

AMENDED IN ASSEMBLY APRIL 21, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 802

Introduced by Assembly Member Duvall

February 26, 2009

~~An act to amend Section 758.5 of the Insurance Code, relating to motor vehicle insurance.~~ *An act to amend Sections 1873 and 1874.1 of the Insurance Code, relating to insurance information.*

LEGISLATIVE COUNSEL'S DIGEST

AB 802, as amended, Duvall. ~~Motor vehicle insurance: direct repair programs.~~ *Insurance fraud: release of information: other unlawful activity.*

Existing law requires an insurer, or agent authorized by that insurer to act on behalf of the insurer, upon written request, to release to a requesting officer of an authorized governmental agency, as defined, any or all relevant information deemed important to the authorized governmental agency that the insurer may possess relating to any specific insurance fraud.

This bill would also require the insurer, or agent authorized by that insurer to act on behalf of the insurer, to release to the authorized governmental agency any or all relevant information deemed important to the authorized governmental agency that the insurer may possess relating to any other unlawful activity recovered in the course of an insurance fraud investigation. This bill would state that the Bureau of Automotive Repair, the Medical Board of California, and the State Bar of California are included as authorized governmental agencies, as specified.

~~Existing law prohibits insurers from requiring that an automobile be repaired at a specific automotive repair dealer. Under existing law, an insurer may suggest or recommend a specific automotive repair dealer under certain specified circumstances.~~

~~This bill would state that nothing in that provision prohibits an insurer from providing a claimant with information regarding the benefits available to the claimant under the terms of the automobile insurance policy.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1873 of the Insurance Code is amended*
2 *to read:*

3 1873. (a) Upon written request to an insurer by officers
4 designated in subdivisions (a) and (b) of Section 830.1 and
5 subdivision (a) of Section 830.2, and subdivisions (a), (c), and (i)
6 of Section 830.3 of the Penal Code, an insurer, or agent authorized
7 by that insurer to act on behalf of the insurer, shall release to the
8 requesting authorized governmental agency any or all relevant
9 information deemed important to the authorized governmental
10 agency that the insurer may possess relating to any specific
11 insurance fraud *or any other unlawful activity recovered in the*
12 *course of an insurance fraud investigation.* Relevant information
13 may include, but is not limited to, all of the following:

14 (1) Insurance policy information relevant to the insurance fraud
15 under investigation, including, but not limited to, any application
16 for a policy.

17 (2) Policy premium payment records ~~which~~ *that* are available.

18 (3) History of previous claims made by the insured.

19 (4) Information relating to the investigation of the insurance
20 fraud, including statements of any person, proof of loss, and notice
21 of loss.

22 (5) Complete copies of both sides of payment drafts.

23 (b) The provisions of subdivision (a) shall not operate to
24 authorize disclosure of medical information not otherwise
25 authorized for disclosure pursuant to law.

26 *SEC. 2. Section 1874.1 of the Insurance Code is amended to*
27 *read:*

1 1874.1. The following definitions govern the construction of
2 this article, unless the context requires otherwise:

3 (a) “Authorized governmental agency” means the Department
4 of the California Highway Patrol, the Department of Insurance,
5 the Department of Justice, the Department of Motor Vehicles, the
6 police department of a city, or a city and county, the sheriff’s office
7 or department of a county, a law enforcement agency of the federal
8 government, the district attorney of any county, or city and county,
9 and any licensing agency governed by the Business and Professions
10 Code, *including the Bureau of Automotive Repair, the Medical*
11 *Board of California, and the State Bar of California*, or the
12 Chiropractic Initiative Act.

13 (b) “Relevant” means having a tendency to make the existence
14 of any fact that is of consequence to the investigation or
15 determination of an issue more probable or less probable than it
16 would be without the information.

17 (c) Information shall be deemed important if, within the sole
18 discretion of the authorized governmental agency, that information
19 is requested by that authorized governmental agency.

20 (d) “Insurer” means the automobile assigned risk plan
21 established pursuant to Section 11620 of the Insurance Code, as
22 well as any insurer writing insurance for motor vehicles or
23 otherwise liable for any loss due to motor vehicle theft or motor
24 vehicle insurance fraud.

25 (e) “Motor vehicle” means motor vehicle as defined in Section
26 415 of the Vehicle Code.

