

House Bill 303 (COMMITTEE SUBSTITUTE)

By: Representatives Hightower of the 68th, Mabra of the 63rd, Kelley of the 16th, Atwood of the 179th, Weldon of the 3rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 33-7-11 of the Official Code of Georgia Annotated, relating to
2 uninsured motorist coverage under motor vehicle liability policies, so as to change provisions
3 relating to the recovery when an insurer refuses to pay for a loss within 60 days after a
4 demand has been made by the insured and a finding has been made that such refusal was
5 made in bad faith; to provide for related matters; to repeal conflicting laws; and for other
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Code Section 33-7-11 of the Official Code of Georgia Annotated, relating to uninsured
10 motorist coverage under motor vehicle liability policies, is amended by revising subsection
11 (j) as follows:

12 "(j)(1) If the insurer shall refuse to pay any insured any loss covered by this Code section
13 and the applicable automobile liability or motor vehicle liability policy within 60 days
14 after a written demand has been made by the insured and a finding has been made that
15 such refusal was made in bad faith, the insurer shall be liable to the insured in addition
16 to any recovery under this Code section for not more than 25 percent of the recovery and
17 all reasonable attorney's fees for the prosecution of the case under this Code section. for:

18 (A) Damages equal to the applicable policy limits or the principal balance of the
19 judgment rendered against the uninsured motorist in the original tort action, whichever
20 amount is less;

21 (B) If the fact finder determines that the insurer's refusal to pay the insured was made
22 in bad faith, a penalty of \$25,000.00 or 25 percent of the damages set forth in
23 subparagraph (A) of this paragraph, whichever amount is greater; and

24 (C) Postjudgment interest on the damages provided in subparagraph (A) of this
25 paragraph pursuant to Code Section 7-4-12 calculated from the date of entry of the
26 judgment against the uninsured motorist in the original tort action.

27 (2) When an insured has prevailed on a claim pursuant to subparagraph (B) of paragraph
 28 (1) of this subsection, the court in its discretion may hold the insurer liable to the insured
 29 for reasonable attorney's fees and expenses of litigation for the prosecution of the case
 30 under this Code section that were incurred after the sixtieth day of the demand made by
 31 the insured.

32 ~~(3) The amounts set forth in paragraph (1) of this subsection and the question of bad~~
 33 ~~faith, the amount of the penalty, if any, and the reasonable attorney's fees, if any, shall be~~
 34 ~~determined in a separate action filed by the insured against the insurer after a judgment~~
 35 ~~has been rendered against the uninsured motorist in the original tort action. The~~
 36 ~~attorney's fees shall be fixed on the basis of competent expert evidence as to the~~
 37 ~~reasonable value of the services, based on the time spent and legal and factual issues~~
 38 ~~involved, in accordance with prevailing fees in the locality where the action is pending.~~
 39 ~~The trial court shall have the discretion, if it finds such jury verdict fixing attorney's fees~~
 40 ~~to be greatly excessive or inadequate, to review and amend such portion of the verdict~~
 41 ~~fixing attorney's fees without the necessity of disapproving the entire verdict. The~~
 42 ~~limitations contained in this subsection in reference to the amount of attorney's fees are~~
 43 ~~not controlling as to the fees which may be agreed upon by the plaintiff and his attorney~~
 44 ~~for the services of the attorney in the action against the insurer.~~

45 (4) Payment of the amounts provided in paragraph (1) of this subsection shall fully
 46 discharge the insurer's obligations under the judgment entered against the uninsured
 47 motorist in the original tort action. Payment of the damages provided in subparagraph
 48 (A) of paragraph (1) of this subsection shall reduce the principal amount of such
 49 judgment. Payment of the postjudgment interest provided in subparagraph (C) of
 50 paragraph (1) of this subsection shall reduce the postjudgment interest owed on such
 51 judgment."

52 **SECTION 2.**

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