

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SENATE JOINT
4 RESOLUTION 48

By: Wilson

5
6 AS INTRODUCED

7
8 A Joint Resolution relating to insurance; ordering a
9 legislative referendum pursuant to the Oklahoma
10 Constitution; creating the Insurance Fair Conduct
11 Act; providing for short title; allowing certain
12 first party claimant to bring action to recover
13 actual damages plus costs and attorney fees; allowing
14 triple damages to be awarded under certain
15 circumstances; defining term; specifying violations;
16 clarifying that this act does not limit a court's
17 ability to make any other determination regarding an
18 unfair or deceptive practice of an insurer; exempting
19 accident and health insurance policies; providing
20 procedures related to written notice of the basis for
21 the cause of action; requiring the Insurance
22 Commissioner to promulgate certain rules; amending 36
23 O.S. 2001, Section 1250.3, which relates to the
24 Unfair Claims Settlement Practices Act; providing
that an insurer may not unreasonably deny a claim to
any first party claimant; providing for codification;
providing a conditional effective date; providing
ballot title; and directing filing.

21 BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE
22 2ND SESSION OF THE 51ST OKLAHOMA LEGISLATURE:

23 SECTION 1. Pursuant to Section 3 of Article V of the Oklahoma
24 Constitution, there is hereby ordered the following legislative

1 referendum which shall be filed with the Secretary of State and
2 addressed to the Governor of the state, who shall submit the same to
3 the people for their approval or rejection at the next General
4 Election.

5 SECTION 2. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1250.17 of Title 36, unless
7 there is created a duplication in numbering, reads as follows:

8 Sections 2 and 3 of this act shall be known and may be cited as
9 the "Insurance Fair Conduct Act".

10 SECTION 3. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1250.18 of Title 36, unless
12 there is created a duplication in numbering, reads as follows:

13 A. Any first party claimant to a policy of insurance who is
14 unreasonably denied a claim for coverage or payment of benefits by
15 an insurer may bring an action in district court of this state to
16 recover the actual damages sustained, together with the costs of the
17 action, including reasonable attorney fees and litigation costs, as
18 set forth in subsection C of this section.

19 B. The district court may, after finding that an insurer has
20 acted unreasonably in denying a claim for coverage or payment of
21 benefits or has violated a provision specified in subsection E of
22 this section, increase the total award of damages to an amount not
23 to exceed three times the actual damages.

24

1 C. The district court shall, after a finding of reasonable
2 denial of a claim for coverage or payment of benefits, or after a
3 finding of a violation of a provision specified in subsection E of
4 this section, award reasonable attorney's fees and actual and
5 statutory litigation costs, including expert witness fees, to the
6 first party claimant of an insurance contract who is the prevailing
7 party in such an action.

8 D. As used in this section "first party claimant" means an
9 individual, corporation, association, partnership, or other legal
10 entity asserting a right to payment as a covered person under an
11 insurance policy or insurance contract arising out of the occurrence
12 of the contingency or loss covered by such a policy or contract.

13 E. A violation of paragraph 1, 2, 3 or 4 of Section 1250.5 of
14 Title 36 of the Oklahoma Statutes is a violation for the purposes of
15 subsections B and C of this section.

16 F. The provisions of this section do not limit a court's
17 existing ability to make any other determination regarding an action
18 for an unfair or deceptive practice of an insurer to provide for any
19 other remedy that is available in law.

20 G. This section does not apply to accident and health insurance
21 policies as defined in Section 703 of Title 36 of the Oklahoma
22 Statutes offered by an insurer. For purposes of this section
23 "insurer" means any entity that provides an accident and health
24 insurance policy in this state, including but not limited to a

1 licensed insurance company, a not-for-profit hospital service and
2 medical indemnity corporation, a fraternal benefit society, a
3 multiple employer welfare arrangement, or any other entity subject
4 to regulation by the Insurance Commissioner.

5 H. 1. Twenty (20) days prior to filing an action based on this
6 section, a first party claimant shall provide written notice of the
7 basis for the cause of action to the insurer and to the Insurance
8 Commissioner. Notice may be provided by regular mail, registered
9 mail, or certified mail with return receipt requested. Proof of
10 notice by mail may be made in the same manner as prescribed by court
11 rule or statute for proof of service by mail. The insurer and
12 Insurance Commissioner are deemed to have received notice three (3)
13 business days after the notice is mailed;

14 2. If the insurer fails to resolve the basis for the action
15 within the twenty-day period after the written notice by the first
16 party claimant, the first party claimant may bring the action
17 without any further notice;

18 3. The first party claimant may bring an action after the
19 required period of time in paragraph 1 of this subsection has
20 elapsed; and

21 4. If a written notice of claim is served under paragraph 1 of
22 this subsection within the time prescribed for the filing of an
23 action under this section, the statute of limitations for the action
24

1 is tolled during the twenty-day period of time in paragraph 1 of
2 this subsection.

3 I. The Insurance Commissioner shall promulgate rules for the
4 implementation of the Insurance Fair Conduct Act.

5 SECTION 4. AMENDATORY 36 O.S. 2001, Section 1250.3, is
6 amended to read as follows:

7 Section 1250.3 A. The provisions of the Unfair Claims
8 Settlement Practices Act shall apply to all claims arising under an
9 insurance policy or insurance contract issued by any insurer.

10 B. It is an unfair claim settlement practice for any insurer to
11 commit any act set out in Section 1250.5 of this title, or to commit
12 a violation of any other provision of the Unfair Claims Settlement
13 Practices Act, if:

14 1. It is committed flagrantly and in conscious disregard of
15 this act or any rules promulgated hereunder; or

16 2. It has been committed with such frequency as to indicate a
17 general business practice to engage in that type of conduct.

18 C. An insurer engaged in the business of insurance may not
19 unreasonably deny a claim for coverage or payment of benefits to any
20 first party claimant. For purposes of this subsection, "first party
21 claimant" has the same meaning as specified in subsection D of
22 Section 3 of this act.

23 SECTION 5. This act shall become effective January 1, 2009,
24 upon approval by the people.

1 SECTION 6. The Ballot Title for the proposed act shall be in
2 the following form:

3 BALLOT TITLE

4 Legislative Referendum No. _____ State Question No. _____

5 THE GIST OF THE PROPOSITION IS AS FOLLOWS:

6 The measure creates the Insurance Fair Conduct Act. Any first
7 party claimant to an insurance policy who is unreasonably denied
8 a claim may file a lawsuit in district court to recover the
9 actual damages. The claimant may also sue to recover attorneys'
10 fees and costs. The district court may award up to three times
11 the actual damage. The measure provides that this law does not
12 limit a court's ability to make other determinations regarding
13 an action for an unfair or deceptive practice of an insurer.
14 This law does not apply to an accident and health insurance
15 policy. The claimant must provide written notice to the insurer
16 and the Insurance Commissioner within a certain time. The
17 Insurance Commissioner shall write rules to implement this act.

18 SHALL THE PROPOSAL BE APPROVED?

19 FOR THE PROPOSAL - YES _____

20 AGAINST THE PROPOSAL - NO _____

21 SECTION 7. The President Pro Tempore of the Senate shall,
22 immediately after the passage of this order for legislative
23 referendum, prepare and file in accordance with Section 3 of Article
24 V of the Oklahoma Constitution, one copy of this order for

1 legislative referendum, including the Ballot Title set forth in
2 SECTION 6, with the Secretary of State and one copy with the
3 Attorney General.

4

5 51-2-2840 ARE 1/22/2008 6:44:28 PM

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24