



1 **§33-11-4a. Complaints by third-party claimants.**

2 (a) A third-party claimant may not bring a private cause of  
3 action or any other action against any person for an unfair claims  
4 settlement practice ~~a third-party claimant's sole remedy against a~~  
5 ~~person for an unfair claims settlement practice or the bad faith~~  
6 ~~settlement of a claim is the filing of~~ unless the third party  
7 claimant fulfills the requirements of this section. Before filing  
8 such a claim, a third party claimant shall file an administrative  
9 complaint with the commissioner in accordance with subsection (b)  
10 of this section. ~~A third-party claimant may not include~~  
11 ~~allegations of unfair claims settlement practices in any underlying~~  
12 ~~litigation against an insured.~~

13 (b) A third-party claimant may file an administrative  
14 complaint against a person for an alleged unfair claims settlement  
15 practice with the commissioner. The administrative complaint shall  
16 be filed as soon as practicable but in no event later than one year  
17 following the actual or implied discovery of the alleged unfair  
18 claims settlement practice.

19 (1) The administrative complaint shall be on a form provided  
20 by the commissioner and shall state with specificity the following  
21 information and such other information as the commissioner may  
22 require:

23 (A) The statutory provision, if known, which the person

1 allegedly violated;

2 (B) The facts and circumstances giving rise to the violation;

3 (C) The name of any individual or other entity involved in the  
4 violation; and

5 (D) Reference to specific policy language that is relevant to  
6 the violation, if known.

7 (2) If the administrative complaint is deficient, the  
8 commissioner shall contact the third-party claimant within fifteen  
9 days of receipt of the complaint to obtain the necessary  
10 information.

11 (3) Upon receipt of a sufficiently complete administrative  
12 complaint, the commissioner must provide the person against whom  
13 the administrative complaint is filed written notice of the alleged  
14 violation.

15 (4) If the person against whom the administrative complaint  
16 was filed substantially corrects the circumstances that gave rise  
17 to the violation or offers to resolve the complaint in a manner  
18 found reasonable by the commissioner and the third-party claimant  
19 within sixty days after receiving the notice from the commissioner  
20 pursuant to subdivision (3) of this subsection, the commissioner  
21 shall close the complaint and no further action shall lie on the  
22 matter, either by the commissioner or by the third-party claimant.

23 (5) The person that is the recipient of a notice from the

1 commissioner pursuant to subdivision (3) of this subsection shall  
2 report to the commissioner on the disposition of the alleged  
3 violation within fifteen days of the disposition but no later than  
4 sixty days from receipt of notice of the complaint from the  
5 commissioner.

6 (c) If the third-party claim is not resolved within the sixty-  
7 day period described in subdivision (4), subsection (b) of this  
8 section through either the person's substantial correction of the  
9 circumstances giving rise to the alleged violation or an offer from  
10 the person to resolve the administrative complaint that is found to  
11 be reasonable by the commissioner ~~the commissioner shall conduct~~  
12 ~~any investigation he or she considers necessary to determine~~  
13 ~~whether the allegations contained in the administrative complaint~~  
14 ~~are meritorious.~~ and the third-party claimant, the third-party  
15 claimant may file a civil action asserting the unfair claims  
16 settlement practice with a court of competent jurisdiction.

17 ~~(d) Following the time period and investigation provided in~~  
18 ~~subsection (c) of this section, if the commissioner finds that~~  
19 ~~merit exists for a complaint and the complaint has not been~~  
20 ~~resolved, the commissioner shall forward a complete copy of the~~  
21 ~~complaint to the Office of Consumer Advocacy and, if at his or her~~  
22 ~~discretion, may order further investigation and hearing to~~  
23 ~~determine if the person has committed an unfair claims settlement~~

~~1 practice with such frequency as to constitute a general business  
2 practice. Notice of any hearing shall be provided to all parties.  
3 The commissioner shall assign a time and place for a hearing and  
4 shall notify the parties of the hearing by written notice at least  
5 ten days in advance thereof. The hearing shall be held within  
6 ninety days from the date of filing the complaint unless the  
7 complaint has been successfully resolved pursuant to subdivision  
8 (4), subsection (b) of this section or continued by agreement of  
9 all parties or by the commissioner for good cause. The  
10 commissioner shall cause hearings to be conducted in the  
11 geographical region of the state where the complainant resides.  
12 The commissioner may promulgate rules pursuant to article three,  
13 chapter twenty-nine-a of this code necessary, pursuant to the  
14 authority of this chapter, to establish procedures to conduct  
15 hearings pursuant to this section and chapter.~~

16 (d) In order to succeed on a claim under this section at  
17 trial, the jury or judge must find by a preponderance of the  
18 evidence that the person both committed an unfair claim settlement  
19 practice in the specific instance at issue and that either: (1) The  
20 person has committed the practice with such frequency as to  
21 constitute a general business practice; or (2) the unfair claim  
22 settlement practice was committed flagrantly and in conscious  
23 disregard of section four of this article, or both.

