Senate Engrossed

FILED

JANICE K. BREWER
SECRETARY OF STATE

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

CHAPTER 34

SENATE BILL 1242

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)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 3. Repeal

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

Sec. 4. Section 20-295, Arizona Revised Statutes, is amended to read:

20-295. License denial, suspension or revocation; civil penalty

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

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

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

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

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

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

6. Having been convicted of a felony.

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

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

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

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

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

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

13. Violating section 6-1410, 6-1412 or 6-1413.

B. The director may deny, suspend for not more than twelve months, revoke or refuse to renew the license of a business entity:

1. For any of the causes prescribed in subsection A of this section if the cause relates to the designated producer or any member, officer, director or manager of the business entity.

2. If the director finds that an individual insurance producer's violation was known or should have been known by the designated producer or one or more of the members, officers, directors or managers acting on behalf of the business entity and the violation was not seasonably reported to the director and no reasonable corrective action was taken.

C. If the director denies an application for a license, the director shall notify the applicant in accordance with title 41, chapter 6, article 10.

D. The director may revoke, suspend or refuse to renew a license after notice and an opportunity for a hearing in accordance with title 41, chapter 6, article 10.

E. Any hearing required by this section shall be conducted as prescribed in chapter 1, article 2 of this title and title 41, chapter 6, article 10.

F. In addition to or instead of any suspension, revocation or refusal to renew a license pursuant to this section, after a hearing the director may:

1. Impose a civil penalty of not more than two hundred fifty dollars for each unintentional failure or violation, up to an aggregate civil penalty of two thousand five hundred dollars.

2. Impose a civil penalty of not more than two thousand five hundred dollars for each intentional failure or violation, up to an aggregate civil penalty of fifteen thousand dollars.

3. Order the licensee to provide restitution to any party injured by the licensee's action.

G. The licensee shall pay any civil penalty to the director who shall deposit it, pursuant to sections 35-146 and 35-147, in the state general fund. The civil penalty is in addition to any other applicable penalty or restraint either in this article or in any other law and may be recovered in a civil action brought by the director. For the purposes of subsection F of this section, a single publication, exhibition or utterance of any matter in violation of this title is deemed one violation or failure, including an edition of a newspaper, book or magazine, a single representation to an audience, a single broadcast over radio or television or a single exhibition of a motion picture.

H. The director shall retain the authority to enforce this title and impose any penalty or remedy authorized by this title against any person who is under investigation for or charged with a violation of this title even if the person's license has been surrendered or has lapsed by operation of law.

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

20-311.03. Application of other laws

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

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

20-321.02. Application of other laws

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

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

20-331. Rental car agents; definitions

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

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

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

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

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

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

4. Vehicle breakdown coverage.

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

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

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

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

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

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

(b) Describe the process for filing a claim.

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

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

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

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

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

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

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

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

H. A rental car agent shall not:

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

2. Advertise, represent or otherwise portray itself or any of its employees or agents as licensed insurers or insurance producers.

3. Pay any person any compensation, fee or commission dependent on the placement of insurance under the license issued pursuant to this section.

I. Nothing in this section prohibits production payments or incentive payments to an employee if the payments are not dependent on the sale of insurance.

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

K. For the purposes of this section:

1. "Rental agreement" means any written agreement that states the terms and conditions that govern the use of a vehicle provided by the rental company for rent or lease for a rental period of ninety days or less.

2. "Rental car agent" means a rental company that is licensed pursuant to this section.

3. "Rental company" means any firm or corporation in the business of renting vehicles to renters under a rental agreement.

4. "Rental period" means the term of the rental agreement.

5. "Rental vehicle" or "vehicle" means a motor vehicle operated by a driver who is not required to possess a commercial driver license to operate the motor vehicle and the motor vehicle is either:

(a) A private passenger motor vehicle, including a passenger van, minivan or sport utility vehicle.

(b) A cargo vehicle, including a cargo van, pickup truck and truck with a gross vehicle weight of less than twenty-six thousand pounds.

6. "Renter" means any person who obtains the use of a vehicle from a rental company under the terms of a rental agreement.

Sec. 8. Section 20-331.01, Arizona Revised Statutes, is amended to read:

20-331.01. <u>Political subdivision employees; risk management consultant licenses</u>

A. An employee of a political subdivision may be licensed as a risk management consultant for the purposes of title 11, chapter 7, article 5 to carry out the provisions of title 11, chapter 7, article 5. The director shall license these employees in the same manner as insurance producers. The director may waive the examination requirement for a license issued pursuant to this section. The license automatically expires when the employee terminates employment with the political subdivision.

B. To the extent not inconsistent with this article, sections 20-281, 20-284 and 20-285, SECTION 20-286, SUBSECTIONS B, C AND D, section 20-288, subsection B and sections 20-289, 20-289.01, 20-290, 20-291, 20-292, 20-295, 20-296, 20-297, 20-298, 20-299, 20-301 and 20-302 apply to risk management consultants.

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

20-340.06. Application of other laws

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

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

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

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

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

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

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

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

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

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

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

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

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

H. The director may:

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

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

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

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

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

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

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

20-1243.02. Exemptions

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

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

2. Contracts used to fund any of the following:

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

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

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

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

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

(f) Formal prepaid funeral contracts.

APPROVED BY THE GOVERNOR APRIL 10, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 2007.

Passed the House April 2, 2007,

by the following vote: 55 Ayes,

0 Nays, 5 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate February 19, 2007,

by the following vote: 27 Ayes,

2 Nays, 1 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

4th day of April, 2007

at 1:43 o'clock P M.

Secretary to the Governor

Approved this 10 day of

April, 2007,

at 4:50 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 11 day of April, 2007,

at 9:04 o'clock A. M.

Secretary of State

S.B. 1242