

This Document can be made available
in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES

**EIGHTY-FIFTH
SESSION**

HOUSE FILE No. 3426

February 25, 2008

Authored by Pelowski, Hosch, Dittrich, Thissen, Emmer and others

The bill was read for the first time and referred to the Committee on Commerce and Labor

1.1 A bill for an act
1.2 relating to commerce; establishing a consumer complaint resolution procedure
1.3 for insurance claims; imposing fees; proposing coding for new law in Minnesota
1.4 Statutes, chapter 72A.

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

1.6 Section 1. [72A.225] CONSUMER COMPLAINT RESOLUTION PROCEDURE.

1.7 Subdivision 1. Definitions. The terms used in this section have the meanings
1.8 defined in section 72A.201, subdivision 3, unless the terms used in this section are
1.9 otherwise defined in this subdivision, in which case the terms used in this section have
1.10 the meanings defined in this subdivision.

1.11 (a) An "unfair claims settlement practice" means a substantial and nontechnical
1.12 violation of section 72A.20, subdivision 12, clauses (1) to (17), or 72A.201, subdivisions
1.13 4 to 9, and 11 to 13, in the handling of a claim submitted by a complainant under an
1.14 insurance policy providing coverage to the complainant for personal, family, or household
1.15 purposes. A disagreement over the value of a claim, the liability of an insurer with respect
1.16 to a claim, or whether a claim is covered is not an unfair claims settlement practice.

1.17 (b) The "account" means the unfair claims settlement practice account established in
1.18 subdivision 7.

1.19 (c) A "complaint" means a written allegation of an unfair claims settlement practice
1.20 by an insurer filed by a complainant under this section.

1.21 (d) A "complainant" means an insured that has filed a complaint under this section.

1.22 (e) "Substantially corrects the circumstances" means that the insurer subject to the
1.23 complaint has remedied the facts and circumstances that provide the basis upon which

2.1 the unfair claims settlement practice is alleged or satisfies the insured's claim under the
2.2 insurance policy.

2.3 (f) An "insurer" means an insurance company licensed by the commissioner to
2.4 transact any line of insurance under section 60A.06 or chapter 67A other than life and
2.5 health insurance under section 60A.06, subdivision 1, clauses (4) and (5)(a). Insurer
2.6 includes the automobile insurance plan established by section 65B.01 and the FAIR plan
2.7 established by section 65A.31.

2.8 (g) A "person" means an individual, corporation, partnership, association, limited
2.9 liability company, other legal entity, or organization.

2.10 (h) An "insured" has the meaning given in section 72A.201, subdivision 3, clause
2.11 (8). Insured does not include any person that has received any assignment of rights
2.12 under an insurance policy nor any person claiming a third-party beneficiary status under
2.13 an insurance policy.

2.14 (i) The "commissioner" means the commissioner of commerce.

2.15 Subd. 2. **Notice.** An insurer shall include with the acknowledgment of each claim
2.16 required by section 72A.201, subdivision 4, clause (1), notification advising an insured
2.17 about the consumer complaint resolution procedure established by this section and the
2.18 commissioner's toll-free number and Web site address. The notice may be provided by
2.19 electronic or telephonic means. The commissioner shall provide insurers with sample
2.20 language that may be used by insurers for this purpose.

2.21 Subd. 3. **Filing of a consumer complaint.** An insured may file a complaint with
2.22 the commissioner alleging that an insurer committed an unfair claims settlement practice
2.23 with respect to a claim submitted to that insurer by the insured. The complaint shall be
2.24 filed as soon as practicable but in no event later than two years following the date of
2.25 loss under the insurance policy pursuant to which the insured submitted a claim that is
2.26 the basis for the alleged unfair claims settlement practice. The complaint shall be on a
2.27 form prescribed by the commissioner. If the complaint is deficient, the commissioner shall
2.28 contact the insured within 15 days of receipt of the complaint to obtain the information
2.29 necessary to consider the complaint.

2.30 Subd. 4. **Informal resolution.** Upon receipt of a complete complaint, the
2.31 commissioner shall provide the insurer against whom the complaint is filed with a copy
2.32 of the complaint. An insurer that receives a copy of a complaint from the commissioner
2.33 under this subdivision shall report to the commissioner on the disposition of the complaint
2.34 within 15 days of its disposition but no later than 60 days from receipt of notice of the
2.35 complaint from the commissioner. If the insurer against whom the complaint was filed
2.36 substantially corrects the circumstances that gave rise to the alleged violation or offers to

3.1 resolve the complaint in a manner considered to be reasonable by the commissioner within
3.2 60 days after receiving the complaint from the commissioner under this subdivision, the
3.3 commissioner shall consider the complaint resolved and take no further action against
3.4 the insurer or make a distribution under subdivision 8 with respect to the facts and
3.5 circumstances giving rise to the alleged violation.

