

REFERENCE TITLE: insurance; unfair claim settlement practices

State of Arizona
Senate
Fifty-first Legislature
Second Regular Session
2014

SB 1279

Introduced by
Senator Barto

AN ACT

AMENDING SECTION 20-461, ARIZONA REVISED STATUTES; RELATING TO UNFAIR CLAIM SETTLEMENT PRACTICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 20-461, Arizona Revised Statutes, is amended to
3 read:

4 20-461. Unfair claim settlement practices

5 A. A person shall not commit or perform with such a frequency to
6 indicate as a general business practice any of the following:

7 1. Misrepresenting pertinent facts or insurance policy provisions
8 relating to coverages at issue.

9 2. Failing to acknowledge and act reasonably and promptly ~~upon~~ ON
10 communications with respect to claims arising under an insurance policy.

11 3. Failing to adopt and implement reasonable standards for the prompt
12 investigation of claims arising under an insurance policy.

13 4. Refusing to pay claims without conducting a reasonable
14 investigation based ~~upon~~ ON all available information.

15 5. Failing to affirm or deny coverage of claims within a reasonable
16 time after proof of loss statements have been completed.

17 6. Not attempting in good faith to effectuate prompt, fair and
18 equitable settlements of claims in which liability has become reasonably
19 clear.

20 7. As a property or casualty insurer, failing to recognize a valid
21 assignment of a claim. The property or casualty insurer shall have the
22 rights consistent with the provisions of its insurance policy to receive
23 notice of loss or claim and to all defenses it may have to the loss or claim,
24 but not otherwise to restrict an assignment of a loss or claim after a loss
25 has occurred.

26 8. Compelling insureds to institute litigation to recover amounts due
27 under an insurance policy by offering substantially less than the amounts
28 ultimately recovered in actions brought by the insureds.

29 9. Attempting to settle a claim for less than the amount to which a
30 reasonable person would have believed he was entitled by reference to written
31 or printed advertising material accompanying or made part of an application.

32 10. Attempting to settle claims on the basis of an application ~~which~~
33 THAT was altered without notice to, or knowledge or consent of, the insured.

34 11. Making claims payments to insureds or beneficiaries not accompanied
35 by a statement setting forth the coverage under which the payments are being
36 made.

37 12. Making known to insureds or claimants a policy of appealing from
38 arbitration awards in favor of insureds or claimants for the purpose of
39 compelling them to accept settlements or compromises less than the amount
40 awarded in arbitration.

41 13. Delaying the investigation or payment of claims by requiring an
42 insured, a claimant or the physician of either to submit a preliminary claim
43 report and then requiring the subsequent submission of formal proof of loss
44 forms, both of which submissions contain substantially the same information.

1 14. Failing to promptly settle claims if liability has become
2 reasonably clear under one portion of the insurance policy coverage in order
3 to influence settlements under other portions of the insurance policy
4 coverage.

5 15. Failing to promptly provide a reasonable explanation of the basis
6 in the insurance policy relative to the facts or applicable law for denial of
7 a claim or for the offer of a compromise settlement.

8 16. Attempting to settle claims for the replacement of any
9 nonmechanical sheet metal or plastic part ~~which~~ THAT generally constitutes
10 the exterior of a motor vehicle, including inner and outer panels, with an
11 aftermarket crash part ~~which~~ THAT is not made by or for the manufacturer of
12 an insured's motor vehicle unless the part meets the specifications of
13 section 44-1292 and unless the consumer is advised in a written notice
14 attached to or printed on a repair estimate ~~which~~ THAT:

15 (a) Clearly identifies each part.

16 (b) Contains the following information in ten point or larger type:

17 This estimate has been prepared based on the use of replacement
18 parts supplied by a source other than the manufacturer of your
19 motor vehicle. Warranties applicable to these replacement parts
20 are provided by the manufacturer or distributor of these parts
21 rather than the manufacturer of your vehicle.

22 17. As an insurer subject to section 20-826, 20-1342, 20-1402 or
23 20-1404, or as an insurer of the same type as those subject to section
24 20-826, 20-1342, 20-1402 or 20-1404 that issues policies, contracts, plans,
25 coverages or evidences of coverage for delivery in this state, failing to pay
26 charges for reasonable and necessary services provided by any physician
27 licensed pursuant to title 32, chapter 8, 13 or 17, if the services are
28 within the lawful scope of practice of the physician and the insurance
29 coverage includes diagnosis and treatment of the condition or complaint,
30 regardless of the nomenclature used to describe the condition, complaint or
31 service.

32 18. Failing to comply with chapter 15 of this title.

33 19. Denying liability for a claim under a motor vehicle liability
34 policy in effect at the time of an accident without having substantial facts
35 based on reasonable investigation to justify the denial for damages or
36 injuries that are a result of the accident and that were caused by the
37 insured if the denial is based solely on a medical condition that could
38 affect the insured's driving ability.

39 B. Nothing in subsection A, paragraph 17 of this section shall be
40 construed to prohibit the application of **FEE SCHEDULES, COPAYMENTS,**
41 deductibles, coinsurance, preferred provider organization requirements, cost
42 containment measures or quality assurance measures if they are equally
43 applied to all types of physicians referred to in this section, and if any
44 limitation or condition placed ~~upon~~ ON payment to or ~~upon~~ ON services,
45 diagnosis or treatment by any physician covered by this section is equally

1 applied to all physicians referred to in subsection A, paragraph ~~16~~ 17 of
2 this section **AS IT PERTAINS TO A PARTICULAR DIAGNOSIS OR CONDITION**, without
3 discrimination to the usual and customary procedures of any type of
4 physician. ~~A determination under this section of discrimination to the usual
5 and customary procedures of any type of physician shall not be based on
6 whether an insurer applies medical necessity review to a particular type of
7 service or treatment.~~

8 C. In prescribing rules to implement this section, the director shall
9 follow, to the extent appropriate, the national association of insurance
10 commissioners unfair claims settlement practices model regulation.

11 D. Nothing contained in this section is intended to provide any
12 private right or cause of action to or on behalf of any insured or uninsured
13 resident or nonresident of this state. It is, however, the specific intent
14 of this section to provide solely an administrative remedy to the director
15 for any violation of this section or rule related to this section.

16 E. The director shall deposit, pursuant to sections 35-146 and 35-147,
17 all civil penalties collected pursuant to this article in the state general
18 fund.

19 **F. NOTWITHSTANDING SUBSECTION D OF THIS SECTION, A PERSON WHO HOLDS
20 ANY POLICY, CONTRACT, PLAN, COVERAGE OR EVIDENCE OF COVERAGE THAT IS ISSUED
21 OR DELIVERED IN THIS STATE BY AN INSURER SUBJECT TO SECTION 20-826, 20-1342,
22 20-1402 OR 20-1404 MAY MAINTAIN A CAUSE OF ACTION FOR A VIOLATION OF
23 SUBSECTION A, PARAGRAPH 17 OF THIS SECTION PURSUANT TO TITLE 12, CHAPTER 10,
24 ARTICLE 2. A PREVAILING PARTY IN THAT ACTION MAY NOT RECOVER MONETARY
25 DAMAGES, IS ENTITLED TO DECLARATORY RELIEF ONLY AND SHALL BE AWARDED
26 REASONABLE ATTORNEY FEES.**