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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. **2389**

March 29, 2007

Authored by Atkins

The bill was read for the first time and referred to the Committee on Public Safety and Civil Justice

May 16, 2007

By motion, recalled and re-referred to the Committee on Rules and Legislative Administration

May 17, 2007

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

1.1 A bill for an act
1.2 relating to insurance; providing for the award of certain damages and attorney
1.3 fees in claims arising from breach of an insurance policy by an insurer; amending
1.4 Minnesota Statutes 2006, section 471.982, subdivision 3; proposing coding for
1.5 new law in Minnesota Statutes, chapter 60A.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. **[60A.0811] BREACH OF INSURANCE POLICY; RECOVERY OF**
1.8 **DAMAGES AND ATTORNEY FEES.**

1.9 Subdivision 1. Definitions; application. (a) For purposes of this section:

1.10 (1) "insurance policy" means an insurance policy or contract other than:

1.11 (i) a workers' compensation insurance policy or contract;

1.12 (ii) a policy or contract issued, executed, renewed, maintained, or delivered in this
1.13 state by a health carrier as defined in section 62A.011, subdivision 2; or

1.14 (iii) a policy or contract issued by a township mutual fire insurance company or
1.15 farmers mutual fire insurance company operating under chapter 65A or 67A;

1.16 (2) "insured" means a first party to an insurance contract and does not include a
1.17 person to whom first-party rights have been assigned; and

1.18 (3) "insurer" means an insurance company:

1.19 (i) incorporated or organized in this state; or

1.20 (ii) admitted to do business in this state but not incorporated or organized in this state.

1.21 Insurer does not include the joint underwriting association operating under chapter 62F
1.22 or 62I; or a township mutual fire insurance company or farmers mutual fire insurance
1.23 company operating under chapter 65A or 67A.

1.24 (b) This section applies to a court action or arbitration proceeding.

2.1 Subd. 2. **Damages.** (a) In addition to other damages or attorney fees allowable
2.2 under law or an insurance policy, an insured who prevails in a claim against an insurer
2.3 for a breach of an insurance policy based on a denial or delay in payment of benefits is
2.4 entitled to recover monetary consequential damages that arise from the denial or delay and
2.5 reasonable attorney fees as provided under this section.

2.6 (b) Punitive damages or damages for nonmonetary losses are not recoverable
2.7 under this section.

2.8 Subd. 3. **Recovery of attorney fees; effect of settlement offer.** If an insurer tenders
2.9 a written offer to an insured to settle a disputed claim, the insured is not entitled to recover
2.10 attorney fees incurred after the offer is made unless the final judgment or award is greater
2.11 than the last offer.

2.12 Subd. 4. **Factors to consider in awarding attorney fees.** An award of attorney
2.13 fees under this section must bear a reasonable relationship and be proportional to the
2.14 damages awarded.

2.15 Subd. 5. **Insurance producers; liability limited.** A licensed insurance producer is
2.16 not liable for damages and attorney fees under this section for a breach of an insurance
2.17 policy by the insurer that appointed the producer to transact business on its behalf.

2.18 Subd. 6. **Fire investigations.** An insurer is not liable for damages and attorney fees
2.19 under this section by conducting or cooperating with a fire investigation to its completion.

2.20 Subd. 7. **No effect on third parties.** Nothing in this section affects third-party
2.21 claims or remedies against insurers under the common law or any other statute.

2.22 **EFFECTIVE DATE.** This section is effective August 1, 2007, and applies to a
2.23 breach of an insurance policy occurring on or after that date.

2.24 Sec. 2. Minnesota Statutes 2006, section 471.982, subdivision 3, is amended to read:

2.25 Subd. 3. **Exemptions.** Self-insurance pools established and open for enrollment
2.26 on a statewide basis by the Minnesota League of Cities Insurance Trust, the Minnesota
2.27 School Boards Association Insurance Trust, the Minnesota Association of Townships
2.28 Insurance and Bond Trust, or the Minnesota Association of Counties Insurance Trust
2.29 and the political subdivisions that belong to them are exempt from the requirements of
2.30 this section and ~~section~~ sections 60A.0811 and 65B.48, subdivision 3. In addition, the
2.31 Minnesota Association of Townships Insurance and Bond Trust and the townships that
2.32 belong to it are exempt from the requirement to hold the certificate of surety authorization
2.33 issued by the commissioner of commerce as provided in section 574.15.