

REFERENCE TITLE: department of insurance; omnibus

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SB 1242

Introduced by
Senator Gorman

AN ACT

AMENDING SECTIONS 20-157.01, 20-223, 20-295, 20-311.03, 20-321.02, 20-331, 20-331.01, 20-340.06, 20-466 AND 20-1243.02, ARIZONA REVISED STATUTES; REPEALING SECTION 20-269, ARIZONA REVISED STATUTES; RELATING TO INSURANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-157.01, Arizona Revised Statutes, is amended to
3 read:

4 20-157.01. Insurer claim files; access by director; definition

5 A. Pursuant to the director's authority under sections 20-156, 20-157,
6 ~~and~~ 20-160 **AND 20-466**, an insurer shall comply with a request to produce any
7 documents, reports or other materials, whether maintained in written or
8 electronic format, from an insurer's claim file.

9 B. Any documents, reports or other materials that are provided to the
10 director pursuant to this section are confidential and are not subject to
11 disclosure, including discovery or subpoena, unless the subpoena is issued by
12 the attorney general or a county attorney or by a court at the request of the
13 attorney general, **A** county attorney or any other law enforcement agency. The
14 director may only disclose the information to a state or federal agency or
15 officer pursuant to a lawful request, subpoena or formal discovery procedure.
16 If the requesting party cannot warrant confidentiality pursuant to section
17 20-158, subsection F, the information that is provided pursuant to discovery,
18 subpoena or lawful request as provided for in this subsection remains
19 confidential. The director shall make reasonable efforts to notify an
20 insurer of any request for a subpoena for documents, reports or other
21 materials in an insurer claim file or record that are produced by the insurer
22 pursuant to this section so that the insurer may assert, in a court of
23 competent jurisdiction, any applicable privileges.

24 C. The director may use the documents, reports or other materials in
25 the furtherance of any regulatory action brought by the director or in
26 actions brought against the director.

27 D. For the purposes of this section, "insurer claim file" includes
28 medical records, repair estimates, adjuster notes, insurance policy
29 provisions, recordings or transcripts of witness interviews and any other
30 records regarding coverage, settlement, payment or denial of a claim asserted
31 under an insurance policy.

32 Sec. 2. Section 20-223, Arizona Revised Statutes, is amended to read:

33 20-223. Annual statement; payment of fees; penalty for failure
34 to file or pay

35 A. Each authorized domestic insurer shall annually on or before March
36 31 and each other authorized insurer shall annually on or before March 1 file
37 with the director, **OR A REPOSITORY DESIGNATED BY THE DIRECTOR**, a true
38 statement of its financial condition, transactions and affairs as of the
39 December 31 preceding. The statement shall be completed pursuant to the
40 instructions and accounting practices and procedures that are approved by the
41 national association of insurance commissioners. The statement shall be in
42 such general form and context as approved by the national association of
43 insurance commissioners for the kinds of insurance to be reported upon, and
44 as supplemented for additional information required by the director. The
45 director shall adopt rules providing requirements for the filing of annual

1 audited financial statements. Coincident with the filing of its annual
2 statement, each such insurer shall pay such fees prescribed by section 20-167
3 for filing the annual statement and renewal of its certificate of authority.

4 B. The statement of an alien insurer shall relate only to its
5 transactions and affairs in the United States unless the director requires
6 otherwise. The statement shall be verified by the insurer's United States
7 manager or other officer duly authorized.

8 C. The director may refuse to renew, or may suspend or revoke, the
9 certificate of authority of any insurer failing to file its annual statement
10 or pay its fees when due or within any extension of time therefor which the
11 director, for good cause, may have granted.

12 D. Any insurer failing to file an annual statement or to pay its fees
13 pursuant to ~~the provisions of~~ this section is subject to payment of a penalty
14 fee not to exceed twenty-five dollars for each day of delinquency.

