

INSURANCE REVISIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gene Davis

House Sponsor: _____

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 an insured 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 an insured 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 corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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



28 ENACTS:

29 [31A-22-322](#), Utah Code Annotated 1953



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

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

33 **31A-22-322. Private action for a motor vehicle insurance unfair claim settlement**
34 **practice.**

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

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

- 43 (a) actual damages;
- 44 (b) costs;
- 45 (c) attorney fees; and
- 46 (d) if the court determines that circumstances are appropriate, punitive damages.

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

48 **31A-26-303. Unfair claim settlement practices.**

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

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

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

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

58 (c) failing to settle a claim promptly under one portion of the insurance policy

59 coverage, where liability and the amount of loss are reasonably clear, in order to influence
60 settlements under other portions of the insurance policy coverage, but this Subsection (2)(c)
61 applies only to claims made by persons in direct privity of contract with the insurer.

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

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

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

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

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

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

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

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

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

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

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

90 private cause of action.

Legislative Review Note
as of 2-2-15 11:41 AM

Office of Legislative Research and General Counsel