of the state of Montana. Imposition
23 of any fine hereunder shall be an order from which an appeal
24 may be taken, pursuant to the provisions of 33-1-711."

25 Section 2. Section 33-18-201, MCA, is amended to read:

1 "33-18-201. Unfair claim settlement practices
2 prohibited. (1) No person may, with such frequency as to
3 indicate a general business practice, do any of the
4 following:

5 (1)(a) misrepresent pertinent facts or insurance
6 policy provisions relating to coverages at issue;

7 (2)(b) fail to acknowledge and act reasonably promptly
8 upon communications with respect to claims arising under
9 insurance policies;

10 (3)(c) fail to adopt and implement reasonable
11 standards for the prompt investigation of claims arising
12 under insurance policies;

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

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

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

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



1 {8}(h) attempt to settle a claim for less than the
2 amount to which a reasonable man would have believed he was
3 entitled by reference to written or printed advertising
4 material accompanying or made part of an application;

5 {9}(i) attempt to settle claims on the basis of an
6 application which was altered without notice to or knowledge
7 or consent of the insured;

8 {10}(j) make claims payments to insureds or
9 beneficiaries not accompanied by statements setting forth
10 the coverage under which the payments are being made;

11 {11}(k) make known to insureds or claimants a policy
12 of appealing from arbitration awards in favor of insureds or
13 claimants for the purpose of compelling them to accept
14 settlements or compromises less than the amount awarded in
15 arbitration;

16 {12}(l) delay the investigation or payment of claims
17 by requiring an insured, claimant, or physician of either to
18 submit a preliminary claim report and then requiring the
19 subsequent submission of formal proof of loss forms, both of
20 which submissions contain substantially the same
21 information;

22 {13}(m) fail to promptly settle claims, if liability
23 has become reasonably clear, under one portion of the
24 insurance policy coverage in order to influence settlements
25 under other portions of the insurance policy coverage; or

1 {14}(n) fail to promptly provide a reasonable
2 explanation of the basis in the insurance policy in relation
3 to the facts or applicable law for denial of a claim or for
4 the offer of a compromise settlement.

5 (2) As used in this section, liability is reasonably
6 clear when there is no genuine issue as to any material fact
7 regarding liability and the claiming party is entitled to
8 judgment as a matter of law."

9 Section 3. Section 33-18-241, MCA, is amended to read:
10 "33-18-241. Separation of trial of claim for ~~lack--of~~
11 good--faith unfair claim settlement practices from trial of
12 underlying claim -- suspension of proceedings. (1) The trial
13 of a claim or action against an insurer under [section 4]
14 for ~~lack--of-good-faith-in-its-handling-or-settlement-of-an~~
15 insurance-claim unfair claim settlement practices may not be
16 consolidated with a trial of the underlying claim if:

17 {1}(a) the ~~lack-of--good--faith~~ insurance settlement
18 claim is against a party different from the party against
19 whom the underlying claim is made; and

20 {2}(b) the parties have not stipulated to
21 consolidation of the trial of the ~~lack--of--good-faith~~
22 insurance settlement claim and the underlying claim.

23 (2) In the case of an insurance settlement claim that
24 is subject to the provisions of subsection (1), all
25 proceedings in the case must be suspended until the

1 liability issues of the underlying claim have been
 2 determined either by settlement or by judgment in favor of
 3 the plaintiff."

4 NEW SECTION. Section 4. Independent cause of action
 5 -- burden of proof. (1) An insured or a third-party claimant
 6 has an independent cause of action against an insurer for
 7 actual damages caused by the insurer's violation of
 8 subsection (1)(a), (1)(d), (1)(f), or (1)(m) of 33-18-201.

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

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

19 (4) In an action under this section, the court or jury
 20 may award such damages as were proximately caused by the
 21 violation of subsection (1)(a), (1)(d), (1)(f), or (1)(m) of
 22 33-18-201.

23 (5) In order to recover under this section, a
 24 plaintiff must prove the absence of any debatable reason for
 25 the insurer's refusal to pay or refusal to pay the amount

1 demanded by the plaintiff. A debatable reason is an arguable
 2 reason that is open to dispute or question.

