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INTRODUCED BY MERCER Van Valkenburg Donerty HOUSE BILL NO. 443

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING UNFAIR CLAIM SETTLEMENT PRACTICES; REQUIRING THAT ATTORNEY FEES AND COSTS BE AWARDED TO CLAIMANTS WHEN SUCCESSFUL; AND AMENDING SECTIONS 33-18-201 AND 33-18-242, MCA."

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

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

"33-18-201. Unfair claim settlement practices prohibited. ~~Ne~~ (1) A person may not, with such a frequency ~~as to indicate~~ that indicates 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~~ an insured person 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~~ an insured person;

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

~~(9)~~(i) attempt to settle claims on the basis of an application ~~which~~ that was altered without notice

1 to or knowledge or consent of the insured;

2 ~~(10)(j)~~ make claims payments to ~~insureds~~ insured persons or beneficiaries ~~not~~, which payments are
3 not accompanied by statements setting forth the coverage under which the payments are being made;

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

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

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

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

15 (o) fail to pay medical expenses, property damage claims, and claims for lost wages if:

16 (i) liability has become reasonably clear within a reasonable time after submission of verified claims
17 for losses; and

18 (ii) the claimant would be compelled, by reason of the economic duress of the claimant's creditors,
19 to settle the claim prematurely or for less than the true and full value of the claim.

20 (2) Attorney fees and costs must be awarded to the claimant for successfully bringing an action
21 under this section."

22

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

24 **"33-18-242. Independent cause of action -- burden of proof.** (1) An insured person or a third-party
25 claimant has an independent cause of action against an insurer for actual damages caused by the insurer's
26 violation of ~~subsection (1), (4), (5), (6), (9), or (13)~~ of 33-18-201 (1)(a), (1)(d), (1)(e), (1)(f), (1)(i), or (1)(m).

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

29 (3) An insured person who has suffered damages as a result of the handling of an insurance claim
30 may bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this

1 section, but not under any other theory or cause of action. An insured person may not bring an action for
2 bad faith in connection with the handling of an insurance claim.

3 (4) In an action under this section, the court or jury may award ~~such~~ damages ~~as~~ that were
4 proximately caused by the violation of ~~subsection (1), (4), (5), (6), (9), or (13) of 33-18-201(1)(a), (1)(d),~~
5 (1)(e), (1)(f), (1)(i), or (1)(m). Exemplary damages may also be assessed in accordance with 27-1-221.

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

8 (6) (a) An insured person may file an action under this section, together with any other cause of
9 action the insured person has against the insurer. Actions may be bifurcated for trial ~~where~~ when justice
10 ~~se~~ requires.

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

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

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

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

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

19 -END-

1 HOUSE BILL NO. 443

2 INTRODUCED BY MERCER, VAN VALKENBURG, DOHERTY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING UNFAIR CLAIM SETTLEMENT PRACTICES;
5 REQUIRING THAT ATTORNEY FEES AND COSTS BE AWARDED TO ~~CLAIMANTS WHEN~~ THE SUCCESSFUL
6 PARTY; AND AMENDING SECTIONS 33-18-201 AND 33-18-242, MCA."
78 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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10 Section 1. Section 33-18-201, MCA, is amended to read:

11 "33-18-201. Unfair claim settlement practices prohibited. ~~No (1)~~ A person may not, with ~~such~~
12 a frequency as to indicate that indicates a general business practice, do any of the following:13 ~~(1)(a)~~(1) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;14 ~~(2)(b)~~(2) fail to acknowledge and act reasonably promptly upon communications with respect to
15 claims arising under insurance policies;16 ~~(3)(c)~~(3) fail to adopt and implement reasonable standards for the prompt investigation of claims
17 arising under insurance policies;18 ~~(4)(d)~~(4) refuse to pay claims without conducting a reasonable investigation based upon all
19 available information;20 ~~(5)(e)~~(5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss
21 statements have been completed;22 ~~(6)(f)~~(6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of
23 claims in which liability has become reasonably clear;24 ~~(7)(g)~~(7) compel ~~insureds~~ an insured person to institute litigation to recover amounts due under an
25 insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by
26 ~~such insureds~~ an insured person;27 ~~(8)(h)~~(8) attempt to settle a claim for less than the amount to which a reasonable ~~man~~ person
28 would have believed ~~he~~ that the person was entitled by reference to written or printed advertising material
29 accompanying or made part of an application;30 ~~(9)(i)~~(9) attempt to settle claims on the basis of an application ~~which~~ that was altered without

1 notice to or knowledge or consent of the insured;

2 ~~(10)(i)(10)~~ make claims payments to ~~insureds~~ insured persons or beneficiaries ~~not~~, which payments
3 are not accompanied by statements setting forth the coverage under which the payments are being made;

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

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

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

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

15 ~~(e)(15)~~ fail to pay medical expenses, property damage claims, and claims for lost wages if:

16 ~~(i)(A)~~ liability has become reasonably clear within a reasonable time after submission of verified
17 claims for losses; and

18 ~~(ii)(B)~~ the claimant would be compelled, by reason of the economic duress of the claimant's
19 creditors, to settle the claim prematurely or for less than the true and full value of the claim.

