

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999  
4

*As Engrossed: S2/2/99*

## A Bill

SENATE BILL 154

5 By: Senator Mahony  
6 By: Representatives Sheppard, M. Smith  
7

### For An Act To Be Entitled

10 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED §23-79-208 TO  
11 FURTHER CLARIFY THE EXISTING INTENT OF THE GENERAL  
12 ASSEMBLY THAT INSURANCE POLICY HOLDERS SHALL NOT BE  
13 LIABLE FOR THE ATTORNEYS' FEES INCURRED BY INSURANCE  
14 COMPANIES IN THE DEFENSE OF CASES IN WHICH THE  
15 INSURANCE COMPANY IS FOUND NOT LIABLE FOR THE LOSS;  
16 AND FOR OTHER PURPOSES. "

### Subtitle

18 "TO FURTHER CLARIFY THAT INSURANCE POLICY  
19 HOLDERS SHALL NOT BE LIABLE FOR THE  
20 ATTORNEYS' FEES INCURRED BY INSURANCE  
21 COMPANIES IN DEFENSE OF CASES IN WHICH  
22 THE INSURANCE COMPANY IS FOUND NOT  
23 LIABLE FOR THE LOSS. "

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25  
26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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28 SECTION 1. Arkansas Code Annotated § 23-79-208 is amended to read as  
29 follows:

30 "23-79-208. Damages and ~~attorney's~~ attorneys' fees on loss claims.

31 (a) In all cases where loss occurs and the cargo, fire, marine,  
32 casualty, fidelity, surety, cyclone, tornado, life, health, accident, medical,  
33 hospital, or surgical benefit insurance company and fraternal benefit society  
34 or farmers' mutual aid association liable therefor shall fail to pay the  
35 losses within the time specified in the policy, after demand made therefor,  
36 the person, firm, corporation, or association shall be liable to pay the

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1 holder of the policy or his assigns, in addition to the amount of the loss,  
2 twelve percent (12%) damages upon the amount of the loss, together with all  
3 reasonable attorneys' fees for the prosecution and collection of the loss. In  
4 no event will the holder of the policy or his assigns be liable for the  
5 attorneys' fees incurred by the insurance company, fraternal benefit society  
6 or farmers' mutual aid association in the defense of a case where the insurer  
7 is found not liable for the loss.

8 (b) ~~The attorney's fee~~ When attorneys' fees are due to a policyholder  
9 or his assigns, they shall be taxed by the court where the same is heard on  
10 original action, by appeal or otherwise, and shall be taxed up as a part of  
11 the costs therein and collected as other costs are or may be by law collected.

12 (c) Writs of attachment or garnishment filed or issued after proof of  
13 loss or death has been received by the company shall not defeat the provisions  
14 of this section, provided the company or association desiring to pay the  
15 amount of the claim as shown in the proof of loss or death may pay the amount  
16 into the registry of the court, after issuance of writs of attachment and  
17 garnishment in which event there shall be no further liability on the part of  
18 the company.

19 (d) Recovery of less than the amount demanded by the person entitled to  
20 recover under the policy shall not defeat the right to the twelve percent  
21 (12%) damages and attorneys' fees provided for in this section if the amount  
22 recovered for the loss is within twenty percent (20%) of the amount demanded  
23 or which is sought in the suit.

24 (e) Notwithstanding the foregoing, this section is not intended to  
25 either vitiate or supplant the provisions of the Arkansas Rules of Civil  
26 Procedure, which rules and the relief described therein remain available to  
27 any litigant under the circumstances described within. Nothing herein is  
28 intended to supersede, supplant or in any way affect the rights and remedies  
29 under applicable law currently available to the insurance company, fraternal  
30 benefit society or farmers mutual aid society association against policy  
31 holders who file fraudulent claims."

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33 SECTION 2. It is the express intent of the General Assembly that this  
34 Act be applied retroactively to pending cases as it is remedial and procedural  
35 in nature.

1 SECTION 3. All provisions of this Act of a general and permanent nature  
2 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
3 Revision Commission shall incorporate the same in the Code.

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5 SECTION 4. If any provision of this Act or the application thereof to  
6 any person or circumstance is held invalid, such invalidity shall not affect  
7 other provisions or applications of the Act which can be given effect without  
8 the invalid provision or application, and to this end the provisions of this  
9 Act are declared to be severable.

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11 SECTION 5. All laws and parts of laws in conflict with this Act are  
12 hereby repealed. Specifically, any other law or parts of law of general  
13 application regarding the award of attorneys' fees, as applied to litigation  
14 involving policies of insurance, are superseded by the provisions of this Act.  
15 Specifically, the provisions of §16-22-308 regarding the award of attorneys'  
16 fees to the prevailing party in a civil action for breach of contract are  
17 expressly superseded by the provisions of this Act.

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19 SECTION 6. EMERGENCY CLAUSE. It is hereby found and determined by the  
20 Eighty-second General Assembly that insurers are seeking an award of  
21 attorneys' fees as the prevailing party in litigation involving disputes over  
22 the coverage of losses under policies of insurance. If successful, this will  
23 result in a chilling effect on insurance policyholders' good faith challenge  
24 of an insurer's denial of coverage. This is a result never intended by the  
25 General Assembly and which will have a negative impact on the policyholders  
26 and economy of this state. Therefore, an emergency is declared to exist and  
27 this act being immediately necessary for the preservation of the public peace,  
28 health and safety shall become effective on the date of its approval by the  
29 Governor. If the bill is neither approved nor vetoed by the Governor, it  
30 shall become effective on the expiration of the period of time during which  
31 the Governor may veto the bill. If the bill is vetoed by the Governor and the  
32 veto is overridden, it shall become effective on the date the last house  
33 overrides the veto.

34 /s/Webb  
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