3 NEW SECTION. Section 5. Codification instruction.
 4 Section 4 is intended to be codified as an integral part of
 5 Title 33, chapter 18, part 2, and the provisions of Title
 6 33, chapter 18, part 2, apply to section 4.

7 NEW SECTION. Section 6. Severability. If a part of
 8 this act is invalid, all valid parts that are severable from
 9 the invalid part remain in effect. If a part of this act is
 10 invalid in one or more of its applications, the part remains
 11 in effect in all valid applications that are severable from
 12 the invalid applications.

13 NEW SECTION. Section 7. Applicability. This act
 14 applies to causes of action arising after the effective date
 15 of this act.

16 NEW SECTION. Section 8. Effective date. This act is
 17 effective on passage and approval.

-End-

APPROVED BY COMM. ON
BUSINESS AND LABOR

HOUSE BILL NO. 240
INTRODUCED BY THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A CAUSE OF ACTION FOR AND THE SUSPENSION OF LEGAL PROCEEDINGS IN CERTAIN INSURANCE CLAIM SETTLEMENT CASES; INCREASING THE FINE THAT MAY BE IMPOSED FOR VIOLATION OF THE INSURANCE CODE; AMENDING SECTIONS SECTION 33-1-317, 33-10-201, AND MCA; REPEALING SECTION 33-18-241, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 33-1-317, MCA, is amended to read:

"33-1-317. Penalty imposed by commissioner. The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine not to exceed the sum of \$5,000 \$25,000 upon a person found to have violated any provision of this code, except 33-30-1012, or regulation duly promulgated by the commissioner, except that the fine imposed upon agents or adjusters shall not exceed \$500. Said fine shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the commissioner in the name of the state of Montana. Imposition of any fine hereunder shall be an order from which an appeal may be taken, pursuant to the provisions of 33-1-711."

Section 2. Section 33-18-201, MCA, is amended to read:
"33-18-201. Unfair claim settlement practices prohibited. (1) No person may, with such frequency as to indicate a general business practice, do any of the following:

(1) (a) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;

(2) (b) fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(3) (c) fail to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

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

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

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

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

1 actions brought by such insureds;

2 (8)(h) attempt to settle a claim for less than the

3 amount to which a reasonable man would have believed he was

4 entitled by reference to written or printed advertising

5 material accompanying or made part of an application;

6 (9)(i) attempt to settle claims on the basis of an

7 application which was altered without notice to or knowledge

8 or consent of the insured;

9 (10)(j) make claims payments to insureds or

10 beneficiaries not accompanied by statements setting forth

11 the coverage under which the payments are being made;

12 (11)(k) make known to insureds or claimants a policy of

13 appealing from arbitration awards in favor of insureds or

14 claimants for the purpose of compelling them to accept

15 settlements or compromises less than the amount awarded in

16 arbitration;

17 (12)(l)(12) delay the investigation or payment of

18 claims by requiring an insured, claimant, or physician of

19 either to submit a preliminary claim report and then

20 requiring the subsequent submission of formal proof of loss

21 forms, both of which submissions contain substantially the

22 same information;

23 (13)(m) fail to promptly settle claims, if liability

24 has become reasonably clear, under one portion of the

25 insurance policy coverage in order to influence settlements

1 under other portions of the insurance policy coverage; or

2 (14)(n)(14) fail to promptly provide a reasonable

3 explanation of the basis in the insurance policy in relation

4 to the facts or applicable law for denial of a claim or for

5 the offer of a compromise settlement;

6 (2) As used in this section, liability is reasonably

7 clear when there is no genuine issue as to any material fact

8 regarding liability and the claiming party is entitled to

9 judgment as a matter of law."

10 Section 2. REPEALER. Section 33-18-241, MCA, is

11 amended to read: REPEALED.

12 "33-18-241. Separation of trial of claim for lack of

13 good faith unfair claim settlement practices from trial of

14 underlying claim --- suspension of proceedings: (1) The trial

15 of a claim or action against an insurer under {section 4}

16 for lack of good faith in its handling or settlement of an

17 insurance claim unfair claim settlement practices may not be

18 consolidated with a trial of the underlying claim if:

19 (1)(a) the lack of good faith insurance settlement

20 claim is against a party different from the party against

21 whom the underlying claim is made, and

22 (2)(b) the parties have not stipulated to

23 consolidation of the trial of the lack of good faith

24 insurance settlement claim and the underlying claim;

25 (2) In the case of an insurance settlement claim that

1 is subject to the provisions of subsection (i), all
 2 proceedings in the case must be suspended until the
 3 liability issues of the underlying claim have been
 4 determined either by settlement or by judgment in favor of
 5 the plaintiff."

