

House Bill 478

By: Representatives Murphy of the 18th, Martin of the 47th, Bordeaux of the 151st,
Hammontree of the 4th and Dix of the 76th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 change a provision relating to an insurer's liability for a bad faith refusal to pay for a loss
3 covered by insurance; to provide for a private cause of action for unfair claims settlement
4 practices in certain circumstances and to provide for certain procedures in connection
5 therewith; to provide who may recover, and that action by the Commissioner of Insurance
6 is not required as a prerequisite; to provide for related matters; to repeal conflicting laws; and
7 for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 style="text-align:center">**SECTION 1.**

10 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended in
11 Chapter 4, relating to actions against insurance companies, by striking in its entirety Code
12 Section 33-4-6, relating to the liability of an insurer for damages and attorney's fees, and
13 inserting in lieu thereof the following:

14 "33-4-6.

15 In the event of a loss which is covered by a policy of insurance and the refusal of the
16 insurer to pay the same within 60 days after a demand has been made by the holder of the
17 policy and a finding has been made that such refusal was in bad faith, the insurer shall be
18 liable to pay such holder, in addition to the loss, ~~not more than 25 percent of the liability~~
19 ~~of the insurer for the loss~~ exemplary damages and all reasonable attorney's fees for the
20 prosecution of the action against the insurer. The amount of any ~~reasonable~~ exemplary
21 damages or attorney's fees shall be determined by the trial jury and shall be included in any
22 judgment which is rendered in the action; provided, however, the attorney's fees shall be
23 fixed on the basis of competent expert evidence as to the reasonable value of the services
24 based on the time spent and legal and factual issues involved in accordance with prevailing
25 fees in the locality where the action is pending; provided, further, the trial court shall have
26 the discretion, if it finds the jury verdict fixing attorney's fees to be greatly excessive or

1 inadequate, to review and amend the portion of the verdict fixing attorney's fees without
 2 the necessity of disapproving the entire verdict. The limitations contained in this Code
 3 section in reference to the amount of attorney's fees are not controlling as to the fees which
 4 may be agreed upon by the plaintiff and his the plaintiff's attorney for the services of the
 5 attorney in the action against the insurer."

6 SECTION 2.

7 Said title is further amended in Article 2 of Chapter 6, relating to unfair claims settlement
 8 practices, by striking in its entirety Code Section 33-6-37, relating to a private cause of
 9 action, and inserting in lieu thereof the following:

10 "33-6-37.

11 (a) Nothing contained in this article shall be construed to create or imply a private cause
 12 of action for a violation of this article for damages to a claimant, insured, or beneficiary in
 13 an amount less than \$500.00.

14 (b) A violation of this article which results in damages to a claimant, insured, or
 15 beneficiary in an amount in excess of \$500.00 may be recovered by the claimant, insured,
 16 or beneficiary in a civil action for damages.

17 (c) At least 30 days prior to the filing of any action pursuant to subsection (b) of this Code
 18 section, a written demand for the specific relief sought, identifying the claimant and the
 19 basis for the claim, shall be delivered to the prospective respondent via registered or
 20 certified mail, return receipt requested, or statutory overnight delivery.

21 (d) In any action brought pursuant to subsection (b) of this Code section, the plaintiff shall,
 22 in addition to service of process in accordance with Code Section 9-11-4, send to the
 23 defendant within 20 days of filing the complaint a copy of the demand, initial complaint,
 24 and amended complaint, if any then exists, by registered or certified mail, return receipt
 25 requested, or statutory overnight delivery.

26 (e) The provisions of this part are cumulative to rights under existing law and no action
 27 of the Commissioner of Insurance shall be required as a prerequisite to such right to
 28 recover damages for a violation of this article."

29 SECTION 3.

30 All laws and parts of laws in conflict with this Act are repealed.