House Engrossed Senate Bill

State of Arizona
Senate
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 226

SENATE BILL 1241

AN ACT

AMENDING SECTIONS 20-456 AND 20-461, ARIZONA REVISED STATUTES; AMENDING TITLE 20, CHAPTER 2, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 20-469; RELATING TO THE TRANSACTION OF INSURANCE BUSINESS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 20-456, Arizona Revised Statutes, is amended to
3 read:
4 20-456. Cease and desist order for defined or prohibited
5 practices; civil penalty
6 A. If after a hearing the director finds that the person charged has
7 engaged or is engaging in any act or practice defined in or prohibited under
8 this article as an illegal or unfair method of competition or an unfair or
9 deceptive act or practice, the director shall order the person to cease and
10 desist from the proscribed acts or practices.
11 B. If the act or practice is a violation of section 20-443, ~~through~~
12 20-443.01, 20-444, 20-445, 20-446, 20-447, 20-448, 20-448.01, 20-448.02,
13 20-449, 20-451, 20-452 or 20-467 or a general business practice of committing
14 or performing acts or omissions proscribed by section 20-461 AND 20-469, the
15 director may also impose a civil penalty of not more than one thousand
16 dollars for each act or violation but not to exceed an aggregate penalty of
17 ten thousand dollars unless the person intentionally violates any section
18 enumerated in this subsection, in which case the director may impose a civil
19 penalty of up to five thousand dollars for each act or violation but not to
20 exceed an aggregate penalty of fifty thousand dollars in any six month
21 period.
22 C. No order of the director pursuant to this section or order of A
23 court to enforce it, or holding of a hearing, may in any manner relieve or
24 absolve any person affected by the order or hearing from any other liability,
25 penalty or forfeiture under law.
26 Sec. 2. Section 20-461, Arizona Revised Statutes, is amended to read:
27 20-461. Unfair claim settlement practices
28 A. A person shall not commit or perform with such a frequency to
29 indicate as a general business practice any of the following:
30 1. Misrepresenting pertinent facts or insurance policy provisions
31 relating to coverages at issue.
32 2. Failing to acknowledge and act reasonably and promptly upon
33 communications with respect to claims arising under an insurance policy.
34 3. Failing to adopt and implement reasonable standards for the prompt
35 investigation of claims arising under an insurance policy.
36 4. Refusing to pay claims without conducting a reasonable
37 investigation based upon all available information.
38 5. Failing to affirm or deny coverage of claims within a reasonable
39 time after proof of loss statements have been completed.
40 6. Not attempting in good faith to effectuate prompt, fair and
41 equitable settlements of claims in which liability has become reasonably
42 clear.

7. AS A PROPERTY OR CASUALTY INSURER, FAILING TO RECOGNIZE A VALID ASSIGNMENT OF A CLAIM. THE PROPERTY OR CASUALTY INSURER SHALL HAVE THE RIGHTS CONSISTENT WITH THE PROVISIONS OF ITS INSURANCE POLICY TO RECEIVE NOTICE OF LOSS OR CLAIM AND TO ALL DEFENSES IT MAY HAVE TO THE LOSS OR CLAIM, BUT NOT OTHERWISE TO RESTRICT AN ASSIGNMENT OF A LOSS OR CLAIM AFTER A LOSS HAS OCCURRED.

~~7.~~ 8. Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds.

~~8.~~ 9. Attempting to settle a claim for less than the amount to which a reasonable person would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application.

~~9.~~ 10. Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured.

~~10.~~ 11. Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made.

~~11.~~ 12. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

~~12.~~ 13. Delaying the investigation or payment of claims by requiring an insured, a claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

~~13.~~ 14. Failing to promptly settle claims if liability has become reasonably clear under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

~~14.~~ 15. Failing to promptly provide a reasonable explanation of the basis in the insurance policy relative to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

~~15.~~ 16. Attempting to settle claims for the replacement of any nonmechanical sheet metal or plastic part which generally constitutes the exterior of a motor vehicle, including inner and outer panels, with an aftermarket crash part which is not made by or for the manufacturer of an insured's motor vehicle unless the part meets the specifications of section 44-1292 and unless the consumer is advised in a written notice attached to or printed on a repair estimate which:

(a) Clearly identifies each part.