6 NEW SECTION. Section 3. Independent cause of action
 7 -- burden of proof. (1) An insured or a third-party claimant
 8 has an independent cause of action against an insurer for
 9 actual damages caused by the insurer's violation of
 10 subsection (i)(a), (i)(d), (i)(f), or (i)(m) (1), (4), (5),
 11 (6), (9), OR (13) of 33-18-201.

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

15 (3) An insured who has suffered damages as a result of
 16 the handling of an insurance claim may bring an action
 17 against the insurer for breach of the insurance contract,
 18 for fraud, or pursuant to this section, but not under any
 19 other theory or cause of action. An insured may not bring an
 20 action for bad faith in connection with the handling of an
 21 insurance claim.

22 (4) In an action under this section, the court or jury
 23 may award such damages as were proximately caused by the
 24 violation of subsection (i)(a), (i)(d), (i)(f), or (i)(m)
 25 (1), (4), (5), (6), (9), OR (13) of 33-18-201. EXEMPLARY

1 DAMAGES MAY ALSO BE ASSESSED IN ACCORDANCE WITH 27-1-221.

2 (5) In order to recover under this section, a
 3 plaintiff must prove the absence of any debatable reason for
 4 the insurer's refusal to pay or refusal to pay the amount
 5 demanded by the plaintiff. A debatable reason is an arguable
 6 reason that is open to dispute or question. AN INSURER MAY
 7 NOT BE HELD LIABLE UNDER THIS SECTION IF THE INSURER HAD A
 8 REASONABLE BASIS IN LAW OR IN FACT FOR CONTESTING THE CLAIM
 9 OR THE AMOUNT OF THE CLAIM, WHICHEVER IS IN ISSUE.

10 (6) (A) AN INSURED MAY FILE AN ACTION UNDER THIS
 11 SECTION, TOGETHER WITH ANY OTHER CAUSE OF ACTION THE INSURED
 12 HAS AGAINST THE INSURER. ACTIONS MAY BE BIFURCATED FOR TRIAL
 13 WHERE JUSTICE SO REQUIRES.

14 (B) A THIRD-PARTY CLAIMANT MAY NOT FILE AN ACTION
 15 UNDER THIS SECTION UNTIL AFTER THE UNDERLYING CLAIM HAS BEEN
 16 SETTLED OR A JUDGMENT ENTERED IN FAVOR OF THE CLAIMANT ON
 17 THE UNDERLYING CLAIM.

18 (7) THE PERIOD PRESCRIBED FOR COMMENCEMENT OF AN
 19 ACTION UNDER THIS SECTION IS:

20 (A) FOR AN INSURED, WITHIN 2 YEARS FROM THE DATE OF
 21 THE VIOLATION OF 33-18-201; AND

22 (B) FOR A THIRD-PARTY CLAIMANT, WITHIN 1 YEAR FROM THE
 23 DATE OF THE SETTLEMENT OF OR THE ENTRY OF JUDGMENT ON THE
 24 UNDERLYING CLAIM.

25 (8) AS USED IN THIS SECTION, AN INSURER INCLUDES A

1 PERSON, FIRM, OR CORPORATION UTILIZING SELF-INSURANCE TO PAY
2 CLAIMS MADE AGAINST THEM.

3 NEW SECTION. Section 4. Codification instruction.
4 Section 4 3 is intended to be codified as an integral part
5 of Title 33, chapter 18, part 2, and the provisions of Title
6 33, chapter 18, part 2, apply to section 4 3.

7 NEW SECTION. Section 5. Severability. If a part of
8 this act is invalid, all valid parts that are severable from
9 the invalid part remain in effect. If a part of this act is
10 invalid in one or more of its applications, the part remains
11 in effect in all valid applications that are severable from
12 the invalid applications.