15 Sec. 3. Repeal

16 Section 20-269, Arizona Revised Statutes, is repealed.

17 Sec. 4. Section 20-295, Arizona Revised Statutes, is amended to read:
18 20-295. License denial, suspension or revocation; civil penalty

19 A. The director may deny, suspend for not more than twelve months,
20 revoke or refuse to renew an insurance producer's license or may impose a
21 civil penalty in accordance with subsection F of this section or any
22 combination of actions for any one or more of the following causes:

23 1. Providing incorrect, misleading, incomplete or materially untrue
24 information in the license application.

25 2. Violating any provision of this title or any rule, subpoena or
26 order of the director.

27 3. Obtaining or attempting to obtain a license through
28 misrepresentation or fraud.

29 4. Improperly withholding, misappropriating or converting any monies
30 or properties received in the course of doing insurance business.

31 5. Intentionally misrepresenting the terms of an actual or proposed
32 insurance contract or application for insurance.

33 6. Having been convicted of a felony.

34 7. Having admitted or been found to have committed any insurance
35 unfair trade practice or fraud.

36 8. Using fraudulent, coercive or dishonest practices, or demonstrating
37 incompetence, untrustworthiness or financial irresponsibility in the conduct
38 of business in this state or elsewhere.

39 9. Having an insurance producer license, or its equivalent, denied,
40 suspended or revoked in any ~~other~~ state, province, district or territory.

41 10. Forging another's name to any document related to an insurance
42 transaction.

43 11. Aiding or assisting any person in the unauthorized transaction of
44 insurance business.

45 12. Violating section 41-624, subsection B or C.

1 13. Violating section 6-1410, 6-1412 or 6-1413.
2 B. The director may deny, suspend for not more than twelve months,
3 revoke or refuse to renew the license of a business entity:
4 1. For any of the causes prescribed in subsection A of this section if
5 the cause relates to the designated producer or any member, officer, director
6 or manager of the business entity.
7 2. If the director finds that an individual insurance producer's
8 violation was known or should have been known by the designated producer or
9 one or more of the members, officers, directors or managers acting on behalf
10 of the business entity and the violation was not seasonably reported to the
11 director and no reasonable corrective action was taken.
12 C. If the director denies an application for a license, the director
13 shall notify the applicant in accordance with title 41, chapter 6, article
14 10.
15 D. The director may revoke, suspend or refuse to renew a license after
16 notice and an opportunity for a hearing in accordance with title 41, chapter
17 6, article 10.
18 E. Any hearing required by this section shall be conducted as
19 prescribed in chapter 1, article 2 of this title and title 41, chapter 6,
20 article 10.
21 F. In addition to or instead of any suspension, revocation or refusal
22 to renew a license pursuant to this section, after a hearing the director
23 may:
24 1. Impose a civil penalty of not more than two hundred fifty dollars
25 for each unintentional failure or violation, up to an aggregate civil penalty
26 of two thousand five hundred dollars.
27 2. Impose a civil penalty of not more than two thousand five hundred
28 dollars for each intentional failure or violation, up to an aggregate civil
29 penalty of fifteen thousand dollars.
30 3. Order the licensee to provide restitution to any party injured by
31 the licensee's action.
32 G. The licensee shall pay any civil penalty to the director who shall
33 deposit it, pursuant to sections 35-146 and 35-147, in the state general
34 fund. The civil penalty is in addition to any other applicable penalty or
35 restraint either in this article or in any other law and may be recovered in
36 a civil action brought by the director. For the purposes of subsection F of
37 this section, a single publication, exhibition or utterance of any matter in
38 violation of this title is deemed one violation or failure, including an
39 edition of a newspaper, book or magazine, a single representation to an
40 audience, a single broadcast over radio or television or a single exhibition
41 of a motion picture.
42 H. The director shall retain the authority to enforce this title and
43 impose any penalty or remedy authorized by this title against any person who
44 is under investigation for or charged with a violation of this title even if
45 the person's license has been surrendered or has lapsed by operation of law.