20 ~~(2) Attorney fees and costs must be awarded to the claimant for successfully bringing an action~~
21 ~~under this section."~~

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

24 **"33-18-242. Independent cause of action -- burden of proof.** (1) An insured person or a
25 third-party claimant has an independent cause of action against an insurer for actual damages caused by
26 the insurer's violation of ~~subsection (1), (4), (5), (6), (9), or (13) of 33-18-201~~ (1)(a), (1)(d), (1)(e), (1)(f),
27 (1)(i), or (1)(m) (1), (4), (5), (6), (9), (13), OR (15).

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

30 (3) An insured person who has suffered damages as a result of the handling of an insurance claim

1 may bring an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this
 2 section, but not under any other theory or cause of action. An insured person may not bring an action for
 3 bad faith in connection with the handling of an insurance claim.

4 (4) (A) In an action under this section, the court or jury may award ~~such damages as that were~~
 5 proximately caused by the violation of ~~subsection (1), (4), (5), (6), (9), or (13) of 33-18-201(1)(a), (1)(d),~~
 6 ~~(1)(e), (1)(f), (1)(i), or (1)(m)~~ (1), (4), (5), (6), (9), (13), OR (15). Exemplary damages may also be assessed
 7 in accordance with 27-1-221.

8 (B) ATTORNEY FEES AND COSTS MUST BE AWARDED TO THE SUCCESSFUL PARTY IN AN
 9 ACTION UNDER THIS SECTION.

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

12 (6) (a) An insured person may file an action under this section, together with any other cause of
 13 action the insured person has against the insurer. Actions may be bifurcated for trial ~~where~~ when justice
 14 ~~se~~ requires.

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

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

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

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

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

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

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

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

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

22 ~~(6)(f)~~(6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of
23 claims in which liability AND THE EXTENT AND CAUSE OF DAMAGES has become reasonably clear;

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

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

30 ~~(9)(i)~~(9) attempt to settle claims on the basis of an application ~~which~~ that was altered without

1 notice to or knowledge or consent of the insured;

2 ~~(10)(j)~~(10) make claims payments to ~~insureds~~ insured persons or beneficiaries ~~not~~, which payments

3 are not accompanied by statements setting forth the coverage under which the payments are being made;

4 ~~(11)(k)~~(11) make known to ~~insureds~~ insured persons or claimants a policy of appealing from

5 arbitration awards in favor of ~~insureds~~ insured persons or claimants for the purpose of compelling them to

6 accept settlements or compromises less than the amount awarded in arbitration;

7 ~~(12)(l)~~(12) delay the investigation or payment of claims by requiring an insured person, claimant,

8 or physician of either to submit a preliminary claim report and then requiring the subsequent submission

9 of formal proof of loss forms, both of which submissions contain substantially the same information;

10 ~~(13)(m)~~(13) fail to promptly settle claims, if liability AND THE EXTENT AND CAUSE OF DAMAGES

11 has become reasonably clear, under one portion of the insurance policy coverage in order to influence

12 settlements under other portions of the insurance policy coverage; ~~or~~

13 ~~(14)(n)~~(14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in

14 relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; or

15 ~~(e)~~(15) fail to pay REASONABLE AND NECESSARY medical expenses, property damage claims, and

16 claims for lost wages if:

17 (i)(A) liability AND THE EXTENT AND CAUSE OF DAMAGES has become reasonably clear within

18 a reasonable time after submission of verified claims for losses; and

19 (ii)(B) the claimant would be compelled, by reason of the economic duress of the claimant's

20 creditors, to settle the claim prematurely or for less than the true and full value of the claim.

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22 ~~under this section."~~

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28 (1)(i), or (1)(m) (1), (4), (5), (6), (9), (13), OR (15).

29 (2) In an action under this section, a plaintiff is not required to prove that the violations were of

30 such a frequency as to indicate that indicates a general business practice.

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

5 (4) ~~(A)~~ In an action under this section, the court or jury may award ~~such~~ damages as that were
 6 proximately caused by the violation of ~~subsection (1), (4), (5), (6), (9), or (13) of 33-18-201(1)(a), (1)(d),~~
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 8 in accordance with 27-1-221.

9 ~~(B) ATTORNEY FEES AND COSTS MUST BE AWARDED TO THE SUCCESSFUL PARTY IN AN~~
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 12 or in fact for contesting the claim or the amount of the claim, whichever is ~~is~~ at issue.

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 14 action the insured person has against the insurer. Actions may be bifurcated for trial ~~where~~ when justice
 15 ~~se~~ requires.

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

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

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 21 judgment on the underlying claim.

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

24 -END-