13 NEW SECTION. Section 6. Applicability. This act
14 applies to causes of action arising after the effective date
15 of this act.

16 NEW SECTION. Section 7. Effective date. This act is
17 effective on ~~passage-and-approval~~ JULY 1, 1987.

-End-

1 HOUSE BILL NO. 240

2 INTRODUCED BY THOMAS

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A CAUSE
5 OF ACTION FOR AND THE SUSPENSION OF LEGAL PROCEEDINGS IN
6 CERTAIN INSURANCE CLAIM SETTLEMENT CASES; INCREASING THE
7 FINE THAT MAY BE IMPOSED FOR VIOLATION OF THE INSURANCE
8 CODE; AMENDING SECTIONS SECTION 33-1-317, 33-18-201, AND
9 MCA; REPEALING SECTION 33-18-241, MCA; AND PROVIDING AN
10 APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE."

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

13 Section 1. Section 33-1-317, MCA, is amended to read:

14 "33-1-317. Penalty imposed by commissioner. The
15 commissioner may, after having conducted a hearing pursuant
16 to 33-1-701, impose a fine not to exceed the sum of \$57,000
17 \$25,000 upon a person found to have violated any provision
18 of this code, except 33-30-1012, or regulation duly
19 promulgated by the commissioner, except that the fine
20 imposed upon agents or adjusters shall not exceed \$500. Said
21 fine shall be in addition to all other penalties imposed by
22 the laws of this state and shall be collected by the
23 commissioner in the name of the state of Montana. Imposition
24 of any fine hereunder shall be an order from which an appeal
25 may be taken, pursuant to the provisions of 33-1-711."

1 Section 2. Section 33-18-201, MCA, is amended to read:

2 "33-18-201. Unfair claim settlement practices
3 prohibited: (1) No person may, with such frequency as to
4 indicate a general business practice, do any of the
5 following:

6 (1)(a) misrepresent pertinent facts or insurance
7 policy provisions relating to coverages at issue;

8 (2)(b) fail to acknowledge and act reasonably promptly
9 upon communications with respect to claims arising under
10 insurance policies;

11 (3)(c) fail to adopt and implement reasonable
12 standards for the prompt investigation of claims arising
13 under insurance policies;

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

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

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

23 (7)(g) compel insureds to institute litigation to
24 recover amounts due under an insurance policy by offering
25 substantially less than the amounts ultimately recovered in

1 actions brought by such insureds;
 2 (8)(h) attempt to settle a claim for less than the
 3 amount to which a reasonable man would have believed he was
 4 entitled by reference to written or printed advertising
 5 material accompanying or made part of an application;
 6 (9)(i) attempt to settle claims on the basis of an
 7 application which was altered without notice to or knowledge
 8 or consent of the insured;
 9 (10)(j) make claims payments to insureds or
 10 beneficiaries not accompanied by statements setting forth
 11 the coverage under which the payments are being made;
 12 (11)(k) make known to insureds or claimants a policy of
 13 appealing from arbitration awards in favor of insureds or
 14 claimants for the purpose of compelling them to accept
 15 settlements or compromises less than the amount awarded in
 16 arbitration;
 17 (12)(l)(12) delay the investigation or payment of
 18 claims by requiring an insured, claimant, or physician of
 19 either to submit a preliminary claim report and then
 20 requiring the subsequent submission of formal proof of loss
 21 forms, both of which submissions contain substantially the
 22 same information;
 23 (13)(m) fail to promptly settle claims, if liability
 24 has become reasonably clear, under one portion of the
 25 insurance policy coverage in order to influence settlements

1 under other portions of the insurance policy coverage; or
 2 (14)(n)(14) fail to promptly provide a reasonable
 3 explanation of the basis in the insurance policy in relation
 4 to the facts or applicable law for denial of a claim or for
 5 the offer of a compromise settlement;
 6 (2) As used in this section, liability is reasonably
 7 clear when there is no genuine issue as to any material fact
 8 regarding liability and the claiming party is entitled to
 9 judgment as a matter of law."
 10 Section 2. REPEALER. Section 33-18-241, MCA, is
 11 amended to read: REPEALED.
 12 "33-18-241. Separation of trial of claim for lack of
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 15 of a claim or action against an insurer under (section 4)
 16 for lack of good faith in its handling or settlement of an
 17 insurance claim unfair claim settlement practices may not be
 18 consolidated with a trial of the underlying claim if:
 19 (1)(a) the lack of good faith insurance settlement
 20 claim is against a party different from the party against
 21 whom the underlying claim is made; and
 22 (2)(b) the parties have not stipulated to
 23 consolidation of the trial of the lack of good faith
 24 insurance settlement claim and the underlying claim;
 25 (2) In the case of an insurance settlement claim that

