

FIRST REGULAR SESSION

HOUSE BILL NO. 719

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GOSEN.

1747H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 375, RSMo, by adding thereto two new sections relating to actions against insurers.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 375, RSMo, is amended by adding thereto two new sections, to be known as sections 375.416 and 375.418, to read as follows:

375.416. 1. In any action against an insurer based on any tort or breach of contract, demand for payment of a claim or an offer of settlement of a claim shall not be introduced as evidence to support such action unless that demand or offer shall:

(1) Be conspicuously in writing, identify each insured against whom the claim is made, identify such insured's claim number, if known, and be sent to the insurer by certified mail return receipt requested;

(2) Be accompanied by an affidavit of the claimant describing the nature of the claim, the nature of any injuries claimed, any previous injury to that part of the body or body system including the approximate date of such previous injury, and a general computation of any category of damages sought by the claimant with supporting documentation if any is reasonably available;

(3) For wrongful death, personal injury, and bodily injury claims, be accompanied by a list of names and addresses of medical providers who have provided treatment to the claimant or decedent for such injuries including all medical providers providing treatment for a previous injury as described in subdivision (2) of this subsection, copies of all reasonably available medical bills, a list of employers if the claimant is seeking damages

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 for loss of wages or earnings, and written authorizations sufficient to allow the liability
18 insurer to obtain records from all employers and medical care providers;

19 (4) Offer to provide a complete release of the insurer's insureds against whom the
20 demand or offer is made for a payment of a sum certain that is at or below the available
21 policy limits;

22 (5) Indicate that the resulting settlement proceeds shall be subject to any liens,
23 subrogation claims, or rights to reimbursement. By so acknowledging, the claimant does
24 not waive any right to contest or set aside any such liens, claims, or rights;

25 (6) Reference this section and be left open for ninety days from the date the
26 certified mail receipt is signed by an authorized representative of the insurer.

27 2. The recipient of a demand or offer to settle made under the provisions of this
28 section may accept the same by providing written acceptance of the material terms outlined
29 in this section in their entirety.

30 3. Nothing in this section is intended to prohibit parties from reaching a settlement
31 agreement in a manner and under terms otherwise agreeable to the parties.

32 4. Upon request of an offer to settle as provided in this section, the recipients shall
33 have the right to seek clarification regarding terms, liens, subrogation claims, rights to
34 reimbursement, standing to release claims, medical bills, medical records, and other
35 relevant facts. An attempt to seek reasonable clarification shall not be deemed a counter
36 offer.

37 5. The demand or offer shall not specify the means of payment. The person or
38 entity providing payment to satisfy the demand or offer may elect to provide payment by
39 any one or more of the following means:

40 (1) Cash;

41 (2) Money order;

42 (3) Wire transfer;

43 (4) A cashier's check issued by a bank or other financial institution;

44 (5) A draft or bank check issued by an insurance company; or

45 (6) Electronic funds transfer or other method of electronic payment.

46 6. If the claimant is a minor, incompetent, or deceased, the affidavit required in
47 subdivision (2) of subsection 1 of this section may be signed by any person who reasonably
48 appears to be qualified to act as next friend, conservator, or personal representative. If the
49 claim is one for wrongful death, such affidavit may be signed by any person qualified
50 under section 537.080 to make claim for the death.

375.418. If an insurer breaches its duty to defend, in the absence of a final
2 adjudication of bad faith, the insurer shall be liable for any judgment against the insured

3 or any reasonable settlement made by the insured, but only up to the applicable limits of
4 liability of the insurance contract. The insurer shall be liable for reasonable attorney fees
5 and statutory court costs incurred by the insured in conducting the defense of the suit. In
6 applying this section, it is the intent of the general assembly to reject and abrogate any
7 previous case law which holds or otherwise suggests or otherwise holds that a breach of the
8 duty to defend, without a final adjudication of bad faith, allows for an award of damages
9 in excess of the applicable limits of liability stated in the insurance contract including, but
10 not limited to, the holding contained in *Columbia Cas. Co. v. HIAR Holding, LLC*, 411
11 S.W.3d 258 (Mo. Banc 2013). This section shall apply to all causes of actions, suits, and
12 claims unless there has been a final judgment entered against the insurer before the
13 effective date of this section holding that the insurer breached its duty to defend the
14 insured.

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