

HOUSE BILL NO. 592

INTRODUCED BY HARP

IN THE HOUSE

FEBRUARY 4, 1987                   INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

FEBRUARY 19, 1987                  COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 20, 1987                  PRINTING REPORT.

FEBRUARY 21, 1987                  SECOND READING, DO PASS.

FEBRUARY 23, 1987                  ENGROSSING REPORT.

THIRD READING, PASSED.  
AYES, 50; NOES, 49.

TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 2, 1987                    INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

MARCH 26, 1987                   COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

MARCH 30, 1987                   SECOND READING, CONCURRED IN.

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

THIRD READING, CONCURRED IN.  
AYES, 48; NOES, 2.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 8, 1987

RECEIVED FROM SENATE.

ON MOTION, CONSIDERATION PASSED  
FOR THE DAY.

APRIL 10, 1987

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 11, 1987

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 592  
2 INTRODUCED BY HASP

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT  
5 COMMON-LAW CAUSES OF ACTION FOR BAD FAITH AND BREACH OF THE  
6 IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING EXIST ONLY  
7 WHEN EXPRESSLY PROVIDED BY STATUTE; AND PROVIDING AN  
8 APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE."

9  
10 WHEREAS, the existing law of contracts provides a legal  
11 remedy for the recovery of damages resulting from a breach  
12 of contract; and

13 WHEREAS, the Uniform Commercial Code governs commercial  
14 transactions, including those involving financial  
15 institutions, and requires that parties to a contract deal  
16 with one another in "good faith"; and

17 WHEREAS, the provisions of Title 33, chapter 8,  
18 relating to insurance unfair claims settlement practices,  
19 establish standards of good faith and fair dealing between  
20 insurance carriers and their insureds; and

21 WHEREAS, the Legislature has the opportunity to provide  
22 standards to govern other legal relationships, such as the  
23 employment relationship; and

24 WHEREAS, the Montana Supreme Court has held that a  
25 covenant of good faith and fair dealing is implied in every

1 contract and is violated when a party's actions are  
2 arbitrary or capricious or violate the reasonable  
3 expectations of the other party; and

4 WHEREAS, no clear standards exist to guide the actions  
5 and decisions of a party to a commercial contract, yet  
6 violation of the implied covenant may subject a party to  
7 compensatory and punitive damages; and

8 WHEREAS, this newly created doctrine has introduced  
9 tremendous uncertainty and unpredictability into commercial  
10 relationships; and

11 WHEREAS, this uncertainty and unpredictability  
12 frustrates parties who might otherwise enter mutually  
13 beneficial commercial transactions; and

14 WHEREAS, this uncertainty and unpredictability has  
15 resulted in extensive litigation at substantial cost; and

16 WHEREAS, it is the opinion of the Legislature that  
17 clearly articulated standards, certainty, and predictability  
18 must be restored to the law of contracts; and

19 WHEREAS, certainty and predictability will be restored  
20 if the traditional law of contracts, consisting of  
21 longstanding statutes and judicially created doctrines, is  
22 substituted for the vagaries of the implied covenant of good  
23 faith and fair dealing.

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



-2- INTRODUCED BILL  
HB-592

1           Section 1. Cause of action for bad faith or breach of  
2 implied covenant of good faith and fair dealing -- when  
3 allowed. Common-law civil causes of action for the torts of  
4 "bad faith" and "breach of the implied covenant of good  
5 faith and fair dealing" are permitted only when expressly  
6 authorized by statute.

7           Section 2. Applicability. This act applies to causes  
8 of action arising after the effective date of this act.

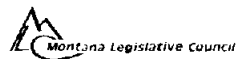
9           Section 3. Effective date. This act is effective on  
10 passage and approval.

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

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5 faith and fair dealing" are permitted only when expressly  
6 authorized by statute. NOTHING IN THIS SECTION AFFECTS THE  
7 RIGHTS OF ANY PERSON TO BRING AN ACTION AS PERMITTED BY  
8 33-18-201 OR THE UNIFORM COMMERCIAL CODE.

9           Section 2. Applicability. This act applies to causes  
10 of action arising after the effective date of this act.

11           Section 3. Effective date. This act is effective on  
12 passage-and-approval JULY 1, 1987.

-End-

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2 INTRODUCED BY HARP  
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 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT  
 5 COMMON-LAW CAUSES OF ACTION FOR BAD FAITH AND BREACH OF  
 6 ESTABLISHING THE CONDUCT REQUIRED BY THE IMPLIED COVENANT OF  
 7 GOOD FAITH AND FAIR DEALING EXIST ONLY WHEN EXPRESSLY  
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1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

2 Section 1. ~~Cause-of-action-for-bad-faith-or-breach-of~~  
3 ~~implied-covenant-of-good-faith-and-fair-dealing---when~~  
4 ~~allowed;--Common-law-civil-causes-of-action-for-the-torts-of~~  
5 ~~"bad-faith"-and-"breach-of--the--implied--covenant--of--good~~  
6 ~~faith--and--fair--dealing"-are-permitted-only-when-expressly~~  
7 ~~authorized-by-statute; NOTHING-IN-THIS-SECTION--APPECTS--THE~~  
8 ~~RIGHTS--OF--ANY--PERSON--TO--BRING-AN-ACTION-AS-PERMITTED-BY~~  
9 ~~33-18-201-OR-THE-UNIFORM-COMMERCIAL-CODE; IMPLIED COVENANT~~  
10 ~~OF GOOD FAITH AND FAIR DEALING. THE CONDUCT REQUIRED BY THE~~  
11 ~~IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING IS HONESTY~~  
12 ~~IN FACT AND THE OBSERVANCE OF REASONABLE COMMERCIAL~~  
13 ~~STANDARDS OF FAIR DEALING IN THE TRADE.~~

14 Section 2. Applicability. This act applies to causes  
15 of action arising after the effective date of this act.

16 Section 3. Effective date. This act is effective on  
17 ~~passage-and-approval~~ JULY 1, 1987.

-End-

# STANDING COMMITTEE REPORT

## SENATE

SCRHB592

.....March 26,..... 19.87.....

MR. PRESIDENT

Judiciary

We, your committee on.....

House Bill

592

having had under consideration..... No.....

third

blue

reading copy ( \_\_\_\_\_ )  
color

ABOLISH BAD FAITH & BREACH OF COVENANT OF GOOD FAITH & FAIR DEALING ACTIONS

Respectfully report as follows: That.....House Bill..... No...592.....

BE AMENDED AS FOLLOWS:

1. Title, lines 4 and 5.

Following: " "AN ACT" on line 4

Strike: remainder of line 4 through "BREACH OF" on line 5

Insert: "ESTABLISHING THE CONDUCT REQUIRED BY"

2. Title, lines 6 and 7.

Following: "DEALING" on line 6

Strike: remainder of line 6 through "STATUTE" on line 7

3. Page 1, line 10 through page 2, line 23.

Strike: lines 10, page 1 through line 23, page 2 in their entirety

4. Page 3, lines 1 through 8.

Following: "1." on line 1

Strike: remainder of section 1 in its entirety

Insert: "Implied covenant of good faith and fair dealing. The conduct required by the implied covenant of good faith and fair dealing is honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade."

~~XXXXXXXXXXXX~~

~~XXXXXXXXXXXX~~

AND AS AMENDED  
BE CONCURRED IN

Chairman.

Senator Mazurek

3-26-84  
eg  
10:10