

**MOTOR VEHICLE INSURANCE - UNFAIR CLAIM  
SETTLEMENT PRACTICES**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gene Davis**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Insurance Code by amending provisions relating to unfair claim settlement practices on certain motor vehicle insurance policies.

**Highlighted Provisions:**

This bill:

- ▶ provides that a person injured by an unfair claim settlement practice may bring a private cause of action against an insurer or a person representing an insurer who engages in an unfair claim settlement practice if the unfair claim settlement practice was made in relation to certain motor vehicle insurance policies;

- ▶ provides that a court may award a person injured by an unfair claim settlement practice actual damages, costs and attorney fees, and, if the court determines that the circumstances are appropriate, punitive damages; and

- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



28 31A-26-303, as last amended by Laws of Utah 1987, Chapter 91

29 ENACTS:

30 31A-22-322, Utah Code Annotated 1953



32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section 31A-22-322 is enacted to read:

34 **31A-22-322. Private action for a motor vehicle insurance unfair claim settlement**  
35 **practices.**

36 (1) A person injured by an unfair claim settlement practice, as described in Section  
37 31A-26-303, may bring a private cause of action against an insurer or a person representing an  
38 insurer who engages in the unfair claim settlement practice if the unfair claim settlement  
39 practice was made in relation to an insurance policy or combination of insurance policies  
40 purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301.

41 (2) In an action under Subsection (1), a court may award a person injured by an unfair  
42 claim settlement practice:

43 (a) actual damages;

44 (b) costs and attorney fees; and

45 (c) if the court determines that the circumstances are appropriate, punitive damages.

46 Section 2. Section 31A-26-303 is amended to read:

47 **31A-26-303. Unfair claim settlement practices.**

48 (1) No insurer or person representing an insurer may engage in any unfair claim  
49 settlement practice under Subsections (2), (3), and (4).

50 (2) Each of the following acts is an unfair claim settlement practice:

51 (a) knowingly misrepresenting material facts or the contents of insurance policy  
52 provisions at issue in connection with a claim under an insurance contract; however, this  
53 provision does not include the failure to disclose information;

54 (b) attempting to use a policy application which was altered by the insurer without  
55 notice to, or knowledge, or consent of, the insured as the basis for settling or refusing to settle a  
56 claim; or

57 (c) failing to settle a claim promptly under one portion of the insurance policy  
58 coverage, where liability and the amount of loss are reasonably clear, in order to influence

59 settlements under other portions of the insurance policy coverage, but this Subsection (2)(c)  
60 applies only to claims made by persons in direct privity of contract with the insurer.

61 (3) Each of the following is an unfair claim settlement practice if committed or  
62 performed with such frequency as to indicate a general business practice by an insurer or  
63 persons representing an insurer:

64 (a) failing to acknowledge and act promptly upon communications about claims under  
65 insurance policies;

66 (b) failing to adopt and implement reasonable standards for the prompt investigation  
67 and processing of claims under insurance policies;

68 (c) compelling insureds to institute litigation to recover amounts due under an  
69 insurance policy by offering substantially less than the amounts ultimately recovered in actions  
70 brought by those insureds when the amounts claimed were reasonably near to the amounts  
71 recovered;

72 (d) failing, after payment of a claim, to inform insureds or beneficiaries, upon request  
73 by them, of the coverage under which payment was made;

74 (e) failing to promptly provide to the insured a reasonable explanation of the basis for  
75 denial of a claim or for the offer of a compromise settlement;

76 (f) appealing from substantially all arbitration awards in favor of insureds for the  
77 purpose of compelling them to accept settlements or compromises for less than the amount  
78 awarded in arbitration;

79 (g) delaying the investigation or payment of claims by requiring an insured, claimant,  
80 or the physician of either to submit a preliminary claim report and then requiring the  
81 subsequent submission of formal proof of loss forms which contain substantially the same  
82 information; or

83 (h) not attempting in good faith to effectuate a prompt, fair, and equitable settlement of  
84 claims in which liability is reasonably clear.

85 (4) The commissioner may define by rule, acts or general business practices which are  
86 unfair claim settlement practices, after a finding that those practices are misleading, deceptive,  
87 unfairly discriminatory, overreaching, or an unreasonable restraint on competition.

88 (5) ~~[This]~~ Except as provided in Section 31A-22-322, this section does not create any  
89 private cause of action.

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**Legislative Review Note**  
**as of 2-24-10 5:26 PM**

**Office of Legislative Research and General Counsel**

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**S.B. 254 - Motor Vehicle Insurance - Unfair Claim Settlement Practices**

**Fiscal Note**

2010 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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