

_____ offers the following
 substitute to HB 478:

A BILL TO BE ENTITLED
 AN ACT

1 To amend Chapter 4 of Title 33 of the Official Code of Georgia Annotated, relating to claims
 2 against insurance companies, so as to change provisions relating to an insurer's liability for
 3 a bad faith refusal to pay for a loss covered by insurance; to provide for insurers' duties with
 4 respect to settlement of motor vehicle liability policy claims; to provide for a private cause
 5 of action for unfair claims settlement practices in certain circumstances and to provide for
 6 damages and procedures in connection therewith; to provide for the right and manner of
 7 recovery; to provide for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 SECTION 1.

10 Chapter 4 of Title 33 of the Official Code of Georgia Annotated, relating to claims against
 11 insurance companies, is amended by striking Code Section 33-4-6, relating to the liability
 12 of an insurer for damages and attorney's fees, and inserting in lieu thereof new Code Sections
 13 33-4-6 and 33-4-7 to read as follows:

14 "33-4-6.

15 (a) 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~~ 50 percent of the liability
 19 of the insurer for the loss or \$5,000.00, whichever is greater, and all reasonable attorney's
 20 fees for the prosecution of the action against the insurer. The action for bad faith shall not
 21 be abated by payment after the 60 day period nor shall the testimony or opinion of an
 22 expert witness be the sole basis for a summary judgment or directed verdict on the issue
 23 of bad faith. The amount of any reasonable attorney's fees shall be determined by the trial
 24 jury and shall be included in any judgment which is rendered in the action; provided,
 25 however, the attorney's fees shall be fixed on the basis of competent expert evidence as to
 26 the reasonable value of the services based on the time spent and legal and factual issues

1 involved in accordance with prevailing fees in the locality where the action is pending;
 2 provided, further, the trial court shall have the discretion, if it finds the jury verdict fixing
 3 attorney's fees to be greatly excessive or inadequate, to review and amend the portion of
 4 the verdict fixing attorney's fees without the necessity of disapproving the entire verdict.
 5 The limitations contained in this Code section in reference to the amount of attorney's fees
 6 are not controlling as to the fees which may be agreed upon by the plaintiff and his the
 7 plaintiff's attorney for the services of the attorney in the action against the insurer.

8 (b) In any action brought pursuant to subsection (a) of this Code section, and within 20
 9 days of bringing such action, the plaintiff shall, in addition to service of process in
 10 accordance with Code Section 9-11-4, mail to the Commissioner of Insurance and the
 11 Consumers' Insurance Advocate a copy of the demand and complaint by first class mail.
 12 Failure to comply with this subsection may be cured by delivering same.

13 33-4-7.

14 (a) In the event of a loss because of injury to or destruction of property covered by a motor
 15 vehicle liability insurance policy, the insurer issuing such policy has an affirmative duty
 16 to adjust that loss fairly and promptly, to make a reasonable effort to investigate and
 17 evaluate the claim, and, where liability is reasonably clear, to make a good faith effort to
 18 settle with the claimant potentially entitled to recover against the insured under such policy.
 19 Any insurer who breaches this duty may be liable to pay the claimant, in addition to the
 20 loss, not more than 50 percent of the liability of the insured for the loss or \$5,000.00,
 21 whichever is greater, and all reasonable attorney's fees for the prosecution of the action.

22 (b) An insurer breaches the duty of subsection (a) of this Code section when, after
 23 investigation of the claim, liability has become reasonably clear and the insurer in bad faith
 24 offers less than the amount reasonably owed under all the circumstances of which the
 25 insurer is aware.

26 (c) A claimant shall be entitled to recover under subsection (a) of this Code section if the
 27 claimant or the claimant's attorney has delivered to the insurer a demand letter, by statutory
 28 overnight delivery or certified mail, return receipt requested, offering to settle for an
 29 amount certain, the insurer has refused or declined to do so within 60 days of receipt of
 30 such demand, thereby compelling the claimant to institute or continue suit to recover, and
 31 the claimant ultimately recovers an amount equal to or in excess of the claimant's demand.

32 (d) At the expiration of the 60 days set forth in subsection (c), the claimant may serve the
 33 insurer issuing such policy by service of the complaint in accordance with law. The insurer
 34 shall be an unnamed party, not disclosed to the jury, until there has been a verdict resulting
 35 in recovery equal to or in excess of the claimant's demand. If that occurs, the trial shall be
 36 recommended in order for the trier of fact to receive evidence to make a determination as

1 to whether bad faith existed in the handling or adjustment of the attempted settlement of
2 the claim or action in question.

3 (e) The action for bad faith shall not be abated by payment after the 60 day period nor shall
4 the testimony or opinion of an expert witness be the sole basis for a summary judgment or
5 directed verdict on the issue of bad faith.

6 (f) The amount of recovery, including reasonable attorney's fees, if any, shall be
7 determined by the trier of fact and included in a separate judgment against the insurer
8 rendered in the action; provided, however, the attorney's fees shall be fixed on the basis
9 of competent expert evidence as to the reasonable value of the services based on the time
10 spent and legal and factual issues involved in accordance with prevailing fees in the
11 locality where the action is pending; provided, further, the trial court shall have the
12 discretion, if it finds the jury verdict fixing attorney's fees to be greatly excessive or
13 inadequate, to review and amend the portion of the verdict fixing attorney's fees without
14 the necessity of disapproving the entire verdict. The limitations contained in this Code
15 section in reference to the amount of attorney's fees are not controlling as to the fees which
16 may be agreed upon by the plaintiff and his or her attorney for the services of the attorney.

17 (g) In any action brought pursuant to subsection (b) of this Code section, and within 20
18 days of bringing such action, the plaintiff shall, in addition to service of process in
19 accordance with Code Section 9-11-4, mail to the Commissioner of Insurance and the
20 Consumers' Insurance Advocate a copy of the demand and complaint by first class mail.
21 Failure to comply with this subsection may be cured by delivering same."

22 SECTION 2.

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