1 Sec. 5. Section 20-311.03, Arizona Revised Statutes, is amended to
2 read:

3 20-311.03. Application of other laws

4 To the extent not inconsistent with this article, ~~sections~~ SECTION
5 20-281, ~~and~~ SECTION 20-286, SUBSECTIONS B, C AND D, SECTIONS 20-289 AND
6 20-289.01, section 20-290, subsection A and sections 20-291, 20-292, 20-295,
7 20-296, 20-297, 20-298, 20-299, 20-301 and 20-302 apply to managing general
8 agents.

9 Sec. 6. Section 20-321.02, Arizona Revised Statutes, is amended to
10 read:

11 20-321.02. Application of other laws

12 To the extent not inconsistent with this article, ~~sections~~ SECTION
13 20-281, SECTION 20-286, SUBSECTIONS B, C AND D AND SECTIONS 20-289,
14 20-289.01, 20-291, 20-292, 20-295, 20-296, 20-297, 20-299, 20-301 and 20-302
15 apply to adjusters.

16 Sec. 7. Section 20-331, Arizona Revised Statutes, is amended to read:

17 20-331. Rental car agents; definitions

18 A. The director may issue to a rental company that has complied with
19 the requirements of this section a license that authorizes the rental company
20 as a rental car agent to offer or sell insurance in connection with and
21 incidental to rental agreements. Notwithstanding section 20-290, subsection
22 B, a rental car agent is not required to have an individual licensee in each
23 office or other rental site or place where insurance is transacted.

24 B. An applicant for a rental car agent license shall file with the
25 director a written application that is in a form prescribed by the director
26 and that is signed by an officer of the applicant. The application shall
27 specify all locations at which the licensee may conduct business under the
28 license. The licensee shall provide the director at least thirty days' prior
29 notice before conducting business under the license at any additional
30 location.

31 C. A rental car agent may offer or sell insurance at the rental
32 company office or other rental site or process a preselection of coverage in
33 a master, corporate, group or individual rental agreement for any of the
34 following kinds or types of insurance, separately or in combination:

35 1. Accident and health or sickness insurance that provides coverage,
36 as applicable, to renters and other rental vehicle occupants for accidental
37 death or dismemberment and reimbursement for medical expenses that result
38 from an accident that occurs during the rental period.

39 2. Liability insurance that provides coverage, as applicable, to
40 renters and other authorized drivers of rental vehicles for liability that
41 arises from the operation of the rental vehicles, including uninsured and
42 underinsured motorist coverage separately or in combination with other
43 liability insurance.

1 3. Personal property insurance that provides coverage, as applicable,
2 to renters and other vehicle occupants for the loss of or damage to personal
3 effects that occurs during the rental period.

4 4. Vehicle breakdown coverage.

5 5. Physical damage insurance that provides coverage to renters and
6 other authorized drivers of rental vehicles for property damage liability
7 that arises from the operation of the vehicle.

8 D. A rental car agent is not subject to the continuing education
9 requirements of chapter 18 of this title.

10 E. A rental car agent shall not offer or sell insurance pursuant to
11 this section unless:

12 1. The rental period of the rental agreement is ninety consecutive
13 days or less.

14 2. The rental car agent provides brochures or other written materials
15 to the prospective renter that:

16 (a) Summarize the material terms and conditions of coverage offered to
17 renters, including the identity of the insurer.

18 (b) Describe the process for filing a claim.

19 3. The rental car agent makes the following disclosures to the renter
20 and the renter acknowledges the disclosures in writing:

21 (a) That the insurance policies offered by the rental car agent may
22 provide a duplication of coverage already provided by a renter's personal
23 automobile insurance policy or by another source of coverage.

24 (b) That the purchase by the renter of the kinds of insurance
25 prescribed in this section is not required in order to rent a vehicle.

26 4. Evidence of coverage is stated on the face of the rental agreement.

27 5. Costs for the insurance are separately itemized in the rental
28 agreement.

29 6. The insurance is provided under a group or master policy issued to
30 the rental company by an insurer authorized to transact the applicable kinds
31 or types of insurance in this state or by a surplus lines insurer in
32 accordance with article 5 of this chapter.

