

IN THE SENATE

SENATE BILL NO. 1110

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO ATTORNEY'S FEES; AMENDING SECTION 41-1839, IDAHO CODE, TO REVISE
2 PROVISIONS RELATING TO ATTORNEY'S FEES WHEN AN INSURER FAILS TO PAY A
3 PERSON ENTITLED, TO PROVIDE FOR WHEN NO ATTORNEY'S FEES MAY BE RECOVERED
4 AND TO MAKE A TECHNICAL CORRECTION.
5

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 41-1839, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 41-1839. ALLOWANCE OF ATTORNEY'S FEES IN SUITS AGAINST OR IN ARBITRA-
10 TION WITH INSURERS. (1) Any Except as provided for in subsections (2) and (3)
11 of this section, an insurer issuing any policy, certificate or contract of
12 insurance, surety, guaranty or indemnity of any kind or nature whatsoever,
13 which shall fails to pay a person entitled thereto within for a period of
14 thirty (30) days after proof of loss has been furnished as provided in such
15 policy, certificate or contract, to pay to the person entitled thereto or
16 within sixty (60) days if the proof of loss pertains to uninsured motorist
17 or underinsured motorist coverage benefits, the amount that person is justly
18 due under such policy, certificate or contract, shall in any action or ar-
19 bitration thereafter brought commenced against the insurer in any court in
20 this state or in any arbitration for recovery under the terms of the policy,
21 certificate or contract, pay such further amount as the court shall adjudge
22 reasonable as attorney's fees in such action or arbitration.

23 (2) In any such action or arbitration, if when it is alleged shown that
24 before the commencement thereof, a tender of the full amount justly due was
25 made to the person entitled thereto, and such amount is thereupon deposited
26 in the court, and if the allegation is found to be true, or if it is determined
27 in such action or arbitration that no amount is justly due, then no such at-
28 torney's fees may be recovered.

29 (3) In any such action or arbitration to obtain uninsured motorist or
30 underinsured motorist coverage benefits, when it is shown that before the
31 commencement thereof, a tender at least equal to ninety percent (90%) of the
32 amount determined to be justly due was made to the person entitled thereto,
33 or if it is determined in such action or arbitration that no amount is justly
34 due, then no such attorney's fees may be recovered.

35 (4) This section shall not apply as to actions under the worker's com-
36 pensation law, title 72, Idaho Code. This section shall not apply to ac-
37 tions or arbitrations against surety insurers by creditors of or claimants
38 against a principal and arising out of a surety or guaranty contract issued
39 by the insurer as to such principal, unless such creditors or claimants shall
40 have notified the surety of their claim, in writing, at least sixty (60) days
41 prior to such action or arbitration against the surety. The surety shall be
42 authorized to determine what portion or amount of such claim is justly due

1 the creditor or claimant and payment or tender of the amount so determined
2 by the surety shall not be deemed a volunteer payment and shall not preju-
3 dice any right of the surety to indemnification and/or subrogation so long as
4 such determination and payment by the surety be made in good faith. Nor shall
5 this section apply to actions or arbitrations against fidelity insurers by
6 claimants against a principal and arising out of a fidelity contract or pol-
7 icy issued by the insurer as to such principal unless the liability of the
8 principal has been acknowledged by him in writing or otherwise established
9 by judgment of a court of competent jurisdiction.

10 (45) Notwithstanding any other provision of statute to the contrary,
11 this section and section 12-123, Idaho Code, shall provide the exclusive
12 remedy for the award of statutory attorney's fees in all actions or arbi-
13 trations between insureds and insurers involving disputes arising under
14 policies of insurance. Provided, attorney's fees may be awarded by the court
15 when it finds, from the facts presented to it that a case was brought, pur-
16 sued or defended frivolously, unreasonably or without foundation. Section
17 12-120, Idaho Code, shall not apply to any actions or arbitrations between
18 insureds and insurers involving disputes arising under any policy of insur-
19 ance.