

1.1 A bill for an act
1.2 relating to insurance; providing for penalties and attorney fees for certain
1.3 insurance claims practices; proposing coding for new law in Minnesota Statutes,
1.4 chapter 604.

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

1.6 Section 1. **[604.18] INSURANCE STANDARD OF CONDUCT.**

1.7 Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in this
1.8 subdivision have the meanings given them.

1.9 (b) "Insurance policy" means a written agreement between an insured and an insurer,
1.10 which obligates an insurer to pay proceeds directly to the insured. Insurance policy does
1.11 not include provisions of a liability insurance policy obligating an insurer to defend the
1.12 insured, reimburse an insured's defense expenses, provide for any other type of defense
1.13 obligation, or provide indemnification for judgments or settlements. Insurance policy also
1.14 does not include coverage for workers' compensation insurance under chapter 176; a
1.15 written agreement of a health carrier, as defined in section 62A.011; a contract issued by a
1.16 nonprofit health service plan corporation regulated under chapter 62C that provides only
1.17 dental coverage; or a written agreement authorized under section 60A.06, subdivision 1,
1.18 clauses (4) and (6).

1.19 (c) "Insured" means a person asserting a right to payment under an insurance policy
1.20 insuring that person, that arises out of the occurrence of a contingency or loss covered
1.21 by the policy. A person does not become an insured for purposes of this section if the
1.22 insurance policy in question contained an anti-assignment clause and the person was
1.23 assigned rights from another insured.

2.1 (d) "Insurer" means every insurer, corporation, business trust, or association engaged
2.2 in insurance as a principal licensed or authorized to transact insurance under section
2.3 60A.06, 60A.206, or 60A.209, but for purposes of this section an insurer does not include
2.4 a political subdivision providing self-insurance or a pool of political subdivisions under
2.5 section 471.981, subdivision 3, or a township mutual fire insurance company or farm
2.6 mutual fire insurance company operating under chapter 67A. The term does not include
2.7 the Joint Underwriting Association operating under chapter 62F or 62I.

2.8 Subd. 2. **Liability.** (a) The court may award as taxable costs to an insured amounts
2.9 as provided in subdivision 3 if the insured can show:

2.10 (1) the absence by an insurer of a reasonable basis for denying the benefits of the
2.11 insurance policy; and

2.12 (2) that the insurer knew of the lack of a reasonable basis for denying the benefits of
2.13 the insurance policy or acted in reckless disregard of the lack of a reasonable basis for
2.14 denying the benefits of the insurance policy.

2.15 (b) In addition to taxable costs under this section, an insured is entitled from the
2.16 insurer to the amount of actual damages incurred by the insured as determined by a fact
2.17 finder, after appropriate reductions made by a judge under section 65B.51, subdivision 1,
2.18 or section 548.36.

2.19 (c) A violation of this section shall not be the basis for any claim or award under
2.20 chapter 325D or 325F.

2.21 (d) A disagreement between an insurer and an insured as to the value or amount of
2.22 proceeds owed to an insured when there is an ongoing arson investigation or an ongoing
2.23 fraud investigation does not justify an award of taxable costs under this section.

2.24 Subd. 3. **Remedies.** (a) In addition to pre- and post-judgment interest and costs
2.25 and disbursements allowed under section 549.09 and the net award of actual damages
2.26 described in subdivision 2, paragraph (b), an insured may be awarded, as taxable costs
2.27 under this section for an insurer's violation of subdivision 2, a penalty in the discretion
2.28 of the court as follows:

2.29 (1) an amount equal to one-half of the proceeds awarded, which are in excess of
2.30 an amount offered by the insurer prior to ten days before jury selection begins, but in
2.31 no case to exceed \$100,000; and

2.32 (2) reasonable attorney fees actually incurred to establish the insurer's violation
2.33 of this section. Attorney fees shall only be awarded if the fees sought are separately
2.34 accounted for by the insured's attorney, are not duplicative of the fees the insured's
2.35 attorney otherwise expended in pursuit of proceeds to an insured under the insurance

3.1 policy, and shall not exceed an amount equal to the penalty in clause (1), and in no case
3.2 may an award of attorney fees exceed \$40,000.

3.3 (b) An insured may not also recover punitive or exemplary damages, nor attorney
3.4 fees under section 8.31, for a violation of this section.

3.5 Subd. 4. **Claim for taxable costs.** (a) Upon commencement of a civil action by
3.6 an insured against an insurer, the complaint must not seek a recovery under this section.
3.7 Instead, after filing the action, a party may make a motion to amend the pleadings to
3.8 claim recovery under this section. The motion must allege the applicable legal basis
3.9 under this section and must be accompanied by one or more affidavits showing the
3.10 factual basis for the motion. The motion may be opposed by the submission of one or
3.11 more affidavits. At the hearing, if the court finds prima facie evidence in support of the
3.12 motion, the court may grant the moving party permission to amend its pleadings to assert a
3.13 claim under this section.

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

3.18 (c) An award of taxable costs under this section is not available in any claim that is
3.19 submitted by the insurer and insured to binding arbitration or appraisal.

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

3.22 (1) findings or determinations made in arbitration proceedings conducted under
3.23 section 65B.525 or any administrative rules promulgated thereunder;

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

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

3.28 (4) provisions under chapters 59A to 79A and all rules promulgated thereunder
3.29 are not admissible as standards of conduct.

3.30 Subd. 5. **Insurance producers; liability limited.** A licensed insurance producer
3.31 is not liable under this section for errors, acts, or omissions attributed to the insurer that
3.32 appointed the producer to transact business on its behalf, except to the extent the producer
3.33 has caused or contributed to the error, act, or omission.

3.34 Subd. 6. **Expiration.** This section expires upon a determination by the
3.35 commissioner of commerce that: (1) average insurance premiums for lines of insurance
3.36 affected by this act have increased by more than 20 percentage points above the percentage

4.1 increase in the Consumer Price Index for all urban consumers in any 12-month period;
4.2 and (2) at least 20 percentage points of the increase is attributable to this section. The
4.3 commissioner of commerce shall make a determination on whether this criterion has been
4.4 met at least once each year. The expiration applies to all causes of action as to which a
4.5 court judgment has not been entered as of the date of the determination.

4.6 Sec. 2. **EFFECTIVE DATE.**

4.7 Section 1 is effective August 1, 2008, and applies to causes of action for conduct
4.8 which occurs on or after that date.