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State of Minnesota

# HOUSE OF REPRESENTATIVES

**EIGHTY-NINTH SESSION**

**H. F. No. 3293**

03/17/2016 Authored by Hoppe and Atkins
The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

A bill for an act

relating to commerce; regulating homeowner's insurance coverages, claims practices, adjuster licensing standards, and certain taxable costs; amending Minnesota Statutes 2014, sections 65A.27, subdivision 1; 72A.201, subdivisions 1, 4; 72B.041, subdivision 4; 72B.045, subdivision 1; 604.18, subdivision 4; proposing coding for new law in Minnesota Statutes, chapter 65A.

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

Section 1. Minnesota Statutes 2014, section 65A.27, subdivision 1, is amended to read:

Subdivision 1. **Scope.** For purposes of sections 65A.27 to ~~65A.302~~ 65A.303, the following terms have the meanings given.

Sec. 2. **[65A.303] STATEMENT OF OPTIONAL COVERAGE AVAILABLE.**

Subdivision 1. **Generally.** (a) An insurer that sells or negotiates homeowner's insurance in the state shall provide an applicant, at the time of application for homeowner's insurance, with a written statement that lists all additional optional coverage available from the insurer to the applicant.

(b) If an application is made by telephone, the insurer is deemed to be in compliance with this section if, within seven calendar days after the date of application, the insurer sends by certificate of mailing the statement to the applicant or insured.

(c) If an application is made using the Internet, the insurer is deemed to be in compliance with this section if the insurer provides the statement to the applicant prior to submission of the application.

Subd. 2. **Contents.** The statement must:

(1) be on a separate form;

(2) be titled, in at least 12-point type, "Additional Optional Coverage Not Included in the Standard Homeowner's Insurance Policy";

(3) contain the following disclosure in at least ten-point type:

"Your standard homeowner's insurance policy does not cover all risks. You may need to obtain additional insurance to cover loss or damage to your home, property, and the contents of your home or to cover risks related to business or personal activities on your property.

This statement provides a list of the types of additional insurance coverage that are available. Contact your insurance company, insurance producer, or insurance agent to discuss these additional coverages."; and

(4) contain a list of additional optional coverage.

Subd. 3. **Effect of notice.** A statement provided under this section does not create a private right of action.

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

Subdivision 1. **Administrative enforcement.** The commissioner may, in accordance with chapter 14, adopt rules to ensure the prompt, fair, and honest processing of claims and complaints. The commissioner may, in accordance with sections 72A.22 to 72A.25, seek and impose appropriate administrative remedies, including fines, for (1) a violation of this section or the rules adopted pursuant to this section; or (2) a violation of section 72A.20, subdivision 12. The commissioner need not show a general business practice in taking an administrative action for these violations.

~~No individual violation constitutes an unfair, discriminatory, or unlawful practice in business, commerce, or trade for purposes of section 8.31.~~

Sec. 4. Minnesota Statutes 2014, section 72A.201, subdivision 4, is amended to read:

Subd. 4. **Standards for claim filing and handling.** The following acts by an insurer, an adjuster, a self-insured, or a self-insurance administrator constitute unfair settlement practices:

(1) except for claims made under a health insurance policy, after receiving notification of claim from an insured or a claimant, failing to acknowledge receipt of the notification of the claim within ten business days, and failing to promptly provide all necessary claim forms and instructions to process the claim, unless the claim is settled within ten business days. The acknowledgment must include the telephone number of the company representative who can assist the insured or the claimant in providing information and assistance that is reasonable so that the insured or claimant can comply with the policy

conditions and the insurer's reasonable requirements. If an acknowledgment is made by means other than writing, an appropriate notation of the acknowledgment must be made in the claim file of the insurer and dated. An appropriate notation must include at least the following information where the acknowledgment is by telephone or oral contact:

(i) the telephone number called, if any;

(ii) the name of the person making the telephone call or oral contact;

(iii) the name of the person who actually received the telephone call or oral contact;

(iv) the time of the telephone call or oral contact; and

(v) the date of the telephone call or oral contact;

(2) failing to reply, within ten business days of receipt, to all other communications about a claim from an insured or a claimant that reasonably indicate a response is requested or needed;

(3)(i) unless provided otherwise by clause (ii) or (iii), other law, or in the policy, failing to complete its investigation and inform the insured or claimant of acceptance or denial of a claim within 30 business days after receipt of notification of claim unless the investigation cannot be reasonably completed within that time. In the event that the investigation cannot reasonably be completed within that time, the insurer shall notify the insured or claimant within the time period of the reasons why the investigation is not complete and the expected date the investigation will be complete. For claims made under a health policy the notification of claim must be in writing;

(ii) for claims submitted under a health policy, the insurer must comply with all of the requirements of section 62Q.75;

(iii) for claims submitted under a health policy that are accepted, the insurer must notify the insured or claimant no less than semiannually of the disposition of claims of the insured or claimant. Notwithstanding the requirements of section 72A.20, subdivision 37, this notification requirement is satisfied if the information related to the acceptance of the claim is made accessible to the insured or claimant on a secured Web site maintained by the insurer. For purposes of this clause, acceptance of a claim means that there is no additional financial liability for the insured or claimant, either because there is a flat co-payment amount specified in the health plan or because there is no co-payment, deductible, or coinsurance owed;

