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SENATE BILL NO. 236
INTRODUCED BY G. HERTZ

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING STANDARDS TO BE SATISFIED BY A THIRD-PARTY CLAIMANT WHEN DELIVERING A WRITTEN TIME-LIMITED DEMAND TO AN INSURER; REQUIRING A THIRD-PARTY CLAIMANT TO DELIVER ALL AVAILABLE AND SUPPORTING DOCUMENTS, RECORDS, AND INFORMATION TO AN INSURER WHEN DELIVERING A TIME-LIMITED DEMAND; PROVIDING A FAIR AND REASONABLE OPPORTUNITY FOR AN INSURER TO TIMELY INVESTIGATE AND EVALUATE CLAIMS PRESENTED TO THE INSURER WITHOUT THE RISK OR EXPOSURE OF HAVING AN UNFAIR CLAIM SETTLEMENT PRACTICES OR INSURANCE BAD FAITH CLAIM ALLEGED AGAINST THE INSURER OR UNREASONABLY CREATING ADDITIONAL LIABILITY EXPOSURE TO THE INSURER BEYOND THE LIMITS OF LIABILITY SET FORTH IN THE INSURANCE POLICY; AND PROMOTING FAIR AND REASONABLE SETTLEMENT OF CLAIMS WHILE ALLOWING INSURERS A REASONABLE OPPORTUNITY TO INVESTIGATE AND EVALUATE CLAIMS AND TO PROMPTLY AND FAIRLY SETTLE CLAIMS TO PROTECT POLICYHOLDERS."

WHEREAS, it is declared to be the public policy of this state that fair, reasonable, and prompt settlements of civil actions and claims are encouraged as beneficial to claimants, policyholders, insurers, and all citizens of this state; and

WHEREAS, the public policy of this state is not promoted by the making, presenting, or delivering of claims or settlement demands to insurers without all available and supporting documents, records, and information reasonably necessary and appropriate for an insurer to timely, fairly, and reasonably investigate and evaluate the claims or settlement demands; and

WHEREAS, both insured policyholders and insurers doing business in this state are entitled to a fair and reasonable opportunity to timely and fairly investigate and evaluate claims presented without the risk or exposure of having an unfair claim settlement practices or insurance bad faith claim asserted against the insurer or unreasonably creating additional liability exposure to the insurer beyond the limits of liability set forth in the insurance policy; and



1 WHEREAS, this policy benefits the citizens of this state because it promotes fair, reasonable, and
 2 prompt settlements of claims, and reduces the nature, extent, and duration of costly litigation in the courts of
 3 this state, while allowing insurers a reasonable opportunity to investigate and evaluate claims and to reasonably
 4 and fairly settle claims to protect policyholders and claimants.

5

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

7

8 NEW SECTION. Section 1. Time-limited demands -- requirements -- insurer's fair and
 9 **reasonable opportunity to investigate and evaluate claims.** (1) A time-limited demand from a claimant to an
 10 insurer offering to settle any claim must:

- 11 (a) reference this section;
- 12 (b) be in writing and labeled "time sensitive" at the top of the first page of the writing setting forth
 13 the required material terms of the offer to settle set forth in subsection (1)(d);
- 14 (c) be sent certified mail, return-receipt requested, to the insurer of the allegedly responsible party;
 15 and
- 16 (d) contain the following material terms:
 - 17 (i) the name of the allegedly responsible party;
 - 18 (ii) the time period within which the offer to settle shall remain open for acceptance by the
 19 allegedly responsible party's insurer, which may not be less than 60 days or the first business day following the
 20 60th day when that day falls on a weekend or holiday;
 - 21 (iii) the amount of the monetary payment requested to settle the claim, together with a description
 22 of any other form of consideration sought to settle the claim;
 - 23 (iv) the date and location of the damage, loss, professional negligence, or breach of fiduciary duty;
 - 24 (v) a reasonable description of the nature and extent of all known injuries, damages, and losses
 25 sustained by the claimant;
 - 26 (vi) the party or parties to be released if the insurer accepts the time-limited demand;
 - 27 (vii) a description of the claim or claims to be released if the time-limited demand is accepted; and
 - 28 (viii) disclosure of eligibility, or information sufficient to verify eligibility, for medicare, medicaid, any

1 other federal or state benefit program, and any other known liens or assignments granted by the claimant that
2 apply to any of the damages claimed.

3 (2) The time period within which an insurer may accept a time-limited demand commences on the
4 date the insurer actually receives the time-limited demand through certified mail.

5 (3) (a) A time-limited demand made pursuant to this section must be accompanied and supported
6 by the following:

7 (i) all available and supporting documents, records, and information sufficient to allow the insurer
8 a fair and reasonable opportunity to investigate and evaluate the nature and extent of the alleged responsible
9 party's liability and the nature and extent of the claimant's injuries, damages, and losses;

10 (ii) medical records, invoices, and billing statements from all health care providers, if any, who
11 provided treatment to or evaluated the claimant or decedent for:

12 (A) injuries suffered in connection with the claim from the date of injury until the date of the time-
13 limited demand, including but not limited to emotional distress; and

14 (B) injuries, damages, losses, ailments, diseases, or other medical conditions occurring or existing
15 prior to the date of injury that relate or may relate in any manner to any of the claimant's claims that are the
16 subject of the written time-limited demand.

17 (b) If the claimant asserts a claim for loss of wages, earnings, compensation, or profits, however
18 denominated, the claimant shall provide records from employers or other relevant sources or tax records to
19 document the claimed loss.