1 ~~is subject to the provisions of subsection (1); all~~
 2 ~~proceedings in the case must be suspended until the~~
 3 ~~liability issues of the underlying claim have been~~
 4 ~~determined either by settlement or by judgment in favor of~~
 5 ~~the plaintiff."~~

6 NEW SECTION. Section 3. Independent cause of action
 7 -- burden of proof. (1) An insured or a third-party claimant
 8 has an independent cause of action against an insurer for
 9 actual damages caused by the insurer's violation of
 10 subsection (a), (d), (f), or (m) (1), (4), (5),
 11 (6), (9), OR (13) of 33-18-201.

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

15 (3) An insured who has suffered damages as a result of
 16 the handling of an insurance claim may bring an action
 17 against the insurer for breach of the insurance contract,
 18 for fraud, or pursuant to this section, but not under any
 19 other theory or cause of action. An insured may not bring an
 20 action for bad faith in connection with the handling of an
 21 insurance claim.

22 (4) In an action under this section, the court or jury
 23 may award such damages as were proximately caused by the
 24 violation of subsection (a), (d), (f), or (m)
 25 (1), (4), (5), (6), (9), OR (13) of 33-18-201. EXEMPLARY

1 DAMAGES MAY ALSO BE ASSESSED IN ACCORDANCE WITH 27-1-221.

2 (5) In order to recover under this section, a
 3 plaintiff must prove the absence of any debatable reason for
 4 the insurer's refusal to pay or refusal to pay the amount
 5 demanding by the plaintiff. A debatable reason is an arguable
 6 reason that is open to dispute or question. AN INSURER MAY
 7 NOT BE HELD LIABLE UNDER THIS SECTION IF THE INSURER HAD A
 8 REASONABLE BASIS IN LAW OR IN FACT FOR CONTESTING THE CLAIM
 9 OR THE AMOUNT OF THE CLAIM, WHICHEVER IS IN ISSUE.

10 (6) (A) AN INSURED MAY FILE AN ACTION UNDER THIS
 11 SECTION, TOGETHER WITH ANY OTHER CAUSE OF ACTION THE INSURED
 12 HAS AGAINST THE INSURER. ACTIONS MAY BE BIFURCATED FOR TRIAL
 13 WHERE JUSTICE SO REQUIRES.

14 (B) A THIRD-PARTY CLAIMANT MAY NOT FILE AN ACTION
 15 UNDER THIS SECTION UNTIL AFTER THE UNDERLYING CLAIM HAS BEEN
 16 SETTLED OR A JUDGMENT ENTERED IN FAVOR OF THE CLAIMANT ON
 17 THE UNDERLYING CLAIM.

18 (7) THE PERIOD PRESCRIBED FOR COMMENCEMENT OF AN
 19 ACTION UNDER THIS SECTION IS:

20 (A) FOR AN INSURED, WITHIN 2 YEARS FROM THE DATE OF
 21 THE VIOLATION OF 33-18-201; AND

22 (B) FOR A THIRD-PARTY CLAIMANT, WITHIN 1 YEAR FROM THE
 23 DATE OF THE SETTLEMENT OF OR THE ENTRY OF JUDGMENT ON THE
 24 UNDERLYING CLAIM.

25 (8) AS USED IN THIS SECTION, AN INSURER INCLUDES A

1 PERSON, FIRM, OR CORPORATION UTILIZING SELF-INSURANCE TO PAY
2 CLAIMS MADE AGAINST THEM.

3 NEW SECTION. Section 4. Codification instruction.
4 Section 4 3 is intended to be codified as an integral part
5 of Title 33, chapter 18, part 2, and the provisions of Title
6 33, chapter 18, part 2, apply to section 4 3.