(4) where evidence of suspected fraud is present, the requirement to disclose their reasons for failure to complete the investigation within the time period set forth in clause (3) need not be specific. The insurer must make this evidence available to the Department of Commerce if requested;

(5) failing to notify an insured who has made a notification of claim of all available benefits or coverages which the insured may be eligible to receive under the terms of a policy and of the documentation which the insured must supply in order to ascertain eligibility;

(6) unless otherwise provided by law or in the policy, requiring an insured to give written notice of loss or proof of loss within a specified time, and thereafter seeking to relieve the insurer of its obligations if the time limit is not complied with, unless the failure to comply with the time limit prejudices the insurer's rights and then only if the insurer gave prior notice to the insured of the potential prejudice;

(7) advising an insured or a claimant not to obtain the services of an attorney or an adjuster, or representing that payment will be delayed if an attorney or an adjuster is retained by the insured or the claimant;

(8) failing to advise in writing an insured or claimant who has filed a notification of claim known to be unresolved, and who has not retained an attorney, of the expiration of a statute of limitations at least 60 days prior to that expiration. For the purposes of this clause, any claim on which the insurer has received no communication from the insured or claimant for a period of two years preceding the expiration of the applicable statute of limitations shall not be considered to be known to be unresolved and notice need not be sent pursuant to this clause;

(9) demanding information which would not affect the settlement of the claim;

(10) unless expressly permitted by law or the policy, refusing to settle a claim of an insured on the basis that the responsibility should be assumed by others;

(11) failing, within 60 business days after receipt of a properly executed proof of loss, to advise the insured of the acceptance or denial of the claim by the insurer. No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to the provision, condition, or exclusion is included in the denial. The denial must be given to the insured in writing with a copy filed in the claim file;

(12) denying or reducing a claim on the basis of an application which was altered or falsified by the agent or insurer without the knowledge of the insured;

(13) failing to notify the insured of the existence of the additional living expense coverage when an insured under a homeowners policy sustains a loss by reason of a covered occurrence and the damage to the dwelling is such that it is not habitable;

(14) failing to inform an insured or a claimant that the insurer will pay for an estimate of repair if the insurer requested the estimate and the insured or claimant had previously submitted two estimates of repair~~.~~; or

(15) refusing to discuss a claim with the contractor with whom the claimant has contracted to provide goods and services in connection with the loss.

Sec. 5. Minnesota Statutes 2014, section 72B.041, subdivision 4, is amended to read:

Subd. 4. **Examinations.** (a) An individual applying for an independent or public adjuster license under this chapter must pass a written examination unless exempt pursuant to subdivision 5. The examination must test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an independent or public adjuster, and the insurance laws and regulations of this state. Examinations required by this subdivision must be developed and conducted under rules and regulations prescribed by the commissioner and, at a minimum, must include the substantive areas included in residential contractor examination designed pursuant to section 326B.83, subdivision 3.

(b) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations.

(c) An individual who fails to appear for the examination as scheduled or fails to pass the examination must reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

(d) The commissioner may by rule determine the period of time between failure of an examination and reexamination.

(e) A person shall not be eligible to take an examination if that person's license as an independent adjuster or public adjuster has been revoked in this or any other state within the three years next preceding the date of the application.

(f) No examination shall be required for the timely renewal of a license, unless the license has been revoked.

Sec. 6. Minnesota Statutes 2014, section 72B.045, subdivision 1, is amended to read:

Subdivision 1. **Requirement.** An individual who holds an independent or public adjuster license and who is not exempt under this section must satisfactorily complete a minimum of ~~24~~ 38 hours of continuing education courses, of which three hours must be in ethics and 14 hours must satisfy the requirements of section 326B.821, subdivision 21, reported to the commissioner on a biennial basis in conjunction with the individual's license renewal cycle.

Sec. 7. Minnesota Statutes 2014, section 604.18, subdivision 4, is amended to read:

Subd. 4. **Claim for taxable costs.** (a) Upon commencement of a civil action by an insured against an insurer, the complaint must not seek a recovery under this section. After filing the suit, a party may make a motion to amend the pleadings to claim recovery of taxable costs under this section. The motion must allege the applicable legal basis under this section for awarding taxable costs under this section, and must be accompanied by one or more affidavits showing the factual basis for the motion. The motion may be opposed by the submission of one or more affidavits showing there is no factual basis for the motion. At the hearing, if the court finds prima facie evidence in support of the motion, the court may grant the moving party permission to amend the pleadings to claim taxable costs under this section.

(b) An award of taxable costs under this section shall be determined by the court in a proceeding subsequent to any determination by a fact finder of the amount an insured is entitled to under the insurance policy, and shall be governed by the procedures set forth in Minnesota General Rules of Practice, Rule 119.

(c) An award of taxable costs under this section is not available in any claim that is resolved or confirmed by arbitration or appraisal.

~~(d) The following are not admissible in any proceeding that seeks taxable costs under this section:~~

~~(1) findings or determinations made in arbitration proceedings conducted under section 65B.525 or rules adopted under that section;~~

~~(2) allegations involving, or results of, investigations, examinations, or administrative proceedings conducted by the Department of Commerce;~~

~~(3) administrative bulletins or other informal guidance published or disseminated by the Department of Commerce; and~~

~~(4) provisions under chapters 59A to 79A and rules adopted under those sections are not admissible as standards of conduct.~~

~~(e) A claim for taxable costs under this section may not be assigned. This paragraph does not affect the assignment of rights not established in this section.~~