33 F. Any salaried employee of a rental car agent may act on behalf and
34 under the supervision of the rental car agent in matters relating to the
35 conduct of business under the license issued pursuant to this section. The
36 conduct of an employee or agent of a rental car agent acting within the scope
37 of employment or agency is deemed the conduct of the rental car agent for
38 purposes of this article.

39 G. Each rental car agent licensed pursuant to this section shall
40 conduct a training program that provides employees and agents of the rental
41 company with basic instruction about the provisions of this section,
42 including the kinds of coverage prescribed in this section.

43 H. A rental car agent shall not:

44 1. Offer or sell insurance except in conjunction with and incidental
45 to rental agreements.

1 Sec. 9. Section 20-340.06, Arizona Revised Statutes, is amended to
2 read:

3 20-340.06. Application of other laws

4 To the extent not inconsistent with this article, sections 20-281,
5 20-284 and 20-285, SECTION 20-286, SUBSECTIONS B, C AND D, section 20-288,
6 subsection B and sections 20-289, 20-289.01, 20-292, 20-295, 20-296, 20-297,
7 20-298, 20-299, 20-301 and 20-302 apply to bail bond agents.

8 Sec. 10. Section 20-466, Arizona Revised Statutes, is amended to read:

9 20-466. Fraud unit; peace officer status; powers; information
10 sharing duty of insurers

11 A. A fraud unit is established in the department of insurance.

12 B. The fraud unit shall work in conjunction with the department of
13 public safety.

14 C. The director may investigate any act or practice of fraud
15 prohibited by section 20-466.01 and any other act or practice of fraud
16 against an insurer or entity licensed under this title. The director shall
17 administer the fraud unit.

18 D. The director may employ investigators for the fraud unit. A fraud
19 unit investigator has and shall exercise the law enforcement powers of a
20 peace officer of this state but only while acting in the course and scope of
21 employment for the department. The director shall adopt guidelines for the
22 conduct of investigations that are substantially similar to the investigative
23 policy and procedural guidelines of the department of public safety for peace
24 officers. Fraud unit investigators shall not preempt the authority and
25 jurisdiction of other law enforcement agencies of this state or its political
26 subdivisions. Fraud unit investigators:

27 1. Shall have at least the qualifications prescribed by the Arizona
28 peace officer standards and training board pursuant to section 41-1822.

29 2. Are not eligible to participate in the public safety personnel
30 retirement system established by title 38, chapter 5, article 4 due solely to
31 employment as fraud unit investigators.

32 E. The director may request the submission of papers, documents,
33 reports or other evidence relating to an investigation under this section.
34 The director may issue subpoenas and take other actions pursuant to section
35 20-160. The materials are privileged and confidential until the director
36 completes the investigation. Any documents, materials or other information
37 that is provided to the director pursuant to this section is not subject to
38 discovery or subpoena until opened for public inspection by the director or,
39 after notice and a hearing, a court determines that the director would not be
40 unduly burdened by compliance with the subpoena. The director shall keep the
41 identity of an informant confidential, including any information that might
42 identify the informant, unless the request for information is made by a law
43 enforcement agency, the attorney general or a county attorney for purposes of
44 a criminal investigation or prosecution. ~~The director shall notify an~~
45 ~~insurer of any public record request or subpoena for documents, materials or~~

1 ~~other information the insurer has referred to the fraud unit for purposes of~~
2 ~~asserting, in a court of competent jurisdiction, any applicable privileges~~
3 ~~under the circumstances unless the subpoena is issued by the attorney general~~
4 ~~or a county attorney or by the court at the request of the attorney general~~
5 ~~or a county attorney.~~ The director may use the documents, materials or other
6 information in the furtherance of any regulatory or legal action brought as a
7 part of the director's official duties.

8 F. If the documents, materials or other information the director seeks
9 to obtain by request is located outside this state, the person requested to
10 provide the documents, materials or other information shall arrange for the
11 fraud unit or a representative, including an official of the state in which
12 the documents, materials or other information is located, to examine the
13 documents, materials or other information where it is located. The director
14 may respond to similar requests from other states.