7 NEW SECTION. Section 5. Severability. If a part of
8 this act is invalid, all valid parts that are severable from
9 the invalid part remain in effect. If a part of this act is
10 invalid in one or more of its applications, the part remains
11 in effect in all valid applications that are severable from
12 the invalid applications.

13 NEW SECTION. Section 6. Applicability. This act
14 applies to causes of action arising after the effective date
15 of this act.

16 NEW SECTION. Section 7. Effective date. This act is
17 effective on passage-and-approval JULY 1, 1987.

-End-

HOUSE BILL NO. 240
INTRODUCED BY THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A CAUSE OF ACTION FOR AND THE SUSPENSION OF LEGAL PROCEEDINGS IN CERTAIN INSURANCE CLAIM SETTLEMENT CASES; INCREASING THE FINE THAT MAY BE IMPOSED FOR VIOLATION OF THE INSURANCE CODE; AMENDING SECTIONS SECTION 33-1-317, 33-18-2017--AND MCA; REPEALING SECTION 33-18-241, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 33-1-317, MCA, is amended to read:

"33-1-317. Penalty imposed by commissioner. The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine not to exceed the sum of \$5,000 \$25,000 upon a person found to have violated any provision of this code, except 33-30-1012, or regulation duly promulgated by the commissioner, except that the fine imposed upon agents or adjusters shall not exceed \$500. Said fine shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the commissioner in the name of the state of Montana. Imposition of any fine hereunder shall be an order from which an appeal may be taken, pursuant to the provisions of 33-1-711."

Section 2. Section 33-18-2017, MCA, is amended to read:
"33-18-2017. Unfair claim settlement practices prohibited: (1) No person may, with such frequency as to indicate a general business practice, do any of the following:

(1)(a) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;

(2)(b) fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(3)(c) fail to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

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

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

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

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

1 actions brought by such insureds;

2 ~~{8}{h}~~ attempt to settle a claim for less than the

3 amount to which a reasonable man would have believed he was

4 entitled by reference to written or printed advertising

5 material accompanying or made part of an application;

6 ~~{9}{i}~~ attempt to settle claims on the basis of an

7 application which was altered without notice to or knowledge

8 or consent of the insured;

9 ~~{10}{j}~~ make claims payments to insureds or

10 beneficiaries not accompanied by statements setting forth

11 the coverage under which the payments are being made;

12 ~~{11}{k}~~ make known to insureds or claimants a policy of

13 appealing from arbitration awards in favor of insureds or

14 claimants for the purpose of compelling them to accept

15 settlements or compromises less than the amount awarded in

16 arbitration;

17 ~~{12}{l}~~ delay the investigation or payment of

18 claims by requiring an insured, claimant, or physician of

19 either to submit a preliminary claim report and then

20 requiring the subsequent submission of formal proof of loss

21 forms, both of which submissions contain substantially the

22 same information;

23 ~~{13}{m}~~ fail to promptly settle claims, if liability

24 has become reasonably clear, under one portion of the

25 insurance policy coverage in order to influence settlements

1 under other portions of the insurance policy coverage; or

2 ~~{14}{n}~~ fail to promptly provide a reasonable

3 explanation of the basis in the insurance policy in relation

4 to the facts or applicable law for denial of a claim or for

5 the offer of a compromise settlement;

6 ~~{2}~~ As used in this section, liability is reasonably

7 clear when there is no genuine issue as to any material fact

8 regarding liability and the claiming party is entitled to

9 judgment as a matter of law;"

10 Section 2. REPEALER. Section 33-18-241, MCA, is

11 amended to read: REPEALED.

12 "33-18-241. Separation of trial of claim for lack of

13 good faith unfair claim settlement practices from trial of

14 underlying claim --- suspension of proceedings: ~~{1}~~ The trial

15 of a claim or action against an insurer under {section 4}

16 for lack of good faith in its handling or settlement of an

17 insurance claim unfair claim settlement practices may not be

18 consolidated with a trial of the underlying claim if:

19 ~~{1}{a}~~ the lack of good faith insurance settlement

20 claim is against a party different from the party against

21 whom the underlying claim is made; and

22 ~~{2}{b}~~ the parties have not stipulated to

23 consolidation of the trial of the lack of good faith

24 insurance settlement claim and the underlying claim;

25 ~~{2}~~ in the case of an insurance settlement claim that

1 is subject to the provisions of subsection (1), all
2 proceedings in the case must be suspended until the
3 liability issues of the underlying claim have been
4 determined either by settlement or by judgment in favor of
5 the plaintiff."

