

SENATE BILL No. 866

November 1, 2007, Introduced by Senators SCOTT, GLEASON, HUNTER, CLARK-COLEMAN, CLARKE, ANDERSON and BRATER and referred to the Committee on Economic Development and Regulatory Reform.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
(MCL 500.100 to 500.8302) by adding section 2026a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 2026A. (1) IT IS AN UNFAIR METHOD OF COMPETITION AND AN
2 UNFAIR OR DECEPTIVE ACT OR PRACTICE IN THE BUSINESS OF INSURANCE
3 FOR AN INSURER TO UNREASONABLY DENY A CLAIM FOR COVERAGE OR PAYMENT
4 OF BENEFITS TO ANY FIRST PARTY CLAIMANT.

5 (2) ANY FIRST PARTY CLAIMANT WHO IS UNREASONABLY DENIED A
6 CLAIM FOR COVERAGE OR PAYMENT OF BENEFITS BY AN INSURER MAY BRING
7 AN ACTION IN THE CIRCUIT COURT OF THIS STATE TO RECOVER THE ACTUAL
8 DAMAGES SUSTAINED, TOGETHER WITH THE COSTS OF THE ACTION, INCLUDING
9 REASONABLE ATTORNEY FEES AND LITIGATION COSTS.

10 (3) TWENTY DAYS PRIOR TO FILING AN ACTION UNDER THIS SECTION,

1 A FIRST PARTY CLAIMANT SHALL PROVIDE WRITTEN NOTICE OF THE BASIS
2 FOR THE CAUSE OF ACTION TO THE INSURER AND THE COMMISSIONER. NOTICE
3 MAY BE PROVIDED BY REGULAR MAIL, REGISTERED MAIL, OR CERTIFIED MAIL
4 WITH RETURN RECEIPT REQUESTED. PROOF OF NOTICE BY MAIL MAY BE MADE
5 IN THE SAME MANNER AS PRESCRIBED BY COURT RULE OR STATUTE FOR PROOF
6 OF SERVICE BY MAIL. THE INSURER AND COMMISSIONER SHALL BE
7 CONSIDERED TO HAVE RECEIVED NOTICE 3 BUSINESS DAYS AFTER THE NOTICE
8 IS MAILED.

9 (4) IF THE INSURER FAILS TO RESOLVE THE BASIS FOR THE ACTION
10 WITHIN THE 20-DAY PERIOD AFTER THE WRITTEN NOTICE BY THE FIRST
11 PARTY CLAIMANT, THE FIRST PARTY CLAIMANT MAY BRING THE ACTION
12 WITHOUT ANY FURTHER NOTICE. THE FIRST PARTY CLAIMANT MAY BRING AN
13 ACTION AFTER THE REQUIRED 20-DAY PERIOD HAS ELAPSED.

14 (5) IF A WRITTEN NOTICE OF CLAIM IS SERVED UNDER SUBSECTION
15 (4) WITHIN THE TIME PRESCRIBED FOR THE FILING OF AN ACTION UNDER
16 THIS SECTION, THE STATUTE OF LIMITATIONS FOR THE ACTION IS TOLLED
17 DURING THE 20-DAY PERIOD OF TIME IN SUBSECTION (4).

18 (6) THE CIRCUIT COURT SHALL, AFTER A FINDING OF UNREASONABLE
19 DENIAL OF A CLAIM FOR COVERAGE OR PAYMENT OF BENEFITS, AWARD
20 REASONABLE ATTORNEY FEES AND ACTUAL AND STATUTORY LITIGATION COSTS,
21 INCLUDING EXPERT WITNESS FEES, TO THE FIRST PARTY CLAIMANT WHO IS
22 THE PREVAILING PARTY IN SUCH AN ACTION. THE CIRCUIT COURT MAY,
23 AFTER FINDING THAT AN INSURER HAS ACTED UNREASONABLY IN DENYING A
24 CLAIM FOR COVERAGE OR PAYMENT OF BENEFITS, INCREASE THE TOTAL AWARD
25 OF DAMAGES TO AN AMOUNT NOT TO EXCEED 3 TIMES THE ACTUAL DAMAGES.

26 (7) THIS SECTION DOES NOT LIMIT A COURT'S EXISTING ABILITY TO
27 MAKE ANY OTHER DETERMINATION REGARDING AN ACTION FOR AN UNFAIR OR

1 DECEPTIVE PRACTICE OF AN INSURER OR PROVIDE FOR ANY OTHER REMEDY
2 THAT IS AVAILABLE AT LAW.

3 (8) THIS SECTION DOES NOT APPLY TO A HEALTH PLAN OFFERED BY A
4 CARRIER.

5 (9) AS USED IN THIS SECTION:

6 (A) "CARRIER" MEANS THAT TERM AS DEFINED IN SECTION 3701.

7 (B) "FIRST PARTY CLAIMANT" MEANS AN INDIVIDUAL OR OTHER LEGAL
8 ENTITY ASSERTING A RIGHT TO PAYMENT AS A COVERED PERSON UNDER AN
9 INSURANCE POLICY OR INSURANCE CONTRACT ARISING OUT OF THE
10 OCCURRENCE OF THE CONTINGENCY OR LOSS COVERED BY THE POLICY OR
11 CONTRACT.