House Engrossed

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KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 38

HOUSE BILL 2308

AN ACT

AMENDING SECTIONS 20-2102 AND 20-2113, ARIZONA REVISED STATUTES; RELATING TO INSURANCE INFORMATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 20-2102, Arizona Revised Statutes, is amended to read:

20-2102. Definitions

In this chapter, unless the context otherwise requires:

1. "Adverse underwriting decision" means any of the following actions involving insurance coverage which is individually underwritten:

(a) A declination of insurance coverage.

(b) A termination of insurance coverage.

(c) Failure of an insurance producer to apply for insurance coverage with a specific insurance institution which the insurance producer represents and which is requested by an applicant.

(d) In the case of property or casualty insurance coverage, placement by an insurance institution or insurance producer of a risk with a residual market mechanism, an unauthorized insurer or an insurance institution which specializes in substandard risks, or the charging of a higher rate on the basis of information which differs from that which the applicant or policyholder furnished.

(e) In the case of life, health or disability insurance coverage, an offer to insure at higher than standard rates.

(f) In the case of property or casualty insurance, assigning an applicant or policyholder to a higher rating tier or failing to apply a premium discount or credit based on any credit related information derived from the applicant's or policyholder's consumer report, insurance score or lack of credit history.

Notwithstanding subdivisions (a) through (f) of this paragraph, the termination of an individual policy form on a class or statewide basis, a declination of insurance coverage solely because the coverage is not available on a class or statewide basis or the rescission of a policy is not considered an adverse underwriting decision, but the insurance institution or insurance producer responsible for its occurrence shall provide the applicant or policyholder with the specific reasons for its occurrence.

2. "Affiliate" or "affiliated" means a person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with another person.

3. "Applicant" means any person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

4. "Consumer report" means any written, oral or other communication of information ~~bearing~~ THAT BEARS on a natural person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living and ~~which~~ THAT is used or expected to be used in connection with an insurance transaction.

5. "Consumer reporting agency" means any person who does any of the following:

(a) Regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee.

(b) Obtains information primarily from sources other than insurance institutions.

(c) Furnishes consumer reports to other persons.

6. "Control", including the terms "controlled by" or "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

7. "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or insurance producer of requested insurance coverage.

8. "Individual" means any natural person who:

(a) In the case of property or casualty insurance, is a past, present or proposed named insured or certificate holder.

(b) In the case of life, health or disability insurance, is a past, present or proposed principal insured or certificate holder.

(c) Is a past, present or proposed policyowner.

(d) Is a past or present applicant.

(e) Is a past or present claimant.

(f) Derived, derives or is proposed to derive insurance coverage under an insurance policy or certificate subject to this chapter.

9. "Institutional source" means any person or governmental entity that provides information about an individual to an insurance producer, insurance institution or insurance support organization, other than an insurance producer, the individual who is the subject of the information or a natural person acting in a personal capacity rather than in a business or professional capacity.

10. "Insurance institution" means any corporation, association, partnership, reciprocal insurer, inter-insurer, Lloyd's association, fraternal benefit society or other person engaged in the business of insurance, including health care service organizations and hospital, medical, dental and optometric service corporations as defined in this title. Insurance institution does not include insurance producers or insurance support organizations.

11. "Insurance producer" means an insurance producer as defined in section 20-281 or a managing general agent as defined in section 20-311.

12. "Insurance score" means, for the purpose of insurance underwriting or rating, a designation that is derived by using a variety of data sources, including an individual's consumer report in an algorithm, computer program, model or other process that reduces the data to a number, alpha character or rating that is used for insurance underwriting and rating decisions.

13. "Insurance support organization" means:

(a) Any person who regularly engages, in whole or in part, in the practice of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurance institution or insurance producer for insurance transactions, including the furnishing of consumer reports or investigative consumer reports to an insurance institution or insurance producer for use in connection with an insurance transaction or the collection of personal information from insurance institutions, insurance producers or other insurance support organizations for the purpose of detecting or preventing fraud, material misrepresentation or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(b) Notwithstanding subdivision (a) of this paragraph the following persons are not considered insurance support organizations for purposes of this chapter:

(i) Insurance producers.

(ii) Government institutions.

(iii) Insurance institutions.

(iv) Medical care institutions.

(v) Medical professionals.

