

1 **H. B. 4440**

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3 (By Delegates Craig, Reynolds and Morgan)
4 [Introduced February 7, 2012; referred to the
5 Committee on Banking and Insurance then the Judiciary.]
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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §33-11-11, relating
12 to unfair trading practices by insurance companies; providing
13 a third-party claimant may collect damages from an insurance
14 company that has intentionally engaged in an unfair trade
15 practice; setting forth the requirements that must be met in
16 order that damages may be awarded; setting forth time limits;
17 and permitting sanctions to be entered against a third-party
18 claimant whose claims are unwarranted.

19 *Be it enacted by the Legislature of West Virginia:*

20 That the Code of West Virginia, 1931, as amended, be amended
21 by adding thereto a new section, designated §33-11-11, to read as
22 follows:

23 **ARTICLE 11. UNFAIR TRADE PRACTICES.**

24 **§33-11-11. Willful or intentional violations; cause of action;**

1 elements; damages; procedure; court orders;
2 sanctions.

3 (a) Notwithstanding any other provision of this chapter to the
4 contrary, a third-party claimant who sustains damages as a
5 consequence of the willful or intentional violation of this article
6 may bring an action against any person committing that violation to
7 recover damages and, additionally, may pursue all legal or
8 equitable remedies available under the law.

9 (b) To bring an action against a person pursuant to subsection
10 (a) of this section, a third-party claimant must prevail in the
11 underlying civil proceeding and obtain a verdict or court order
12 awarding compensation for injuries or damages.

13 (c) An action permitted by this section shall be filed in a
14 court of competent jurisdiction within one year from the conclusion
15 of the underlying civil case from which the action is based.

16 (d) To recover damages permitted by this section, the
17 third-party claimant must establish by a preponderance of the
18 evidence:

19 (1) There have been additional violations of this article by
20 the defendant;

21 (2) The violations arose from separate, discrete acts or
22 omissions in claim settlements; and

23 (3) The violations arose from habit, custom, usage or business
24 policy of insurer.

1 (e) Once the requirements of subsection (d) of section have
2 been met, and viewing a defendant's conduct as whole, the finder of
3 fact is able to conclude that the practice or practices are
4 sufficiently pervasive or sufficiently sanctioned by insurance
5 company that the conduct can be considered "general business
6 practice." "General business practice" can be established by the
7 handling of a single claim, including that of the third-party
8 claimant, or multiple claims. However, a "good faith" disagreement
9 over the value of a claim or liability of any person is not unfair
10 settlement practice.

11 (f) If, after the parties have been provided a reasonable
12 opportunity for discovery, the court enters an order finding there
13 is no evidentiary support for an action authorized by this section,
14 the defendant has ninety days from entry of that order to file a
15 motion for sanctions. The motion shall be served in accordance with
16 Rule 5 of the West Virginia Rules of Civil Procedure. A
17 third-party claimant upon whom the motion is served has twenty-one
18 days to respond. After the motion has been served and the parties
19 have had a reasonable opportunity to be heard, the court shall
20 determine whether sanctions are warranted. When imposing a
21 sanction, the court shall describe the conduct giving rise to the
22 sanction and explain the basis for the sanction. Sanctions are
23 limited to the actual costs and expenses incurred by a defendant
24 and an amount sufficient to deter others similarly situated.

1 (g) A defendant is not entitled to seek or recover sanctions
2 or damages for claims, defenses, and other legal contentions
3 warranted by existing law or by nonfrivolous arguments for the
4 extension, modification, or reversal of existing law or the
5 establishment of new law or for claims brought in good faith, but
6 may lack sufficient evidentiary support.

NOTE: The purpose of this bill is to permit a third-party claimant to collect damages from an insurance company that has intentionally engaged in an unfair trade practice. The bill sets forth the requirements that must be met in order that damages may be awarded. The bill sets forth time limits. The bill also permits sanctions to be entered against a third-party claimant whose claims are unwarranted.

This section is new; therefore, it has been completely underscored.