

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 86th General Assembly
3 Regular Session, 2007
4

A Bill

HOUSE BILL 1146

5 By: Representative Walters
6 By: Senator Miller
7
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For An Act To Be Entitled

9
10 AN ACT TO INCREASE THE RELIEF AVAILABLE FOR THE
11 FAILURE TO PAY BONA FIDE LOSS CLAIMS; AND FOR
12 OTHER PURPOSES.
13

Subtitle

14
15 TO INCREASE THE RELIEF AVAILABLE FOR THE
16 FAILURE TO PAY BONA FIDE LOSS CLAIMS.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 23-79-208 is amended to read as follows:
22 23-79-208. Damages and attorney's fees on loss claims.

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

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



1 (b) When attorney's fees are due a policyholder or his or her assigns,
 2 they shall be taxed by the court where the same is heard on original action,
 3 by appeal or otherwise, and shall be taxed up as a part of the costs therein
 4 and collected as other costs are or may be by law collected.

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

12 (d) Recovery of less than the amount demanded by the person entitled
 13 to recover under the policy shall not:

14 (1) ~~defeat~~ Defeat the right to the twelve percent (12%) damages
 15 and attorney's fees provided ~~for~~ in this section if the amount recovered for
 16 the loss is within twenty percent (20%) of the amount demanded or which is
 17 sought in the suit; or

18 (2) Prevent a prevailing plaintiff from recovering costs or
 19 attorney's fees under any other applicable statute or court rule.

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

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

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