

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

# A Bill

HOUSE BILL 2904

5 By: Representative Moore  
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## For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW REGARDING DAMAGES IN  
10 SUITS AGAINST INSURERS; AND FOR OTHER PURPOSES.  
11

### Subtitle

12 AN ACT TO AMEND THE LAW REGARDING  
13 DAMAGES PAID ON LOSS CLAIMS IN SUITS  
14 AGAINST INSURERS.  
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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20 SECTION 1. Arkansas Code § 23-79-208 is amended to read as follows:

21 23-79-208. Damages and attorney's fees on loss claims.

22 (a)(1) In all cases where loss occurs and the cargo, property, marine,  
23 casualty, fidelity, surety, cyclone, tornado, life, accident and health,  
24 medical, hospital, or surgical benefit insurance company and fraternal  
25 benefit society or farmers' mutual aid association or company liable therefor  
26 shall fail to pay the losses within the time specified in the policy after  
27 demand is made, the person, firm, corporation, or association shall be liable  
28 to pay the holder of the policy or his or her assigns, in addition to the  
29 amount of the loss, ~~twelve percent (12%)~~ up to three (3) times the damages  
30 upon the amount of the loss, together with all reasonable attorney's fees for  
31 the prosecution and collection of the loss.

32 (2) In no event will the holder of the policy or his or her  
33 assigns be liable for the attorney's fees incurred by the insurance company,  
34 fraternal benefit society, or farmers' mutual aid association in the defense  
35 of a case where the insurer is found not liable for the loss.

36 (b) When attorney's fees are due a policyholder or his or her assigns,



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1 they shall be taxed by the court where the same is heard on original action,  
2 by appeal or otherwise, and shall be taxed up as a part of the costs therein  
3 and collected as other costs are or may be by law collected.

4 (c) Writs of attachment or garnishment filed or issued after proof of  
5 loss or death has been received by the company shall not defeat the  
6 provisions of this section, provided the company or association desiring to  
7 pay the amount of the claim as shown in the proof of loss or death may pay  
8 the amount into the registry of the court, after issuance of writs of  
9 attachment and garnishment in which event there shall be no further liability  
10 on the part of the company.

11 (d) Recovery of less than the amount demanded by the person entitled  
12 to recover under the policy shall not defeat the right to the ~~twelve percent~~  
13 ~~(12%)~~ damages and attorney's fees provided for in this section if the amount  
14 recovered for the loss is within twenty percent (20%) of the amount demanded  
15 or which is sought in the suit.

16 (e)(1) Notwithstanding the foregoing provisions of subsections (a)-(d)  
17 of this section, this section is not intended to either vitiate or supplant  
18 the provisions of the Arkansas Rules of Civil Procedure, which rules and the  
19 relief described therein remain available to any litigant under the  
20 circumstances described in this section.

21 (2) Nothing in this section is intended to supersede, supplant,  
22 or in any way affect the rights and remedies under applicable law currently  
23 available to the insurance company, fraternal benefit society, or farmers'  
24 mutual aid association or company against policyholders who file fraudulent  
25 claims.

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