

SENATE

STATE OF MINNESOTA

EIGHTY-NINTH SESSION

S.F. No. 3050

(SENATE AUTHORS: FISCHBACH)

DATE	D-PG	OFFICIAL STATUS
03/21/2016	5160	Introduction and first reading Referred to Commerce

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A bill for an act

relating to insurance; regulating auto repair shop referrals; providing penalties;

amending Minnesota Statutes 2014, section 72A.201, subdivisions 3, 6;

proposing coding for new law in Minnesota Statutes, chapter 72A.

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

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Section 1. Minnesota Statutes 2014, section 72A.201, subdivision 3, is amended to read:

Subd. 3. **Definitions.** For the purposes of this section and section 72A.291, the

following terms have the meanings given them.

(1) **Adjuster or adjusters.** "Adjuster" or "adjusters" is as defined in section 72B.02.

(2) **Agent.** "Agent" means insurance agents or insurance agencies licensed pursuant

to sections 60K.30 to 60K.56, and representatives of these agents or agencies.

(3) **Claim.** "Claim" means a request or demand made with an insurer for the

payment of funds or the provision of services under the terms of any policy, certificate,

contract of insurance, binder, or other contracts of temporary insurance. The term does not

include a claim under a health insurance policy made by a participating provider with an

insurer in accordance with the participating provider's service agreement with the insurer

which has been filed with the commissioner of commerce prior to its use.

(4) **Claim settlement.** "Claim settlement" means all activities of an insurer related

directly or indirectly to the determination of the extent of liabilities due or potentially

due under coverages afforded by the policy, and which result in claim payment, claim

acceptance, compromise, or other disposition.

(5) **Claimant.** "Claimant" means any individual, corporation, association,

partnership, or other legal entity asserting a claim against any individual, corporation,

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association, partnership, or other legal entity which is insured under an insurance policy or insurance contract of an insurer.

(6) **Complaint.** "Complaint" means a communication primarily expressing a grievance.

(7) **Insurance policy.** "Insurance policy" means any evidence of coverage issued by an insurer including all policies, contracts, certificates, riders, binders, and endorsements which provide or describe coverage. The term includes any contract issuing coverage under a self-insurance plan, group self-insurance plan, or joint self-insurance employee health plans.

(8) **Insured.** "Insured" means an individual, corporation, association, partnership, or other legal entity asserting a right to payment under their insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by the policy or contract. The term does not apply to a person who acquires rights under a mortgage.

(9) **Insurer.** "Insurer" includes any individual, corporation, association, partnership, reciprocal exchange, Lloyds, fraternal benefits society, self-insurer, surplus line insurer, self-insurance administrator, and nonprofit service plans under the jurisdiction of the Department of Commerce.

(10) **Investigation.** "Investigation" means a reasonable procedure adopted by an insurer to determine whether to accept or reject a claim.

(11) **Notification of claim.** "Notification of claim" means any communication to an insurer by a claimant or an insured which reasonably apprises the insurer of a claim brought under an insurance contract or policy issued by the insurer. Notification of claim to an agent of the insurer is notice to the insurer.

(12) **Proof of loss.** "Proof of loss" means the necessary documentation required from the insured to establish entitlement to payment under a policy.

(13) **Self-insurance administrator.** "Self-insurance administrator" means any vendor of risk management services or entities administering self-insurance plans, licensed pursuant to section 60A.23, subdivision 8.

(14) **Self-insured or self-insurer.** "Self-insured" or "self-insurer" means any entity authorized pursuant to section 65B.48, subdivision 3; chapter 62H; section 176.181, subdivision 2; Laws of Minnesota 1983, chapter 290, section 171; section 471.617; or section 471.981 and includes any entity which, for a fee, employs the services of vendors of risk management services in the administration of a self-insurance plan as defined by section 60A.23, subdivision 8, clause (2), subclauses (a) and (d).

Sec. 2. Minnesota Statutes 2014, section 72A.201, subdivision 6, is amended to read:

3.1 Subd. 6. **Standards for automobile insurance claims handling, settlement offers,**
3.2 **and agreements.** In addition to the acts specified in subdivisions 4, 5, 7, 8, and 9, the
3.3 following acts by an insurer, adjuster, or a self-insured or self-insurance administrator
3.4 constitute unfair settlement practices:

3.5 (1) if an automobile insurance policy provides for the adjustment and settlement
3.6 of an automobile total loss on the basis of actual cash value or replacement with like
3.7 kind and quality and the insured is not an automobile dealer, failing to offer one of the
3.8 following methods of settlement:

