

HOUSE BILL NO. 464
INTRODUCED BY K. PETERSON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW GOVERNING THE DAMAGES THAT MAY BE AWARDED BECAUSE OF AN INSURANCE COMPANY'S VIOLATION OF CERTAIN PROHIBITED INSURANCE CLAIM SETTLEMENT PRACTICES; AMENDING SECTION 33-18-242, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, Montana law has traditionally sought to protect insurance consumers from harmful claims settlement practices used by some insurance companies; and

WHEREAS, the Legislature has enacted various statutes to hold an insurance company accountable if the company fails to properly investigate a claim or adjust and settle a claim in good faith; and

WHEREAS, even though section 33-18-242, MCA, authorizes an independent cause of action against an insurance company by an insurance consumer for certain unfair insurance claim settlement practices by the company and provides that the court or jury may award damages that were proximately caused by the violation, the Montana Supreme Court has denied claims for attorney fees because they were not specifically provided for by the Legislature and has denied claims for emotional distress because certain claims were not for severe emotional distress.

THEREFORE, it is the intent of the Legislature to authorize damages for all detriment, including attorney fees, and for less-than-severe emotional distress caused when an insurance company engages in certain prohibited insurance claim settlement practices.

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

Section 1. Section 33-18-242, MCA, is amended to read:

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

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

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

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

(4) In an action under this section, the court or jury may award ~~such~~ all damages as were proximately caused by the violation of subsection (1), (4), (5), (6), (9), or (13) of 33-18-201. ~~Exemplary damages may also be assessed in accordance with 27-1-224 including:~~

(a) all detriment, including punitive damages and interest, as provided in Title 27, chapter 1, part 2;

(b) mental and emotional distress of any degree, when established by substantial evidence, including anguish, suffering, sorrow, grief, fright, shame, embarrassment, humiliation, anger, chagrin, disappointment, or worry; and

(c) expenses and attorney fees incurred by the insured in the underlying case as a result of the violation.

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

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

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

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

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

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

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

NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 3. Applicability. [This act] applies to a violation, as provided in 33-18-242(1), occurring on or after [the effective date of this act].

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