15 G. An insurer that believes a fraudulent claim has been or is being
16 made shall send to the director, on a form prescribed by the director,
17 information relative to the claim including the identity of parties claiming
18 loss or damage as a result of an accident and any other information the fraud
19 unit may require. The director shall review the report and determine if
20 further investigation is necessary. If the director determines that further
21 investigation is necessary, the director may conduct an independent
22 investigation to determine if fraud, deceit or intentional misrepresentation
23 in the submission of the claim exists. If the director is satisfied that
24 fraud, deceit or intentional misrepresentation of any kind has been committed
25 in the submission of a claim, the director may report the violations of the
26 law to the reporting insurer, to the appropriate licensing agency as defined
27 in section 20-466.04 and to the appropriate county attorney or the attorney
28 general for prosecution.

29 H. The director may:

30 1. Share nonpublic documents, materials or other information with
31 other state, federal and international regulatory agencies, with the national
32 association of insurance commissioners and its affiliates and subsidiaries
33 and with state, federal and international law enforcement authorities if the
34 recipient agrees and warrants that it has the authority to maintain the
35 confidentiality and privileged status of the documents, materials or other
36 information.

37 2. Receive documents, materials and other information from the
38 national association of insurance commissioners and its affiliates and
39 subsidiaries and from regulatory and law enforcement officials of other
40 jurisdictions and shall maintain as confidential or privileged any document,
41 material or other information received with notice or the understanding that
42 it is confidential or privileged under the laws of the jurisdiction that is
43 the source of the document, material or other information.

44 3. Enter into agreements that govern the sharing and use of documents,
45 materials and other information and that are consistent with this section.

1 I. A disclosure to or by the director pursuant to this section or as a
2 result of sharing information pursuant to subsection G of this section is not
3 a waiver of any applicable privilege or claim of confidentiality in the
4 documents, materials or other information disclosed or shared.

5 J. The director shall annually assess each insurer as defined in
6 section 20-441, subsection B authorized to transact business in this state up
7 to one thousand fifty dollars, as annually adjusted pursuant to this
8 subsection for the administration and operation of the fraud unit and the
9 prosecution of fraud pursuant to this section. Monies collected shall be
10 deposited, pursuant to sections 35-146 and 35-147, in the state general fund.
11 The director shall annually revise the assessment amount in such a manner
12 that the revenue derived from the assessment equals at least ninety-five per
13 cent but not more than one hundred ten per cent of the appropriated budget of
14 the fraud unit for the prior fiscal year.

15 K. A person, or an officer, employee or agent of the person acting
16 within the scope of employment or agency of that officer, employee or agent,
17 who in good faith files a report or provides other information to the fraud
18 unit pursuant to this section is not subject to civil or criminal liability
19 for reporting that information to the fraud unit.

20 Sec. 11. Section 20-1243.02, Arizona Revised Statutes, is amended to
21 read:

22 20-1243.02. Exemptions

23 Unless otherwise specifically included, this article does not apply to
24 recommendations involving:

25 1. Direct response solicitations if there is no recommendation based
26 on information collected from the consumer pursuant to this article.

27 2. Contracts used to fund any of the following:

28 (a) An employee pension or welfare benefit plan that is covered by the
29 employee retirement and income security act of 1974 (P.L. 93-406; 88 Stat.
30 829; 29 United States Code sections 1001 through 1461).

31 (b) A plan described by section 401(a), 401(k), 403(b), 408(k) or
32 408(p) of the internal revenue code, if established or maintained by an
33 employer.

34 (c) A government or church plan as defined in section 414 of the
35 internal revenue code, a government or church welfare benefit plan or a
36 deferred compensation plan of a state or local government or tax exempt
37 organization under section 457 of the internal revenue code.

38 (d) A nonqualified deferred compensation arrangement established or
39 maintained by an ~~employee~~ EMPLOYER or plan sponsor.

40 (e) Settlements of, or assumptions of liabilities associated with,
41 personal injury litigation or any dispute or claim resolution process.

42 (f) Formal prepaid funeral contracts.