

1 **H. B. 4580**

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3 (By Delegate Diserio)

4 [Introduced February 17, 2014; referred to the
5 Committee on Banking and Insurance then the Judiciary.]

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10 A BILL to amend and reenact §23-2C-21 of the Code of West Virginia,
11 1931, as amended, relating to removing immunity language and
12 acknowledging the duty to act in good faith and fair dealing
13 in the administration of insurance claims; providing that an
14 administrative fine is no longer the sole remedy for
15 violations; permitting attorney's fees and costs to be awarded
16 in certain additional cases; and requiring any attorney's fees
17 and costs awarded be made jointly to the claimant and the
18 attorney.

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

20 That §23-2C-21 of the Code of West Virginia, 1931, as amended,
21 be amended and reenacted to read as follows:

22 **ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.**

23 **§23-2C-21. Limitation Obligation of liability of insurer or**

1 **third-party administrator; administrative fines;**
2 **~~are exclusive~~ available remedies.**

3 ~~(a) No civil action may be brought or maintained by an~~
4 ~~employee against a private carrier or a third-party administrator,~~
5 ~~or any employee or agent of a private carrier or third party~~
6 ~~administrator, who violates any provision of this chapter or~~
7 ~~chapter thirty-three of this code.~~

8 (a) In light of the self-administration of claims by an
9 insurer or third-party administrator for an insurer or self-insured
10 employer, there is adopted herein an express duty of good faith and
11 fair dealing in its activities undertaken in the administration of
12 claims. This express duty includes, but is not limited to,
13 avoidance of those unfair claim settlement practices found in
14 chapter thirty-three of this code.

15 (b) ~~Any~~ Administrative fines or remedies provided in this
16 chapter or chapter thirty-three of this code or rules promulgated
17 by the Workers' Compensation Commission or the Insurance
18 Commissioner are ~~the exclusive civil~~ among the available remedies
19 for any violation of this chapter committed by a private carrier or
20 a third-party administrator or any agent or employee of a private
21 carrier or a third-party administrator.

22 (c) Upon a determination by the Office of Judges or the
23 Insurance Commissioner that a denial of compensability, a denial of
24 an award of temporary total disability, ~~or~~ a denial of an

1 authorization for medical benefits or a denial of permanent partial
2 or permanent total disability benefits was unreasonable, reasonable
3 attorney's fees and the costs actually incurred in the process of
4 obtaining a reversal of the denial shall be awarded to the claimant
5 and paid by the private carrier or self-insured employer which
6 issued the unreasonable denial. A denial is unreasonable if, after
7 submission by or on behalf of the claimant, of evidence of the
8 compensability of the claim, the entitlement to temporary total
9 disability benefits or medical benefits, the private carrier or
10 self-insured employer is unable to demonstrate that it had evidence
11 or a legal basis supported by legal authority at the time of the
12 denial which is relevant and probative and supports the denial of
13 the award or authorization. Payment of attorney's fees and costs
14 awarded under this subsection will be made jointly to the claimant
15 and his or her counsel at the conclusion of litigation, including
16 all appeals, of the claimant's protest of the denial.

NOTE: The purpose of this bill is to remove immunity language and acknowledge the duty to act in good faith and fair dealing in the administration of insurance claims. The bill provides that an administrative fine is no longer the sole remedy for violations. The bill permits the award of attorney's fees and costs in certain additional cases. Requiring any attorney's fees and costs awarded be made jointly to the claimant and the attorney.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.