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HOUSE BILL 314

**44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

INTRODUCED BY

Ron Godbey

AN ACT

RELATING TO INSURANCE; EXTENDING COVERAGE OF UNFAIR CLAIMS  
PRACTICES BY INSURANCE COMPANIES TO THIRD PARTY CLAIMANTS;  
INCREASING DAMAGES; PROVIDING FOR ATTORNEY FEES AND COSTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the New Mexico Insurance  
Code is enacted to read:

"NEW MATERIAL] DEFINITIONS. -- As used in Chapter 59A,  
Article 16 NMSA 1978:

A. "claim" means a right to payment arising out of  
and within coverage of a policy;

B. "claimant" means a person who asserts a claim  
as an insured or as a third party to a policy;

C. "policy" means an insurance policy, including  
contracts of insurance, indemnity, health care, suretyship and

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1 annuity, along with all attached clauses, riders, endorsements  
2 and papers; and

3 D. "contract of insurance" means a contract by  
4 which one party assumes a risk of loss or liability for  
5 another party pursuant to a plan for the distribution of the  
6 risk in exchange for valuable consideration. "

7 Section 2. Section 59A-16-20 NMSA 1978 (being Laws 1984,  
8 Chapter 127, Section 286, as amended) is amended to read:

9 "59A-16-20. UNFAIR CLAIMS PRACTICES DEFINED AND  
10 PROHIBITED. --Any [~~and all~~] of the following practices with  
11 respect to claims, by an insurer or other person, knowingly  
12 committed or performed with such frequency as to indicate a  
13 general business practice, are defined as unfair and deceptive  
14 practices and are prohibited:

15 A. misrepresenting to [~~insureds~~] claimants  
16 pertinent facts or policy provisions relating to coverages at  
17 issue;

18 B. failing to acknowledge and act reasonably  
19 promptly upon communications with respect to claims [ ~~from~~  
20 ~~insureds~~] arising under policies;

21 C. failing to adopt and implement reasonable  
22 standards for the prompt investigation and processing of  
23 [~~insureds'~~] claims arising under policies;

24 D. failing to affirm or deny coverage of claims  
25 [~~of insureds~~] within a reasonable time after proof of loss

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1 requirements under the policy have been completed and  
2 submitted by [~~the insured~~] a claimant;

3 E. not attempting in good faith to effectuate  
4 prompt, fair and equitable settlements of [~~an insured's~~]  
5 claims in which liability has become reasonably clear;

6 F. failing to settle all catastrophic claims  
7 within a ninety-day period after the assignment of a  
8 catastrophic claim number when a catastrophic loss has been  
9 declared;

10 G. compelling [~~insureds~~] claimants to institute  
11 litigation to recover amounts due under policy by offering  
12 substantially less than the amounts ultimately recovered in  
13 actions brought by such [~~insureds~~] claimants when such  
14 [~~insureds~~] claimants have made claims for amounts reasonably  
15 similar to amounts ultimately recovered;

16 H. attempting to settle a claim [~~by an insured~~]  
17 for less than the amount to which a reasonable person would  
18 have believed he was entitled by reference to written or  
19 printed advertising material accompanying or made part of an  
20 application;

21 I. attempting to settle claims on the basis of an  
22 application that was altered without notice to, or knowledge  
23 or consent of, the insured, his representative, agent or  
24 broker;

25 J. failing, after payment of a claim, to inform

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1 insureds or beneficiaries, upon request by them, of the  
2 coverage under which payment has been made;

3 K. making known to [~~insureds or~~] claimants a  
4 practice of insurer of appealing from arbitration awards in  
5 favor of [~~insureds or~~] claimants for the purpose of compelling  
6 them to accept settlements or compromises less than the amount  
7 awarded in arbitration;

8 L. delaying the investigation or payment of claims  
9 by requiring [~~an insured~~] a claimant or [~~the~~] his physician  
10 [~~of either~~] to submit a preliminary claim report and then  
11 requiring the subsequent submission of formal proof of loss  
12 forms, both of which submissions contain substantially the  
13 same information;

14 M failing to settle [~~an insured's~~] claims  
15 promptly where liability has become apparent under one portion  
16 of the policy coverage in order to influence settlement under  
17 other portions of the policy coverage;

18 N. failing to promptly provide [~~an insured~~] a  
19 claimant a reasonable explanation of the basis relied on in  
20 the policy in relation to the facts or applicable law for  
21 denial of a claim or for the offer of a compromise settlement;  
22 or

23 O. violating a provision of the Domestic Abuse  
24 Insurance Protection Act. "

25 Section 3. Section 59A-16-30 NMSA 1978 (being Laws 1984,

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1 Chapter 127, Section 296.1, as amended) is amended to read:

2 "59A-16-30. PRIVATE RIGHT OF ACTION. --Any person covered  
3 by Chapter 59A, Article 16 NMSA 1978 who has suffered damages  
4 as a result of a violation of that article by an insurer or  
5 agent is granted a right to bring an action in district court  
6 to recover three times actual damages. [~~Costs shall be~~  
7 ~~allowed to the prevailing party unless the court otherwise~~  
8 ~~directs. The court may award attorneys' fees to the~~  
9 ~~prevailing party if:~~

10 A. ~~the party complaining of the violation of that~~  
11 ~~article has brought an action that he knew to be groundless;~~  
12 ~~or~~

13 B. ~~the party charged with the violation of that~~  
14 ~~article has willfully engaged in the violation.] The court  
15 shall award attorney fees and costs to the party complaining  
16 of an unfair claims practice if he prevails. The court shall  
17 award attorney fees and costs to the party charged with an  
18 unfair claims practice if it finds that the party complaining  
19 of such conduct brought an action that was groundless.~~

20 The relief provided in this section is in addition to remedies  
21 otherwise available against the same conduct under the common  
22 law or other statutes of this state; provided, however, that  
23 the Workers' Compensation Act and the New Mexico Occupational  
24 Disease Disablement Law provide exclusive remedies. "

25 Section 4. EFFECTIVE DATE. --The effective date of the

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provisions of this act is July 1, 1999.

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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6 February 12, 1999

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8 Mr. Speaker:

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10 Your JUDICIARY COMMITTEE, to whom has been referred

11  
12 HOUSE BILL 314

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14 has had it under consideration and reports same with  
15 recommendation that it DO PASS, amended as follows:

16 1. On page 2, line 2, after "papers" insert ", but  
17 does not include self-insured or insured workers'  
18 compensation policies".

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

3 HJ/HB 314

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Respectfully submitted,

R. David Pederson, Chairman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 5 For 4 Against

Yes: 5

No: Mallory, Stewart, Thompson, Vaughn

Excused: Luna, Rios, Taylor, T.

Absent: None

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