14. "Insurance transaction" means any transaction ~~involving~~ THAT INVOLVES insurance primarily for personal, family or household needs rather than business or professional needs and ~~which~~ THAT entails the determination of an individual's eligibility for an insurance coverage, benefit or payment or the servicing of an insurance application, policy, contract or certificate, INCLUDING TRANSFERS OF BUSINESS.

15. "Investigative consumer report" means a consumer report or portion of a consumer report in which information about a natural person's character, general reputation, personal characteristics or mode of living is obtained through personal interviews with the person's neighbors, friends, associates, acquaintances or others who may have knowledge concerning those items of information.

16. "Medical care institution" means any facility or institution that is licensed to provide health care services to natural persons including:

(a) Health care service organizations.

(b) Home health agencies.

(c) Hospitals.

(d) Medical clinics.

(e) Public health agencies.

(f) Rehabilitation agencies.

(g) Skilled nursing facilities.

17. "Medical professional" means any person licensed or certified to provide health care services to natural persons, including a chiropractor, clinical dietitian, clinical psychologist, dentist, nurse, a occupational

therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker or speech therapist.

18. "Medical record information" means personal information ~~which~~ THAT relates to an individual's physical or mental condition, medical history or medical treatment and THAT is obtained from a medical professional or medical care institution, the individual or the individual's spouse, parent or legal guardian.

19. "Personal information" means any individually identifiable information gathered in connection with an insurance transaction and from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health or any other personal characteristics. Personal information includes an individual's name and address and medical record information but does not include privileged information.

20. "Policyholder" means any person who:

(a) In the case of individual property or casualty insurance, is a present named insured.

(b) In the case of individual life, health or disability insurance, is a present policyowner.

(c) In the case of group insurance which is individually underwritten, is a present group certificate holder.

21. "Pretext interview" means an interview in which a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(a) Pretends to be someone he or she is not.

(b) Pretends to represent a person he or she is not in fact representing.

(c) Misrepresents the true purpose of the interview.

(d) Refuses to identify himself or herself ~~upon~~ ON request.

22. "Privileged information" means any individually identifiable information that relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual and THAT is collected in connection with or in reasonable anticipation of a claim for insurance benefits or a civil or criminal proceeding involving an individual, except that information otherwise meeting the requirements of this paragraph is considered personal information under this chapter if it is disclosed in violation of section 20-2113.

23. "Residual market mechanism" means an agreement for the equitable apportionment among insurers of insurance afforded applicants who are in good faith entitled to but who are unable to procure insurance through ordinary methods.

24. "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

25. "TRANSFER OF BUSINESS":

(a) MEANS THE TRANSFER BY AN INSURANCE INSTITUTION OR INSURANCE PRODUCER THAT OWNS THE POLICY EXPIRATION OF A POLICYHOLDER'S EXISTING POLICY OF INSURANCE OR THE TRANSFER OF A GROUP OF POLICYHOLDERS' EXISTING POLICIES OF INSURANCE TO ANOTHER INSURANCE INSTITUTION.

(b) DOES NOT INCLUDE THE TRANSFER OF BUSINESS BY AN INSURANCE PRODUCER THAT IS UNDER AN EXCLUSIVE CONTRACT OR A CONTRACT REQUIRING THE INSURANCE PRODUCER TO SUBMIT ALL ELIGIBLE BUSINESS TO AN INSURER OR GROUP OF INSURERS UNDER A COMMON MANAGEMENT.

~~25.~~ 26. "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the director to transact insurance in this state.

Sec. 2. Section 20-2113, Arizona Revised Statutes, is amended to read:

20-2113. Disclosure limitations and conditions

An insurance institution, insurance producer or insurance support organization shall not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction unless the disclosure is:

1. With the written authorization of the individual except that:

(a) If the authorization is submitted by another insurance institution, insurance producer or insurance support organization, the authorization shall meet the requirements prescribed in section 20-2106.

(b) If the authorization is submitted by a person other than an insurance institution, insurance producer or insurance support organization, the authorization shall be dated, signed by the individual and obtained one year or less ~~prior to~~ BEFORE the date a disclosure is sought pursuant to this section.