1       ~~(e) If the commissioner finds that the person has committed~~  
2 ~~the unfair claim settlement practice with such frequency as to~~  
3 ~~constitute a general business practice, the commissioner may~~  
4 ~~proceed to take administrative action he or she considers~~  
5 ~~appropriate in accordance with section six of this article or as~~  
6 ~~otherwise provided in this chapter. If the commissioner finds that~~  
7 ~~the person engaged in any method of competition, act or practice~~  
8 ~~that involves an intentional violation of subdivision (9), section~~  
9 ~~four of this article, and even though it has not been established~~  
10 ~~that the person engaged in a general business practice, the~~  
11 ~~commissioner may proceed to take administrative action he or she~~  
12 ~~considers appropriate in accordance with subsection (b), section~~  
13 ~~six of this article. The person is entitled to notice and hearing~~  
14 ~~in connection with the administrative proceeding.~~

15       ~~(f) A finding by the commissioner that the actions of a person~~  
16 ~~constitute a general business practice may only be based on the~~  
17 ~~existence of substantially similar violations in a number of~~  
18 ~~separate claims or causes of action.~~

19       ~~(g)~~(e) A good faith disagreement over the value of an action  
20 or claim or the liability of any party to any action or claim is  
21 not an unfair claims settlement practice. However, evidence  
22 showing that a jury returned an award greater than the third-party  
23 claimant's greatest settlement demand for an underlying claim in

1 underlying litigation creates a presumption of an unfair claims  
2 settlement practice.

3 (f) If a third-party claimant succeeds at trial on a claim  
4 under this section, the third-party claimant may recover all actual  
5 damages, including damages for pain and suffering, if any. In  
6 addition, the third-party claimant is entitled to recover the costs  
7 of litigation and reasonable attorneys fees from any defendant that  
8 did not resolve the dispute within the sixty-day period described  
9 in subdivision (4), subsection (b) of this section through either  
10 the person's substantial correction of the circumstances giving  
11 rise to the alleged violation or an offer from the person to  
12 resolve the administrative complaint that is found to be reasonable  
13 by the commissioner and the third-party claimant. No punitive  
14 damages may be awarded under this section unless the acts giving  
15 rise to the violation occur with such frequency as to indicate a  
16 regular business practice and the acts are willful, wanton, or  
17 malicious.

18 (g) The commissioner may propose rules for legislative  
19 approval and may promulgate emergency rules, all in accordance with  
20 the provisions of article three, chapter twenty-nine-a of this  
21 code.

22 ~~(h) The commissioner, pursuant to article three, chapter~~  
23 ~~twenty-nine-a of this code, may promulgate by emergency rule~~

1 ~~standards for subsection (9), section four of this article.~~

2       ~~(i)~~(h) Nothing in this section in any way limits the rights of  
3 the commissioner to investigate and take action against a person  
4 which the commissioner has reason to believe has committed an  
5 unfair claims settlement practice or has consistently resolved  
6 administrative complaints by third-party claimants within the  
7 sixty-day period set forth in subdivision (4), subsection (b) of  
8 this section.

9       ~~(j)~~(i) Definitions:

10       (1) "Third-party claimant" means any individual, corporation,  
11 association, partnership or any other legal entity asserting a  
12 claim against any individual, corporation, association, partnership  
13 or other legal entity insured under an insurance policy or  
14 insurance contract for the claim in question.

15       (2) "Unfair claims settlement practice" means a violation of  
16 subsection (9), section four of this article.

17       (3) "Underlying litigation" means a third-party claimant's  
18 lawsuit involving a claim against an insured.

19       (4) "Underlying claim" means the claim by a third-party  
20 claimant against an insured.

NOTE: The purpose of this bill is to amend the third party bad  
faith process.



Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.