20 (4) On receipt of a time-limited demand, the insurer has the right to provide a proposed settlement
21 agreement or release, or both, or seek clarification or additional information regarding terms, liens, subrogation
22 claims, alleged damages, standing to release claims, medical bills, medical records, preexisting medical
23 conditions, and other relevant facts. The claimant has the duty to provide any missing or needed documents,
24 records, and information reasonably requested by the insurer. A request for clarification or for additional
25 documents, records, or information, or to propose a settlement agreement or release, or both, may not be
26 deemed a counteroffer or rejection of the time-limited demand to settle. On a request or proposal, any time limit
27 imposed within the time-limited demand is extended a minimum of either 30 days, or by the number of days
28 from and including the date of the request to the date of receipt of the information responding to the requestor,

1 whether the terms of a settlement agreement, a release, or both, are accepted or rejected.

2 (5) If, during the time period within which a time-limited demand may be accepted, it is determined
3 that a lien attaches to any settlement payment to be paid by the allegedly responsible party's insurer, including
4 but not limited to any actual or potential medicare or medicaid lien, the claimant has a duty to cooperate with
5 the insurer to ensure satisfaction of any valid lien interest medicare, medicaid, or other lienholder may have in
6 the settlement payment. In addition, any time limit imposed within the time-limited demand must be stayed from
7 date the valid lien is identified until the date on which the claimant, allegedly responsible party, and the insurer
8 agree to address and resolve satisfaction of the valid lien.

9 (6) If an insurer with the right to settle on behalf of an insured receives a time-limited demand, the
10 insurer may accept the time-limited demand by providing written acceptance of the material terms outlined in
11 subsection (1) that is delivered or postmarked to the claimant within the time period set in the time-limited
12 demand. The person or entity providing payment to satisfy the material terms may elect to provide payment by
13 any one or more of the following means:

- 14 (a) cash;
- 15 (b) money order;
- 16 (c) wire transfer;
- 17 (d) a cashier's check issued by a bank or other financial institution;
- 18 (e) a draft or bank check issued by an insurer; or
- 19 (f) electronic funds transfer or other method of electronic payment.

20 (7) In any civil action commenced by or on behalf of a claimant, or by a claimant as an assignee of
21 the allegedly responsible party, or by the allegedly responsible party for the benefit of the claimant:

22 (a) a time-limited demand that does not strictly comply with the terms of this section may not be
23 considered as a reasonable opportunity to settle for the insurer and may not be admissible in any civil action
24 alleging extracontractual damages against the allegedly responsible party's liability insurer; and

25 (b) a claimant is not entitled to recover from the insurer as extracontractual damages any injuries,
26 damages, or losses suffered by the claimant that are not identified in the time-limited demand and supported by
27 the documents, records, and information set forth in subsection (3).

28 (8) If an insurer receives a time-limited demand from a claimant that the insurer knows or

1 reasonably believes is not represented by an attorney, and the insurer determines that the time-limited demand
2 does not strictly comply with the requirements set forth in subsections (1) and (3), the insurer is obligated to
3 notify the claimant of the requirements within 10 business days of receiving the time-limited demand from the
4 claimant. On delivery of the notice to the claimant, any time limit imposed within the time-limited demand is
5 extended a minimum of either 30 days, or by the number of days from and including the date on which the
6 claimant presents a time-limited demand to the insurer that strictly complies with the requirements in
7 subsections (4) and (5). If an insurer becomes obligated under this section to notify a claimant and fails to
8 deliver the notice to the claimant, subsection (7) may not apply in any civil action alleging extracontractual
9 damages against the insurer.

10 (9) For purposes of this section, the following definitions apply:

11 (a) "Allegedly responsible party" means any person or entity:

12 (i) claimed or alleged to have caused or contributed to cause property damage, personal injury,
13 bodily injury, wrongful death, professional negligence or liability, or breach of any fiduciary duty; or

14 (ii) claimed or alleged to have committed, engaged in, or be liable for professional negligence or
15 breach of fiduciary duty.

16 (b) "Claimant" means:

17 (i) any injured party delivering a time-limited demand to an insurer, including but not necessarily
18 limited to the injured party's attorney or any other authorized representative acting for or on behalf of the injured
19 party;

20 (ii) any insured under an insurance policy pursuing a claim or cause of action arising from or
21 related in any manner to the insurance policy issued by the insurer and delivering a time-limited demand to the
22 insurer, including but not necessarily limited to the insured's attorney or any other authorized representative
23 acting for or on behalf of the insured; or

24 (iii) any assignee of an injured party or insured delivering a time-limited demand to the insurer,
25 including but not necessarily limited to the assignee's attorney or any other authorized representative acting for
26 or on behalf of the assignee.

27 (c) "Extracontractual damages" means any amount of damages that exceeds the total available
28 policy limit of liability for all policies of liability insurance that an insurer has issued to an allegedly responsible

1 party and which policies of liability insurance are applicable to a claim for property damage, personal injury,
2 bodily injury, wrongful death, professional negligence or liability, or breach of any fiduciary duty.

3 (d) "Insurer" means any insurer referred to or defined under 33-1-201 who has issued an
4 insurance contract to an allegedly responsible party.

5 (e) "Time-limited demand" means any offer to settle any claim for personal injury, property
6 damage, bodily injury, wrongful death, professional negligence or liability, or breach of any fiduciary duty, in
7 which the offer to settle:

8 (i) is made by or on behalf of a claimant or is made based on or arising out of any rights of a
9 claimant;

10 (ii) is delivered in writing to an allegedly responsible party's insurer for purposes of offering to
11 settle a claim against the allegedly responsible party within any insurance policy limit of liability; and

12 (iii) states by its terms that it can only be accepted within a specified period of time.

13

14 NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an
15 integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].

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