

Senator Todd D. Weiler proposes the following substitute bill:

INSURANCE ADJUSTER CLAIM AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Nelson T. Abbott

LONG TITLE

General Description:

This bill modifies provisions related to insurance adjuster claim practices.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ adds to the type of actions that are considered an unfair claim settlement practice by an insurance adjuster; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-26-102, as last amended by Laws of Utah 2021, Chapter 252

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

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



26 Section 1. Section 31A-26-102 is amended to read:

27 **31A-26-102. Definitions.**

28 As used in this chapter, unless expressly provided otherwise:

29 (1) "Company adjuster" means a person employed by an insurer who negotiates or
30 settles claims on behalf of the insurer or an affiliated insurer.

31 (2) "Designated home state" means the state or territory of the United States or the
32 District of Columbia:

33 (a) in which an insurance adjuster does not maintain the adjuster's principal:

34 (i) place of residence; or

35 (ii) place of business;

36 (b) if the resident state, territory, or District of Columbia of the adjuster does not
37 license adjusters for the line of authority sought, the adjuster has qualified for the license as if
38 the person were a resident in the state, territory, or District of Columbia described in
39 Subsection (2)(a), including an applicable:

40 (i) examination requirement;

41 (ii) fingerprint background check requirement; and

42 (iii) continuing education requirement; and

43 (c) that the adjuster has designated as the insurance adjuster's designated home state.

44 (3) "Home state" means:

45 (a) a state or territory of the United States or the District of Columbia in which an
46 insurance adjuster:

47 (i) maintains the adjuster's principal:

48 (A) place of residence; or

49 (B) place of business; and

50 (ii) is licensed to act as a resident adjuster; or

51 (b) if the resident state, territory, or the District of Columbia described in Subsection
52 (3)(a) does not license adjusters for the line of authority sought, a state, territory, or the District
53 of Columbia:

54 (i) in which the adjuster is licensed;

55 (ii) in which the adjuster is in good standing; and

56 (iii) that the adjuster has designated as the adjuster's designated home state.

57 (4) "Independent adjuster" means an insurance adjuster required to be licensed under
58 Section 31A-26-201, who engages in insurance adjusting as a representative of one or more
59 insurers.

60 (5) "Insurance adjusting" or "adjusting" means directing or conducting the
61 investigation, negotiation, or settlement of a claim under an insurance policy, on behalf of an
62 insurer, policyholder, or a claimant under an insurance policy.

63 (6) (a) "Organization" means a person other than a natural person.

64 (b) "Organization" includes a sole proprietorship by which a natural person does
65 business under an assumed name.

66 (7) "Portable electronics insurance" means the same as that term is defined in Section
67 31A-22-1802.

68 (8) "Public adjuster" means a person required to be licensed under Section
69 31A-26-201, who engages in insurance adjusting as a representative of insureds and claimants
70 under insurance policies.

71 (9) "Subrogation" means the assumption of the right to pursue an obligation owed by a
72 debtor to the original creditor.

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

74 **31A-26-303. Unfair claim settlement practices.**

75 (1) ~~[No]~~ An insurer or person representing an insurer may not engage in any unfair
76 claim settlement practice under ~~[Subsections (2), (3), and (4)]~~ Subsection (2), (3), or (4).

77 (2) ~~[Each]~~ Except as provided in Subsection (5), each of the following acts is an unfair
78 claim settlement practice:

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

82 (b) attempting to use a policy application which was altered by the insurer without
83 notice to, or knowledge, or consent of, the insured as the basis for settling or refusing to settle a
84 claim; ~~[or]~~

85 (c) failing to settle a claim promptly under one portion of the insurance policy
86 coverage, where liability and the amount of loss are reasonably clear, in order to influence
87 settlements under other portions of the insurance policy coverage, but this Subsection (2)(c)

88 applies only to claims made by persons in direct privity of contract with the insurer[-];

89 (d) separately paying a portion of settlement funds, other than by subrogation, to a
90 lienholder or a party claiming entitlement to reimbursement;

91 (e) insisting on including a lienholder or a party claiming entitlement to
92 reimbursement, other than by subrogation, as a payee on an instrument used to pay settlement
93 funds; or

94 (f) refusing to promptly issue settlement funds without naming a lienholder or a party
95 claiming entitlement to reimbursement, other than by subrogation, if the person receiving the
96 settlement;

97 (i) accepts liability for the satisfaction of liens or claims of entitlement to
98 reimbursement; and

99 (ii) agrees to hold the insurer and insured harmless from the liens and claims.

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

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

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

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

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

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

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

118 (g) delaying the investigation or payment of claims by requiring an insured, claimant,

119 or the physician of either to submit a preliminary claim report and then requiring the
120 subsequent submission of formal proof of loss forms which contain substantially the same
121 information; or

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

124 (4) The commissioner may define by rule[;] made in accordance with Title 63G,
125 Chapter 3, Utah Administrative Rulemaking Act, acts or general business practices [~~which~~]
126 that are unfair claim settlement practices, after a finding that those practices are misleading,
127 deceptive, unfairly discriminatory, overreaching, or an unreasonable restraint on competition.

128 (5) Subsections (2)(d), (e), and (f) do not apply if:

129 (a) the lienholder holds a lien by statute; or

130 (b) the party's claim to entitlement to reimbursement is under a contractual ~~H~~→ **obligation**

130a or ~~H~~← **lien to**

131 repay benefits from compensation received from a responsible third party.

132 [~~(5)~~] (6) This section does not create any private cause of action.