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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. 417

February 2, 2009

Authored by Atkins, Smith, Mullery and Davnie

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 insurance; providing recovery of damages and attorney fees for breach
1.3 of an insurance policy; amending Minnesota Statutes 2008, section 471.982,
1.4 subdivision 3; proposing coding for new law in Minnesota Statutes, chapter 60A.

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

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

1.8 Subdivision 1. **Definitions.** For purposes of this section:

1.9 (1) "insurance policy" means a commercial or professional insurance policy or
1.10 contract other than:

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

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

1.14 (iii) a life insurance or disability insurance policy or contract; or

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

1.17 (2) "insured" means any named insured, additional insured, or insured under an
1.18 insurance policy; and

1.19 (3) "insurer" means an insurer:

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

1.21 (ii) admitted to do business or doing business in this state but not incorporated

1.22 or organized in this state. Insurer does not include the joint underwriting association
1.23 operating under chapter 62F or 62I; or a township mutual fire insurance company or

1.24 farmers mutual fire insurance company operating under chapter 65A or 67A.

2.1 Subd. 2. **Damages.** (a) In addition to other damages, attorney fees, or costs
 2.2 allowable under law or an insurance policy, an insured who prevails in any claim against
 2.3 an insurer based on the insurer's breach, repudiation or denial of, failure to fulfill, or delay
 2.4 in fulfilling, a duty to provide services or make payments is entitled to recover:

2.5 (1) monetary damages that naturally and proximately flow from the breach,
 2.6 repudiation, denial, failure, or delay;

2.7 (2) 12 percent per annum interest on monetary amounts due under the insurance
 2.8 policy, calculated from the date the request for payment of those benefits was made to
 2.9 the insurer; and

2.10 (3) reasonable attorney fees and costs as provided under this section.

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

2.13 Subd. 3. **Effect of arbitration under section 65B.525.** If an insurer agrees to
 2.14 liability for personal injury protection, uninsured, or underinsured benefits under a policy
 2.15 of private passenger vehicle insurance under chapter 65B and only the amount of benefits
 2.16 is disputed, the insured is not entitled to recover attorney fees under this section if the
 2.17 insurer agrees to submit the dispute to binding arbitration or if binding arbitration is
 2.18 required under section 65B.525.

2.19 Subd. 4. **Factors to consider in awarding attorney fees.** An award of attorney
 2.20 fees and costs under this section may include consideration of the following factors: the
 2.21 amount of time reasonably expended before and during the court action or arbitration
 2.22 proceeding; reasonable hourly rates; the outcome obtained; and the nature and complexity
 2.23 of the matter.

2.24 Subd. 5. **Insurance producers; liability limited.** Except as otherwise provided
 2.25 by law, a licensed insurance producer is not liable for damages and attorney fees under
 2.26 this section for a breach of insurance policy by the insurer that appointed the producer
 2.27 to transact on its behalf, except to the extent the producer has caused or contributed to
 2.28 the breach.

2.29 Subd. 6. **Application.** This section applies to a court action or arbitration
 2.30 proceeding, including an action seeking declaratory judgment.

2.31 **EFFECTIVE DATE.** This section is effective August 1, 2009, and applies to a
 2.32 cause of action existing on or arising on or after that date.

2.33 Sec. 2. Minnesota Statutes 2008, section 471.982, subdivision 3, is amended to read:

2.34 Subd. 3. **Exemptions.** Self-insurance pools established and open for enrollment
 2.35 on a statewide basis by the Minnesota League of Cities Insurance Trust, the Minnesota

3.1 School Boards Association Insurance Trust, the Minnesota Association of Townships
3.2 Insurance and Bond Trust, or the Minnesota Association of Counties Insurance Trust
3.3 and the political subdivisions that belong to them are exempt from the requirements of
3.4 this section and ~~section~~ sections 65B.48, subdivision 3, and 60A.0811. In addition, the
3.5 Minnesota Association of Townships Insurance and Bond Trust and the townships that
3.6 belong to it are exempt from the requirement to hold the certificate of surety authorization
3.7 issued by the commissioner of commerce as provided in section 574.15.