HOUSE RESEARCH
Bill Summary

FILE NUMBER: S.F. 2822 (companion to H.F. 3115) **DATE:** April 4, 2008

Version: First unofficial engrossment

Authors: Atkins and others

Subject: Good faith in handling insurance claims

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Overview

This bill creates a legal duty of good faith that an insurance company owes to its own insured in responding to a claim made by the insured under certain types of insurance policies. Permits the insured to sue the insurance company for breaching that duty of good faith. Permits the insured to recover actual damages, a penalty, and reasonable attorney fees.

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1 Insurance standard of conduct.

Subd. 1. Definitions.

(a) Says that the definitions in this subdivision apply to this section.

(b) Defines "insurance policy" to include certain first-party insurance policies or contracts, not including workers' compensation, health, nonprofit dental coverage, life insurance, annuities, and fidelity insurance or fidelity bonds.

(c) Defines "insured" as a person asserting a right to payment under an insurance policy insuring that person. States the effect of an assignment of a claim on a person's status as an insured.

(d) Defines "insurer" to mean any insurance company authorized to do business in

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this state, including surplus lines insurers. Exempts self-insured pools of political subdivisions, township and farm mutuals, and the joint underwriting association.

Subd. 2. Liability. (a) Says the court may award "taxable costs" described in subd. 3 to an insured if the insured can show:

(1) that the insurer did not have a rational basis for denying benefits under the insurance policy; and

(2) that the insurer knew that it lacked a rational basis for denying the claim or acted in reckless disregard of its lack of a rational basis.

(b) Says that, in addition to taxable costs under this section (subdivision 3), the insured is entitled to recover from the insurer, the actual damages the insured suffered. This amount would be determined by the "finder of fact" (jury in a jury trial, and a judge in a trial without a jury) and would be reduced by amounts the insured receives from "collateral sources," such as auto insurance or workers compensation, whose obligation to pay for the underlying loss is primary as compared to the insurance policy.

(c) Says that a violation of this section is not a basis for a claim under antitrust or consumer fraud laws.

(d) Says that a disagreement as to the amount owed to an insured is not a violation of this section if there is an ongoing arson or fraud investigation.

Subd. 3. Remedies. (a) Provides that a court may award an insured a penalty (which the bill calls "taxable costs") against an insurer that violates this section. Says that the penalty is in the court's discretion. The penalty may consist of:

(1) one-half of the difference between what the court awarded as damages and any amount the insurer offered to settle the case ten days before jury selection began, not to exceed $100,000; and

(2) reasonable attorney fees the insured incurred to prove the insurer violated this section, not to exceed the penalty awarded under clause (1) or $40,000, whichever is less.

(b) Says that the insured cannot also recover punitive or exemplary damages or attorney fees under section 8.31 ("private attorney general" provision in subd. 3a of section 8.31), for a violation of this section.

Subd. 4. Claim for taxable costs. This subdivision specifies the procedure for an insured to claim taxable costs under subdivision 3.

(a) Prohibits an insured from asserting a claim for costs in the complaint used to start

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the lawsuit. Requires instead that the insured request the court's permission to amend the insured's complaint to add a claim for taxable costs. Says that the insured and insurer may each submit affidavits to the court on that issue. Provides that the court may grant the request to amend the complaint if the court finds that there is evidence that seems to support ("prima facie evidence") the insured's claim that the insurer violated subdivision 2, paragraph (a).

(b) Requires that the judge (not the jury) determine the amount of taxable costs after the rest of the case has been decided (a "proceeding subsequent"), under an existing court rule that governs that type of proceeding.

(c) Says that taxable costs are not available if the parties submit the dispute to binding arbitration or appraisal.

(d) Lists four types of items that are not admissible as evidence in a proceeding to determine taxable costs.

Subd. 5. Insurance producers; liability limited. Excludes insurance agents (now referred to in law as "insurance producers") from liability under this section, unless the agent caused or contributed to the insurer's violation of the good faith requirement.

Subd. 6. Expiration. Provides that this section expires if it at any time it causes insurance premiums to increase by more than 20 percent. Specifies the method for determining the amount of the increase if any.

2 **Effective date.** Makes section 1 effective August 1, 2008 , and apply to lawsuits based on conduct occurring on or after that date.