

By: Representative Baria

To: Insurance; Judiciary A

HOUSE BILL NO. 865

1 AN ACT TO CREATE THE "UNFAIR CLAIMS SETTLEMENT PRACTICES
2 ACT"; TO SET FORTH STANDARDS FOR THE INVESTIGATION AND DISPOSITION
3 OF CLAIMS ARISING UNDER POLICIES OR CERTIFICATES OF INSURANCE; TO
4 PROVIDE DEFINITIONS OF UNFAIR CLAIMS PRACTICES; TO PROVIDE HEARING
5 PROCEDURES; TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS ACT; AND
6 FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** This act shall be known and may be cited as the
9 "Unfair Claims Settlement Practices Act."

10 **SECTION 2.** The purpose of this act is to set forth standards
11 for the investigation and disposition of claims arising under
12 policies or certificates of insurance issued to residents of
13 Mississippi. It is not intended to cover claims involving
14 workers' compensation, fidelity, suretyship or boiler and
15 machinery insurance. Nothing herein shall be construed to create
16 or imply a private cause of action for violation of this act.

17 **SECTION 3.** When used in this act:

18 (a) "Commissioner" means the Commissioner of Insurance
19 of this state.



20 (b) "Insured" means the party named on a policy or
21 certificate as the individual with legal rights to the benefits
22 provided by such policy.

23 (c) "Insurer" means any person, reciprocal exchange,
24 interinsurer, Lloyds insurer, fraternal benefit society and any
25 other legal entity engaged in the business of insurance, including
26 agents, brokers, adjusters and third-party administrators.
27 Insurer shall also mean medical service plans, hospital service
28 plans, health maintenance organizations, prepaid limited health
29 care service plans, dental, optometric and other similar health
30 service plans. For purposes of this act, these foregoing entities
31 shall be deemed to be engaged in the business of insurance.

32 (d) "Person" means any natural or artificial entity,
33 including, but not limited to, individuals, partnerships,
34 associations, trusts or corporations.

35 (e) "Policy" or "certificate" means any contract of
36 insurance, indemnity, medical, health or hospital service or
37 annuity issued. "Policy" or "certificate" for purposes of this
38 act shall not mean contracts of workers' compensation, fidelity,
39 suretyship or boiler and machinery insurance.

40 **SECTION 4.** It is an improper claims practice for any
41 domestic, foreign or alien insurer transacting business in this
42 state to commit any act defined in Section 5 of this act if:

43 (a) It is committed flagrantly and in conscious
44 disregard of this act or any rules promulgated hereunder; or



45 (b) It has been committed with such frequency to
46 indicate a general business practice to engage in that type of
47 conduct.

48 **SECTION 5.** Any of the following acts by an insurer, if
49 committed in violation of Section 4 of this act, constitutes an
50 unfair claims practice:

51 (a) Knowingly misrepresenting to claimants and insureds
52 relevant facts or policy provisions relating to coverages at
53 issue;

54 (b) Failing to acknowledge with reasonable promptness
55 pertinent communications with respect to claims arising under its
56 policies;

57 (c) Failing to adopt and implement reasonable standards
58 for the prompt investigation and settlement of claims arising
59 under its policies;

60 (d) Not attempting in good faith to effectuate prompt,
61 fair and equitable settlement of claims submitted in which
62 liability has become reasonably clear;

63 (e) Compelling insureds or beneficiaries to institute
64 suits to recover amounts due under its policies by offering
65 substantially less than the amounts ultimately recovered in suits
66 brought by them;

67 (f) Refusing to pay claims without conducting a
68 reasonable investigation;



69 (g) Failing to affirm or deny coverage of claims within
70 a reasonable time after having completed its investigation related
71 to such claim or claims;

72 (h) Attempting to settle or settling claims for less
73 than the amount so that a reasonable person would believe the
74 insured or beneficiary was entitled by reference to written or
75 printed advertising material accompanying or made part of an
76 application;

77 (i) Attempting to settle or settling claims on the
78 basis of an application that was materially altered without notice
79 to, or knowledge or consent of, the insured;

80 (j) Making claims payments to an insured or beneficiary
81 without indicating the coverage under which each payment is being
82 made;

83 (k) Unreasonably delaying the investigation or payment
84 of claims by requiring both a formal proof of loss form and
85 subsequent verification that would result in duplication of
86 information and verification appearing in the formal proof of loss
87 form;

88 (l) Failing in the case of claims denials or offers of
89 compromise settlement to promptly provide a reasonable and
90 accurate explanation of the basis for such actions;

91 (m) Failing to provide forms necessary to present
92 claims within fifteen (15) calendar days of a request with
93 reasonable explanations regarding their use;



94 (n) Failing to adopt and implement reasonable standards
95 to assure that the repairs of a repairer owned by or required to
96 be used by the insurer are performed in a workmanlike manner.

97 **SECTION 6.** Whenever the commissioner has reasonable cause to
98 believe that any insurer doing business in this state is engaging
99 in any unfair claims practice and that a proceeding in respect
100 thereto would be in the public interest, the commissioner shall
101 issue and serve upon such insurer a statement of the charges in
102 that respect and a notice of hearing thereon, which notice shall
103 set a hearing date not less than thirty (30) days from the date of
104 the notice.

105 **SECTION 7.** If, after hearing, the commissioner finds an
106 insurer has engaged in an unfair claims practice, the commissioner
107 shall reduce the findings to writing and shall issue and cause to
108 be served upon the insurer charged with the violation a copy of
109 the findings and an order requiring such insurer to cease and
110 desist from engaging in the act or practice and the commissioner
111 may, at the commissioner's discretion, order:

112 (a) Payment of a monetary penalty of not more than One
113 Thousand Dollars (\$1,000.00) for each violation but not to exceed
114 an aggregate penalty of One Hundred Thousand Dollars (\$100,000.00)
115 unless the violation was committed flagrantly and in conscious
116 disregard of this act, in which case the penalty shall not be more
117 than Twenty-five Thousand Dollars (\$25,000.00) for each violation,



118 but not to exceed an aggregate penalty of Two Hundred Fifty
119 Thousand Dollars (\$250,000.00) pursuant to any such hearing; or

120 (b) Suspension or revocation of the insurer's license
121 if the insurer knew or reasonably should have known it was in
122 violation of this act, or both penalty and suspension or
123 revocation of the license.

124 **SECTION 8.** Any insurer which violates a cease and desist
125 order of the commissioner while such order is in effect, after
126 notice and hearing and upon order of the commissioner, may be
127 subject, at the discretion of the commissioner, to:

128 (a) A monetary penalty of not more than Twenty-five
129 Thousand Dollars (\$25,000.00) for each and every act or violation
130 not to exceed an aggregate of Two Hundred Fifty Thousand Dollars
131 (\$250,000.00) pursuant to any such hearing; or

132 (b) Suspension or revocation of the insurer's license
133 or both penalty and suspension or revocation of the license.

134 **SECTION 9.** The commissioner, after notice and hearing, may
135 promulgate reasonable rules, regulations and orders as are
136 necessary or proper to carry out and effectuate the provisions of
137 this act. Such regulations shall be subject to review in
138 accordance with Section 25-43-1 et seq.

139 **SECTION 10.** If any provision of this act, or the application
140 of such provision to any person or circumstances, shall be held
141 invalid, the remainder of the act, and the application of such



142 provision to person or circumstances other than those as to which
143 it is held invalid, shall not be affected thereby.

144 **SECTION 11.** This act shall take effect and be in force from
145 and after July 1, 2018.