3.6 Subd. 5. **Investigation.** If the complaint is not resolved within the 60-day period
3.7 described in subdivision 4, the commissioner may conduct an investigation to determine
3.8 whether the insurer has committed an unfair claims settlement practice. Any such
3.9 investigation shall be conducted under section 45.027. All working papers, recorded
3.10 information, and documents and copies thereof produced by, obtained by, or disclosed to
3.11 the commissioner or any other person in the course of an investigation made under this
3.12 section must be given confidential treatment and are not subject to subpoena and may not
3.13 be made public by the commissioner or any other person.

3.14 Subd. 6. **Proceedings.** If the commissioner, based upon any investigation
3.15 undertaken under subdivision 5, determines that the insurer has committed an unfair
3.16 claim settlement practice under section 72A.20, subdivision 12, with such frequency as
3.17 to constitute a general business practice or under section 72A.201, taking into account
3.18 the considerations in section 72A.201, subdivision 2, the commissioner may initiate
3.19 administrative action in accordance with the authority provided to the commissioner
3.20 under chapter 45 and this chapter and may make a distribution under subdivision
3.21 8. A determination by the commissioner that the actions of an insurer constitute a
3.22 general business practice, to the extent required, may only be based on the existence of
3.23 substantially similar violations in a number of separate transactions. Nothing in this
3.24 section limits the authority of the commissioner to otherwise investigate and take action
3.25 under the authority of the commissioner against an insurer under circumstances in which
3.26 the commissioner has reason to believe that the insurer has committed a violation of law.

3.27 Subd. 7. **Unfair claims practice settlement account.** There is hereby created a
3.28 special account in the general fund designated as the unfair claims settlement practice
3.29 account. Funds paid into this account shall be derived from the supplemental licensing
3.30 assessment authorized by subdivision 10. The money in the account shall only be
3.31 expended by the commissioner to compensate complainants as provided in subdivision 8.

3.32 Subd. 8. **Distribution from unfair claims practice settlement account.** If the
3.33 commissioner, based upon the investigation undertaken under subdivision 5, determines
3.34 that an insurer has committed an unfair claims settlement practice and the complainant has
3.35 suffered economic damages as a proximate result of such practice, the commissioner may
3.36 make a distribution to the complainant from the account to compensate the complainant

4.1 for such damages. The amount of a distribution to any complainant shall not exceed
4.2 \$5,000 per unfair claims settlement practice violation and the total amount of a distribution
4.3 to any complainant shall not exceed \$25,000. A distribution shall not include any amounts
4.4 to compensate a complainant for any noneconomic losses, attorney fees, whether incurred
4.5 in pursuing a complaint under this section or in any action with respect to the claim that
4.6 is the basis for an alleged unfair claims settlement practice, costs, statutory damages,
4.7 punitive damages, or any form of exemplary damages, nor shall a distribution include any
4.8 amount to compensate a complainant for any amount claimed under the terms of the
4.9 insurance policy that is the basis for the alleged unfair claims settlement practice.

4.10 Subd. 9. **Administration.** The consumer complaint resolution procedure established
4.11 in this section shall be administered solely by the commissioner. It is expressly understood
4.12 and intended that the provisions of this section do not create a private right of action for
4.13 any violation of Minnesota law, including a violation of section 72A.20, subdivision 12,
4.14 clauses (1) to (17), or 72A.201, subdivisions 4 to 9, or 11 to 13. No information regarding
4.15 proceedings under this section, nor any order of the commissioner or determination of the
4.16 commissioner made under this section, shall be admissible in any proceeding or action
4.17 relating to a claim made by a complainant for coverage under or other action related to
4.18 an insurance policy, whether in a court or in an administrative enforcement action under
4.19 Minnesota law.

4.20 Subd. 10. **License fee supplemental assessment.** Each insurer, other than an insurer
4.21 exclusively writing workers' compensation, medical professional, or other professional
4.22 liability insurance, shall pay, as a supplement to its licensing fee, an assessment to
4.23 the commissioner each year in the amount of \$2,500, which shall be deposited by the
4.24 commissioner into the account. An insurer authorized under chapter 67A shall not be
4.25 subject to an assessment under this subdivision.

4.26 Subd. 11. **Contested case proceeding.** A complainant or insurer aggrieved by a
4.27 final action of the commissioner under this section may request review in a contested
4.28 case proceeding under chapter 14.