3.9 (a) comparable and available replacement automobile, with all applicable taxes,
3.10 license fees, at least pro rata for the unexpired term of the replaced automobile's license,
3.11 and other fees incident to the transfer or evidence of ownership of the automobile paid, at
3.12 no cost to the insured other than the deductible amount as provided in the policy;

3.13 (b) a cash settlement based upon the actual cost of purchase of a comparable
3.14 automobile, including all applicable taxes, license fees, at least pro rata for the unexpired
3.15 term of the replaced automobile's license, and other fees incident to transfer of evidence
3.16 of ownership, less the deductible amount as provided in the policy. The costs must be
3.17 determined by:

3.18 (i) the cost of a comparable automobile, adjusted for mileage, condition, and options,
3.19 in the local market area of the insured, if such an automobile is available in that area; or

3.20 (ii) one of two or more quotations obtained from two or more qualified sources
3.21 located within the local market area when a comparable automobile is not available in
3.22 the local market area. The insured shall be provided the information contained in all
3.23 quotations prior to settlement; or

3.24 (iii) any settlement or offer of settlement which deviates from the procedure above
3.25 must be documented and justified in detail. The basis for the settlement or offer of
3.26 settlement must be explained to the insured;

3.27 (2) if an automobile insurance policy provides for the adjustment and settlement
3.28 of an automobile partial loss on the basis of repair or replacement with like kind and
3.29 quality and the insured is not an automobile dealer, failing to offer one of the following
3.30 methods of settlement:

3.31 (a) to assume all costs, including reasonable towing costs, for the satisfactory repair
3.32 of the motor vehicle. Satisfactory repair includes repair of both obvious and hidden
3.33 damage as caused by the claim incident. This assumption of cost may be reduced by
3.34 applicable policy provision; or

4.1 (b) to offer a cash settlement sufficient to pay for satisfactory repair of the vehicle.
4.2 Satisfactory repair includes repair of obvious and hidden damage caused by the claim
4.3 incident, and includes reasonable towing costs;

4.4 (3) regardless of whether the loss was total or partial, in the event that a damaged
4.5 vehicle of an insured cannot be safely driven, failing to exercise the right to inspect
4.6 automobile damage prior to repair within five business days following receipt of
4.7 notification of claim. In other cases the inspection must be made in 15 days;

4.8 (4) regardless of whether the loss was total or partial, requiring unreasonable travel
4.9 of a claimant or insured to inspect a replacement automobile, to obtain a repair estimate,
4.10 to allow an insurer to inspect a repair estimate, to allow an insurer to inspect repairs made
4.11 pursuant to policy requirements, or to have the automobile repaired;

4.12 (5) regardless of whether the loss was total or partial, if loss of use coverage
4.13 exists under the insurance policy, failing to notify an insured at the time of the insurer's
4.14 acknowledgment of claim, or sooner if inquiry is made, of the fact of the coverage,
4.15 including the policy terms and conditions affecting the coverage and the manner in which
4.16 the insured can apply for this coverage;

4.17 (6) regardless of whether the loss was total or partial, failing to include the insured's
4.18 deductible in the insurer's demands under its subrogation rights. Subrogation recovery
4.19 must be shared at least on a proportionate basis with the insured, unless the deductible
4.20 amount has been otherwise recovered by the insured, except that when an insurer is
4.21 recovering directly from an uninsured third party by means of installments, the insured
4.22 must receive the full deductible share as soon as that amount is collected and before any
4.23 part of the total recovery is applied to any other use. No deduction for expenses may be
4.24 made from the deductible recovery unless an attorney is retained to collect the recovery, in
4.25 which case deduction may be made only for a pro rata share of the cost of retaining the
4.26 attorney. An insured is not bound by any settlement of its insurer's subrogation claim with
4.27 respect to the deductible amount, unless the insured receives, as a result of the subrogation
4.28 settlement, the full amount of the deductible. Recovery by the insurer and receipt by the
4.29 insured of less than all of the insured's deductible amount does not affect the insured's
4.30 rights to recover any unreimbursed portion of the deductible from parties liable for the loss;

4.31 (7) requiring as a condition of payment of a claim that repairs to any damaged vehicle
4.32 must be made by a particular contractor or repair shop or that parts, other than window glass,
4.33 must be replaced with parts other than original equipment parts or engaging in any act or
4.34 practice of intimidation, coercion, threat, incentive, or inducement for or against an insured
4.35 to use a particular contractor or repair shop. Consumer benefits included within preferred

5.1 vendor programs must not be considered an incentive or inducement. At the time a claim
5.2 is reported, the insurer must provide the following advisory to the insured or claimant:

5.3 "You have the legal right to choose a repair shop to fix your vehicle. Your policy will
5.4 cover the reasonable costs of repairing your vehicle to its pre-accident condition no matter
5.5 where you have repairs made. Have you selected a repair shop or would you like a referral?"