6 NEW SECTION. Section 3. Independent cause of action
7 -- burden of proof. (1) An insured or a third-party claimant
8 has an independent cause of action against an insurer for
9 actual damages caused by the insurer's violation of
10 subsection (a), (d), (f), or (m) (1), (4), (5),
11 (6), (9), OR (13) of 33-18-201.

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

15 (3) An insured who has suffered damages as a result of
16 the handling of an insurance claim may bring an action
17 against the insurer for breach of the insurance contract,
18 for fraud, or pursuant to this section, but not under any
19 other theory or cause of action. An insured may not bring an
20 action for bad faith in connection with the handling of an
21 insurance claim.

22 (4) In an action under this section, the court or jury
23 may award such damages as were proximately caused by the
24 violation of subsection (a), (d), (f), or (m)
25 (1), (4), (5), (6), (9), OR (13) of 33-18-201. EXEMPLARY

1 DAMAGES MAY ALSO BE ASSESSED IN ACCORDANCE WITH 27-1-221.

2 (5) In order to recover under this section, a
3 plaintiff must prove the absence of any debatable reason for
4 the insurer's refusal to pay or refusal to pay the amount
5 demanded by the plaintiff. A debatable reason is an arguable
6 reason that is open to dispute or question. AN INSURER MAY
7 NOT BE HELD LIABLE UNDER THIS SECTION IF THE INSURER HAD A
8 REASONABLE BASIS IN LAW OR IN FACT FOR CONTESTING THE CLAIM
9 OR THE AMOUNT OF THE CLAIM, WHICHEVER IS IN ISSUE.

10 (6) (A) AN INSURED MAY FILE AN ACTION UNDER THIS
11 SECTION, TOGETHER WITH ANY OTHER CAUSE OF ACTION THE INSURED
12 HAS AGAINST THE INSURER. ACTIONS MAY BE BIFURCATED FOR TRIAL
13 WHERE JUSTICE SO REQUIRES.

14 (B) A THIRD-PARTY CLAIMANT MAY NOT FILE AN ACTION
15 UNDER THIS SECTION UNTIL AFTER THE UNDERLYING CLAIM HAS BEEN
16 SETTLED OR A JUDGMENT ENTERED IN FAVOR OF THE CLAIMANT ON
17 THE UNDERLYING CLAIM.

18 (7) THE PERIOD PRESCRIBED FOR COMMENCEMENT OF AN
19 ACTION UNDER THIS SECTION IS:

20 (A) FOR AN INSURED, WITHIN 2 YEARS FROM THE DATE OF
21 THE VIOLATION OF 33-18-201; AND

22 (B) FOR A THIRD-PARTY CLAIMANT, WITHIN 1 YEAR FROM THE
23 DATE OF THE SETTLEMENT OF OR THE ENTRY OF JUDGMENT ON THE
24 UNDERLYING CLAIM.

25 (8) AS USED IN THIS SECTION, AN INSURER INCLUDES A

1 PERSON, FIRM, OR CORPORATION UTILIZING SELF-INSURANCE TO PAY
2 CLAIMS MADE AGAINST THEM.

3 NEW SECTION. Section 4. Codification instruction.
4 Section 4 3 is intended to be codified as an integral part
5 of Title 33, chapter 18, part 2, and the provisions of Title
6 33, chapter 18, part 2, apply to section 4 3.

7 NEW SECTION. Section 5. Severability. If a part of
8 this act is invalid, all valid parts that are severable from
9 the invalid part remain in effect. If a part of this act is
10 invalid in one or more of its applications, the part remains
11 in effect in all valid applications that are severable from
12 the invalid applications.

13 NEW SECTION. Section 6. Applicability. This act
14 applies to causes of action arising after the effective date
15 of this act.

16 NEW SECTION. Section 7. Effective date. This act is
17 effective on ~~passage-and-approval~~ JULY 1, 1987.

-End-