

IN THE SENATE

SENATE BILL NO. 1165

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO ATTORNEY'S FEES; AMENDING SECTION 41-1839, IDAHO CODE, TO REVISE
2 A PROVISION RELATING TO ATTORNEY'S FEES WHEN AN INSURER FAILS TO PAY A
3 PERSON ENTITLED.
4

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

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

8 41-1839. ALLOWANCE OF ATTORNEY'S FEES IN SUITS AGAINST OR IN ARBITRA-
9 TION WITH INSURERS. (1) Any insurer issuing any policy, certificate or con-
10 tract of insurance, surety, guaranty or indemnity of any kind or nature what-
11 soever, ~~which shall that fails to pay a person entitled thereto within for a~~
12 ~~period of~~ thirty (30) days after proof of loss has been furnished as provided
13 in such policy, certificate or contract, or to pay to the person entitled
14 thereto within sixty (60) days if the proof of loss pertains to uninsured mo-
15 torist or underinsured motorist coverage benefits, the amount that person is
16 justly due under such policy, certificate or contract, shall in any action
17 thereafter ~~brought~~ commenced against the insurer in any court in this state,
18 or in any arbitration for recovery under the terms of the policy, certificate
19 or contract, pay such further amount as the court shall adjudge reasonable as
20 attorney's fees in such action or arbitration.

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

27 (3) This section shall not apply as to actions under the worker's com-
28 pensation law, title 72, Idaho Code. This section shall not apply to ac-
29 tions or arbitrations against surety insurers by creditors of or claimants
30 against a principal and arising out of a surety or guaranty contract issued
31 by the insurer as to such principal, unless such creditors or claimants shall
32 have notified the surety of their claim, in writing, at least sixty (60) days
33 prior to such action or arbitration against the surety. The surety shall be
34 authorized to determine what portion or amount of such claim is justly due
35 the creditor or claimant and payment or tender of the amount so determined
36 by the surety shall not be deemed a volunteer payment and shall not preju-
37 dice any right of the surety to indemnification and/or subrogation so long as
38 such determination and payment by the surety be made in good faith. Nor shall
39 this section apply to actions or arbitrations against fidelity insurers by
40 claimants against a principal and arising out of a fidelity contract or pol-
41 icy issued by the insurer as to such principal unless the liability of the

1 principal has been acknowledged by him in writing or otherwise established
2 by judgment of a court of competent jurisdiction.

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