HB 719 -- ACTIONS AGAINST INSURERS

SPONSOR: Gosen

In any action against an insurer based on any tort or breach of contract, this bill prohibits a demand for payment or an offer of settlement of a claim in any action to be introduced as evidence to support the action unless the demand or offer is in writing and contains:

(1) Specified information regarding each insured; the nature of the claim and any injuries; the names and addresses of medical providers who have provided treatment and their bills; a list of employers if the claimant is seeking damages for loss of wages; and authorization to allow the liability insurer to obtain records from all employers and medical providers;

(2) An offer to completely release the insureds for a payment of a sum certain that is at or below the available policy limits;

(3) An indication that the settlement proceeds must be subject to any liens, subrogation claims, or rights to reimbursement; however, this does not waive any right of the claimant to contest or set aside any lien, claim, or right; and

(4) A reference to these provisions that it will be left open for 90 days from the date the certified mail receipt is signed by the insurer.

The recipient of a demand or offer to settle may accept it by providing written acceptance of the material terms outlined in these provisions. The recipient must have the right to seek clarification of any provision or relevant fact in it and an attempt to seek reasonable clarification must not be deemed a counter offer.

The affidavit must be signed by an authorized person if the claimant is a minor, incompetent, or deceased.

Any insurer breaching its duty to defend in the absence of a final adjudication of bad faith must be liable for any judgment against the insured or any reasonable settlement made by the insured up to the applicable limits of liability of the insurance contract. The insurer must be liable for reasonable attorney fees and statutory court costs incurred by the insured in conducting the defense of the suit.

The bill specifies that it is the intent of the General Assembly to reject and abrogate any previous case law which holds or otherwise

suggests or otherwise holds that a breach of the duty to defend, without a final adjudication of bad faith, allows for an award of damages in excess of the applicable limits of liability stated in the insurance contract including, but not limited to, the holding contained in Columbia Cas. Co. v. HIAR Holding, LLC, 411 S.W.3d 258 (Mo. Banc 2013). These provisions must apply to all causes of actions, suits, and claims unless there has been a final judgment entered against the insurer before the effective date of these provisions holding that the insurer breached its duty to defend the insured.