2. To a person other than an insurance institution, insurance producer or insurance support organization, if the disclosure is reasonably necessary:

(a) To enable the person to perform a business, professional or insurance function for the disclosing insurance institution, insurance producer or insurance support organization and the person agrees not to disclose the information further without the individual's written authorization unless the further disclosure either:

(i) Would otherwise be permitted by this section if made by an insurance institution, insurance producer or insurance support organization.

(ii) Is reasonably necessary for the person to perform the individual's function for the disclosing insurance institution, insurance producer or insurance support organization.

(b) To enable the person to provide information to the disclosing insurance institution, insurance producer or insurance support organization for the purpose of determining an individual's eligibility for an insurance benefit or payment or detecting or preventing criminal activity, fraud, material misrepresentation or material nondisclosure in connection with an insurance transaction.

3. To an insurance institution, insurance producer, insurance support organization or self-insurer if the information disclosed is limited to that which is reasonably necessary EITHER:

(a) To detect or prevent criminal activity, fraud, material misrepresentation or material nondisclosure in connection with insurance transactions. ~~or~~

(b) For ~~either~~ the disclosing or receiving insurance institution, insurance producer or insurance support organization to perform its function in connection with an insurance transaction involving the individual.

4. To a medical care institution or medical professional for the purpose of verifying insurance coverage or benefits, informing an individual of a medical problem of which the individual may not be aware or conducting an operations or service audit, if only the information ~~which~~ THAT is reasonably necessary to accomplish the purposes prescribed by this paragraph is disclosed.

5. To an insurance regulatory authority.

6. To a law enforcement or other governmental authority to protect the interests of the insurance institution, insurance producer or insurance support organization in preventing or prosecuting the perpetration of fraud upon it, or if the insurance institution, insurance producer or insurance support organization reasonably believes that illegal activities have been conducted by the individual.

7. Otherwise permitted or required by law.

8. In response to a valid administrative or judicial order, including a search warrant or subpoena.

9. Made for the purpose of conducting actuarial or research studies, except that no individual may be identified in any actuarial or research report, materials allowing the individual to be identified shall be returned or destroyed as soon as they are no longer needed and the actuarial or research organization shall agree not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, insurance producer or insurance support organization.

10. To a party or a representative of a party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the insurance institution, insurance producer or insurance support organization, except that ~~prior to~~ BEFORE the consummation of the sale, transfer, merger or consolidation only the information is disclosed ~~which~~ THAT is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger or consolidation and the recipient agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, insurance producer or insurance support organization.

11. To a person whose only use of the information will be in connection with the marketing of a product or service if:

(a) No medical record information, privileged information or personal information relating to an individual's character, personal habits, mode of living or general reputation is disclosed and no classification derived from the information is disclosed.

(b) The individual has been given an opportunity to indicate that the individual does not want personal information disclosed for marketing purposes and has given no indication that the individual does not want the information disclosed.

(c) The person receiving the information agrees not to use it except in connection with the marketing of a product or service.

12. To an affiliate whose only use of the information will be in connection with an audit of the insurance institution or insurance producer or the marketing of an insurance or financial product or service, if the affiliate agrees not to disclose the information for any other purpose or to an unaffiliated person, except that no medical record information may be disclosed for marketing purposes without the individual's written consent.

13. By a consumer reporting agency if the disclosure is to a person other than an insurance institution or insurance producer.

14. To a group insurance policyholder for the purpose of reporting claims experience or conducting an audit of the insurance institution's or insurance producer's operations or services if the information disclosed is reasonably necessary for the recipient to conduct the review or audit.

15. To a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional.

16. To a governmental authority for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

17. To a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction.

Sec. 3. Intent

The amendments to sections 20-2102 and 20-2113, Arizona Revised Statutes, as amended by this act are intended to clarify the legislature's original intent and meaning in the administration of these statutes.

APPROVED BY THE GOVERNOR APRIL 9, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 9, 2010.

Passed the House March 4, 2010

by the following vote: 55 Ayes,

0 Nays, 4 Not Voting 1 vacancy

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate April 1, 2010

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 received by the Governor this

5th day of April, 2010

at 2:36 o'clock P. M.

Nicole Bendle

Secretary to the Governor

Approved this 9th day of

April

at 10:31 o'clock A. M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 9th day of April, 2010

at 12:09 o'clock P M.

Ken Bennett

Secretary of State

H.B. 2308