27 ~~SECTION 1. Section 758.5 of the Insurance Code is amended~~
28 ~~to read:~~

29 ~~758.5. (a) No insurer shall require that an automobile be~~
30 ~~repaired at a specific automotive repair dealer, as defined in Section~~
31 ~~9880.1 of the Business and Professions Code. Nothing in this~~
32 ~~section prohibits an insurer from providing a claimant with~~
33 ~~information regarding the benefits available to the claimant under~~
34 ~~the terms of the automobile insurance policy.~~

35 ~~(b) (1) No insurer shall suggest or recommend that an~~
36 ~~automobile be repaired at a specific automotive repair dealer unless~~
37 ~~either of the following applies:~~

38 ~~(A) A referral is expressly requested by the claimant.~~

39 ~~(B) The claimant has been informed in writing of the right to~~
40 ~~select the automotive repair dealer.~~

1 ~~(2) If the recommendation is accepted by the claimant, the~~
2 ~~insurer shall cause the damaged vehicle to be restored to its~~
3 ~~condition prior to the loss at no additional cost to the claimant~~
4 ~~other than as stated in the policy or as is otherwise allowed by law.~~
5 ~~If the recommendation of an automotive repair dealer is done~~
6 ~~orally, and if the oral recommendation is accepted by the claimant,~~
7 ~~the insurer shall provide the information contained in this~~
8 ~~paragraph, as noted in the statement below, to the claimant at the~~
9 ~~time the recommendation is made. The insurer shall send the~~
10 ~~written notice required by this paragraph within five calendar days~~
11 ~~from the oral recommendation. The written notice required by this~~
12 ~~paragraph shall include the following statement plainly printed in~~
13 ~~no less than 10-point type:~~

14 ~~“WE ARE PROHIBITED BY LAW FROM REQUIRING THAT~~
15 ~~REPAIRS BE DONE AT A SPECIFIC AUTOMOTIVE REPAIR~~
16 ~~DEALER. YOU ARE ENTITLED TO SELECT THE AUTO~~
17 ~~BODY REPAIR SHOP TO REPAIR DAMAGE COVERED BY~~
18 ~~US. WE HAVE RECOMMENDED AN AUTOMOTIVE REPAIR~~
19 ~~DEALER THAT WILL REPAIR YOUR DAMAGED VEHICLE.~~
20 ~~IF YOU AGREE TO USE OUR RECOMMENDED~~
21 ~~AUTOMOTIVE REPAIR DEALER, WE WILL CAUSE THE~~
22 ~~DAMAGED VEHICLE TO BE RESTORED TO ITS~~
23 ~~CONDITION PRIOR TO THE LOSS AT NO ADDITIONAL~~
24 ~~COST TO YOU OTHER THAN AS STATED IN THE~~
25 ~~INSURANCE POLICY OR AS OTHERWISE ALLOWED BY~~
26 ~~LAW. IF YOU EXPERIENCE A PROBLEM WITH THE REPAIR~~
27 ~~OF YOUR VEHICLE, PLEASE CONTACT US IMMEDIATELY~~
28 ~~FOR ASSISTANCE.”~~

29 ~~(e) Except as provided in subparagraph (A) of paragraph (1) of~~
30 ~~subdivision (b), after the claimant has chosen an automotive repair~~
31 ~~dealer, the insurer shall not suggest or recommend that the claimant~~
32 ~~select a different automotive repair dealer.~~

33 ~~(d) Any insurer that, by the insurance contract, suggests or~~
34 ~~recommends that an automobile be repaired at a particular~~
35 ~~automotive repair dealer shall also do both of the following:~~

36 ~~(1) Prominently disclose the contractual provision in writing to~~
37 ~~the insured at the time the insurance is applied for and at the time~~
38 ~~the claim is acknowledged by the insurer.~~

39 ~~(2) If the claimant elects to have the vehicle repaired at the shop~~
40 ~~of his or her choice, the insurer shall not limit or discount the~~

1 reasonable repair costs based on charges that would have been
2 incurred had the vehicle been repaired by the insurer's chosen
3 shop.

4 (e) For purposes of this section, "claimant" means a first-party
5 claimant or insured, or a third-party claimant who asserts a right
6 of recovery for automotive repairs under an insurance policy.

7 (f) The powers of the commissioner to enforce this section shall
8 include those granted in Article 6.5 (commencing with Section
9 790) of Chapter 1 of Part 2 of Division 1.

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