SENATE BILL NO. 106

INTRODUCED BY B. CROMLEY

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING INSURANCE UNFAIR TRADE PRACTICES LAW TO ELIMINATE THE REQUIREMENT OF HAVING TO SHOW THAT A PRACTICE OCCURS WITH A SUFFICIENT FREQUENCY AS TO INDICATE A GENERAL BUSINESS PRACTICE ON THE PART OF AN INSURER; ELIMINATING THE EXEMPTION FROM AN ADMINISTRATIVE PENALTY FOR AN INSURER THAT DEMONSTRATES THAT IT CONSISTENTLY PAID A PORTION OR ALL OF ITS OUTSTANDING CLAIMS DURING THE 6 MONTHS PRECEDING ITS HEARING DATE PERTAINING TO UNFAIR TRADE PRACTICES; AND AMENDING SECTIONS 33-18-201, 33-18-232, AND 33-18-233, 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. ~~No~~ A person may not~~, 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~~ the insureds;

(8) attempt to settle a claim for less than the amount ~~to which~~ that a reasonable ~~man~~ person would have

believed ~~he~~ the person was entitled to 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~~ that 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;

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

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

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

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

Section 2. Section 33-18-232, MCA, is amended to read:

"33-18-232. Time for payment of claims. (1) If within 30 days after receipt of a proof of loss~~,~~ the insurer has not paid the claim for benefits provided in the policy or contract or notified the insured or the insured's assignee of the reasons for failure to pay the claim in full and has not requested additional information or documents, the insured or the assignee may report the delay to the commissioner, who may then investigate to determine if the insurer has failed to pay the claim within 30 days of its receipt without good reason ~~and, if so, whether such delay is a general course of business practice of the insurer~~.

(2) ~~Upon the commissioner's determination that the delay is a general course of business practice and for a year thereafter unless earlier rescinded by the commissioner, all~~ All claims for benefits not paid by that insurer within 30 working days after receipt by the insurer, without good reason as determined by the commissioner, ~~shall~~ obligate the insurer to pay interest at 18% a year from the date the commissioner determines that the delay became unreasonable."

Section 3. Section 33-18-233, MCA, is amended to read:

"33-18-233. Administrative penalty for failure to pay promptly. (1) The commissioner may, after a hearing, impose an administrative fine as set forth in subsection (2) on an insurer if ~~he~~ the commissioner finds that the insurer ~~as a general course of business practice in this state~~ fails to:

(a) use due diligence in processing all claims;

(b) pay claims in a timely manner;

(c) provide proper notice, when required, with respect to the reasons for the insurer's failure to make claim payments when due; or

(d) pay, without just cause, proper claims arising under coverage provided by its policies, whether ~~such~~ the claims are in favor of an insured, in favor of a third person with respect to the liability of an insured to ~~such~~ the third person, or in favor of any other person entitled to the benefits of a policy.

(2) The administrative penalty imposed for violations of 33-18-231 through 33-18-235 may not exceed $1,000 for each separate violation.

~~(3) If an insurer can demonstrate that it has consistently paid 90% of the total amount outstanding in claims within 20 working days and all of the amount within 30 working days of receipt of claims during the 6-month period immediately preceding the hearing date, the insurer is not subject to the fine imposed under subsection (2).~~"

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