5.6 After an insured has indicated that the insured has selected a repair shop, the insurer
5.7 must cease all efforts to influence the insured's or claimant's choice of repair shop;

5.8 (8) where liability is reasonably clear, failing to inform the claimant in an automobile
5.9 property damage liability claim that the claimant may have a claim for loss of use of
5.10 the vehicle;

5.11 (9) failing to make a good faith assignment of comparative negligence percentages
5.12 in ascertaining the issue of liability;

5.13 (10) failing to pay any interest required by statute on overdue payment for an
5.14 automobile personal injury protection claim;

5.15 (11) if an automobile insurance policy contains either or both of the time limitation
5.16 provisions as permitted by section 65B.55, subdivisions 1 and 2, failing to notify the insured
5.17 in writing of those limitations at least 60 days prior to the expiration of that time limitation;

5.18 (12) if an insurer chooses to have an insured examined as permitted by section
5.19 65B.56, subdivision 1, failing to notify the insured of all of the insured's rights and
5.20 obligations under that statute, including the right to request, in writing, and to receive
5.21 a copy of the report of the examination;

5.22 (13) failing to provide, to an insured who has submitted a claim for benefits
5.23 described in section 65B.44, a complete copy of the insurer's claim file on the insured,
5.24 excluding internal company memoranda, all materials that relate to any insurance fraud
5.25 investigation, materials that constitute attorney work product or that qualify for the
5.26 attorney-client privilege, and medical reviews that are subject to section 145.64, within ten
5.27 business days of receiving a written request from the insured. The insurer may charge
5.28 the insured a reasonable copying fee. This clause supersedes any inconsistent provisions
5.29 of sections 72A.49 to 72A.505;

5.30 (14) if an automobile policy provides for the adjustment or settlement of an
5.31 automobile loss due to damaged window glass, failing to provide payment to the insured's
5.32 chosen vendor based on a competitive price that is fair and reasonable within the local
5.33 industry at large.

5.34 Where facts establish that a different rate in a specific geographic area actually served
5.35 by the vendor is required by that market, that geographic area must be considered. This
5.36 clause does not prohibit an insurer from recommending a vendor to the insured or from

agreeing with a vendor to perform work at an agreed-upon price, provided, however, that before recommending a vendor, the insurer shall offer its insured the opportunity to choose the vendor. If the insurer recommends a vendor, the insurer must also provide the following advisory:

"Minnesota law gives you the right to go to any glass vendor you choose, and prohibits me from pressuring you to choose a particular vendor.";

(15) requiring that the repair or replacement of motor vehicle glass and related products and services be made in a particular place or shop or by a particular entity, or by otherwise limiting the ability of the insured to select the place, shop, or entity to repair or replace the motor vehicle glass and related products and services;

(16) engaging in any act or practice of intimidation, coercion, threat, incentive, or inducement for or against an insured to use a particular company or location to provide the motor vehicle glass repair or replacement services or products. For purposes of this section, a warranty shall not be considered an inducement or incentive; ~~or~~

(17) failing to inform an insured making a claim under collision or comprehensive coverage, that includes rental vehicle reimbursement coverage, of the insured's right to select any rental vehicle company. If the insurer recommends a rental vehicle company to the insured, the insurer must also provide the following advisory: "Minnesota law gives you the right to choose any rental vehicle company, and prohibits me from requiring you to choose a particular vendor:"; or

(18) failing to consider all of the following criteria, and only the following criteria, when referring a claimant or insured to a repair shop: (i) convenience of location for the claimant or insured; (ii) quality and workmanship of repairs; (iii) repair warranties; (iv) equipment and facility; (v) technician training and certification; (vi) timing of repairs, excluding any delays attributable to the insurer; (vii) customer service, including washing, vacuuming, pick-up, and delivery; and (viii) ethical and professional business practices.

Sec. 3. **[72A.291] CIVIL REMEDIES.**

Subdivision 1. **Violation.** Any insurer, agent, or adjuster that violates any provision of sections 72A.17 to 72A.32 is liable to any person who suffers damage as a result of the violation. The person damaged may bring a civil action against the insurer, agent, or adjuster to recover any damages sustained, or \$1,000, whichever is greater.

Subd. 2. **Willful violation.** In the case of a willful violation of any provision of sections 72A.17 to 72A.32, the insurer, agent, or adjuster shall, in addition to penalties in subdivision 1, be liable for a civil penalty of not less than \$5,000, nor more than \$15,000, for each violation, paid to the plaintiff.