(b) Contains the following information in ten point or larger type: "This estimate has been prepared based on the use of replacement parts supplied by a source other than the manufacturer of your

motor vehicle. Warranties applicable to these replacement parts are provided by the manufacturer or distributor of these parts rather than the manufacturer of your vehicle."

~~16.~~ 17. As an insurer subject to section 20-826, 20-1342, 20-1402 or 20-1404, or as an insurer of the same type as those subject to section 20-826, 20-1342, 20-1402 or 20-1404 that issues policies, contracts, plans, coverages or evidences of coverage for delivery in this state, failing to pay charges for reasonable and necessary services provided by any physician licensed pursuant to title 32, chapter 8, 13 or 17, if the services are within the lawful scope of practice of the physician and the insurance coverage includes diagnosis and treatment of the condition or complaint, regardless of the nomenclature used to describe the condition, complaint or service.

~~17.~~ 18. Failing to comply with chapter 15 of this title.

~~18.~~ 19. Denying liability for a claim under a motor vehicle liability policy in effect at the time of an accident without having substantial facts based on reasonable investigation to justify the denial for damages or injuries that are a result of the accident and that were caused by the insured if the denial is based solely on a medical condition that could affect the insured's driving ability.

B. Nothing in subsection A, paragraph ~~16~~ 17 of this section shall be construed to prohibit the application of deductibles, coinsurance, preferred provider organization requirements, cost containment measures or quality assurance measures if they are equally applied to all types of physicians referred to in this section, and if any limitation or condition placed upon payment to or upon services, diagnosis or treatment by any physician covered by this section is equally applied to all physicians referred to in subsection A, paragraph 16 of this section, without discrimination to the usual and customary procedures of any type of physician.

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

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

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

Sec. 3. Title 20, chapter 2, article 6, Arizona Revised Statutes, is amended by adding section 20-469, to read:

20-469. <u>Motor vehicle loss; choice of glass repair facility</u>

UNLESS OTHERWISE PRESCRIBED BY CONTRACT, A PERSON IN THIS STATE HAS THE RIGHT TO CHOOSE ANY GLASS REPAIR FACILITY FOR THE REPAIR OF A LOSS RELATING

1 TO MOTOR VEHICLE GLASS. IF AN INSURER RECOMMENDS OR PROVIDES INFORMATION
2 ABOUT A GLASS REPAIR FACILITY, THE INSURER SHALL INFORM THE PERSON OF THIS
3 RIGHT AT THE SAME TIME AS MAKING THE RECOMMENDATION OR PROVIDING THE
4 INFORMATION. THIS SECTION DOES NOT CREATE A PRIVATE RIGHT OR CAUSE OF ACTION
5 TO OR ON BEHALF OF ANY PERSON. THIS SECTION PROVIDES SOLELY AN
6 ADMINISTRATIVE REMEDY TO THE DIRECTOR FOR ANY VIOLATION OF THIS SECTION.

APPROVED BY THE GOVERNOR MAY 12, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2004.

Passed the House April 29, 20 04,

by the following vote: 51 Ayes,

0 Nays, 9 Not Voting

Speaker of the House

Pro Tempore

Cheryl Laube

Asst. Chief Clerk of the House

Passed the Senate March 8, 20 04,

by the following vote: 28 Ayes,

2 Nays, 0 Not Voting

President of the Senate

Charmine Billington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1241

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate May 6, 2004,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

16th day of May, 2004,

at 2:04 o'clock P. M.

Secretary to the Governor

Approved this 12 day of

May, 2004,

at 2:40 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 12 day of May, 2004

at 4:45 o'clock P. M.

Secretary of State

S.B. 1241