

AMENDED IN SENATE AUGUST 7, 2012
AMENDED IN ASSEMBLY MARCH 31, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1098

Introduced by Assembly Member Hagman
(Coauthor: Assembly Member Solorio)
(Coauthors: Senators Calderon and Gaines)

February 18, 2011

An act to amend Section ~~758~~ 790.03 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1098, as amended, Hagman. Insurance: ~~unlawful practices: unfair methods of competition: automotive repair.~~

Existing law ~~makes it unlawful for an insurer to require an auto body repair shop, as a condition of participation in the insurer's direct repair program, to pay for the cost of an insured's rental vehicle that is replacing an insured vehicle damaged in an accident, or to pay for the towing charges of the insured with respect to that accident. Existing law authorizes a registered auto body repair shop, denied participation in an insurer's direct repair program, to report the denial to the Department of Insurance, which maintains a record of those denials, and requires an insurer, upon the request of the department, to disclose the fact that a denial was made~~ *defines unfair methods of competition and unfair and deceptive acts or practices in the business of insurance, including knowingly committing or performing with such frequency as to indicate a general business practice of various unfair claims settlement practices, such as not attempting in good faith to effectuate*

prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. If a person engages in any unfair method of competition or any unfair or deceptive act or practice, that person may be subject to a civil penalty fixed by the Insurance Commissioner.

~~This bill would require the department's request that an insurer disclose the fact that a denial of participation in its direct repair program was made be in writing~~ *add to the list of unfair claims settlement practices (1) failing to estimate the cost of automotive repairs in accordance with accepted trade standards for good and workmanlike automotive repair, (2) adjusting a claimant's written repair estimate, if the repair costs will exceed the written repair estimates, without providing specified information, including edited copies of either the insurer's estimate or the claimant's auto body repair shop estimate, and (3) requiring the use of nonoriginal equipment manufacturer replacement crash parts in the repair of an automobile.*

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

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

1 *SECTION 1. Section 790.03 of the Insurance Code is amended*
2 *to read:*

3 790.03. The following are hereby defined as unfair methods
4 of competition and unfair and deceptive acts or practices in the
5 business of insurance.

6 (a) Making, issuing, circulating, or causing to be made, issued
7 or circulated, any estimate, illustration, circular, or statement
8 misrepresenting the terms of any policy issued or to be issued or
9 the benefits or advantages promised thereby or the dividends or
10 share of the surplus to be received thereon, or making any false or
11 misleading statement as to the dividends or share of surplus
12 previously paid on similar policies, or making any misleading
13 representation or any misrepresentation as to the financial condition
14 of any insurer, or as to the legal reserve system upon which any
15 life insurer operates, or using any name or title of any policy or
16 class of policies misrepresenting the true nature thereof, or making
17 any misrepresentation to any policyholder insured in any company
18 for the purpose of inducing or tending to induce the policyholder
19 to lapse, forfeit, or surrender his or her insurance.

1 (b) Making or disseminating or causing to be made or
2 disseminated before the public in this state, in any newspaper or
3 other publication, or any advertising device, or by public outcry
4 or proclamation, or in any other manner or means whatsoever, any
5 statement containing any assertion, representation, or statement
6 with respect to the business of insurance or with respect to any
7 person in the conduct of his or her insurance business, which is
8 untrue, deceptive, or misleading, and which is known, or which
9 by the exercise of reasonable care should be known, to be untrue,
10 deceptive, or misleading.

11 (c) Entering into any agreement to commit, or by any concerted
12 action committing, any act of boycott, coercion, or intimidation
13 resulting in or tending to result in unreasonable restraint of, or
14 monopoly in, the business of insurance.

15 (d) Filing with any supervisory or other public official, or
16 making, publishing, disseminating, circulating, or delivering to
17 any person, or placing before the public, or causing directly or
18 indirectly, to be made, published, disseminated, circulated,
19 delivered to any person, or placed before the public any false
20 statement of financial condition of an insurer with intent to deceive.

21 (e) Making any false entry in any book, report, or statement of
22 any insurer with intent to deceive any agent or examiner lawfully
23 appointed to examine into its condition or into any of its affairs,
24 or any public official to whom the insurer is required by law to
25 report, or who has authority by law to examine into its condition
26 or into any of its affairs, or, with like intent, willfully omitting to
27 make a true entry of any material fact pertaining to the business
28 of the insurer in any book, report, or statement of the insurer.

29 (f) (1) Making or permitting any unfair discrimination between
30 individuals of the same class and equal expectation of life in the
31 rates charged for any contract of life insurance or of life annuity
32 or in the dividends or other benefits payable thereon, or in any
33 other of the terms and conditions of the contract.

34 (2) This subdivision shall be interpreted, for any contract of
35 ordinary life insurance or individual life annuity applied for and
36 issued on or after January 1, 1981, to require differentials based
37 upon the sex of the individual insured or annuitant in the rates or
38 dividends or benefits, or any combination thereof. This requirement
39 is satisfied if those differentials are substantially supported by

1 valid pertinent data segregated by sex, including, but not limited
2 to, mortality data segregated by sex.

3 (3) However, for any contract of ordinary life insurance or
4 individual life annuity applied for and issued on or after January
5 1, 1981, but before the compliance date, in lieu of those
6 differentials based on data segregated by sex, rates, or dividends
7 or benefits, or any combination thereof, for ordinary life insurance
8 or individual life annuity on a female life may be calculated as
9 follows: (A) according to an age not less than three years nor more
10 than six years younger than the actual age of the female insured
11 or female annuitant, in the case of a contract of ordinary life
12 insurance with a face value greater than five thousand dollars
13 (\$5,000) or a contract of individual life annuity; and (B) according
14 to an age not more than six years younger than the actual age of
15 the female insured, in the case of a contract of ordinary life
16 insurance with a face value of five thousand dollars (\$5,000) or
17 less. "Compliance date" as used in this paragraph shall mean the
18 date or dates established as the operative date or dates by future
19 amendments to this code directing and authorizing life insurers to
20 use a mortality table containing mortality data segregated by sex
21 for the calculation of adjusted premiums and present values for
22 nonforfeiture benefits and valuation reserves as specified in
23 Sections 10163.1 and 10489.2 or successor sections.

24 (4) Notwithstanding the provisions of this subdivision, sex-based
25 differentials in rates or dividends or benefits, or any combination
26 thereof, shall not be required for (A) any contract of life insurance
27 or life annuity issued pursuant to arrangements which may be
28 considered terms, conditions, or privileges of employment as these
29 terms are used in Title VII of the Civil Rights Act of 1964 (Public
30 Law 88-352), as amended, and (B) tax sheltered annuities for
31 employees of public schools or of tax exempt organizations
32 described in Section 501(c)(3) of the Internal Revenue Code.

33 (g) Making or disseminating, or causing to be made or
34 disseminated, before the public in this state, in any newspaper or
35 other publication, or any other advertising device, or by public
36 outcry or proclamation, or in any other manner or means whatever,
37 whether directly or by implication, any statement that a named
38 insurer, or named insurers, are members of the California Insurance
39 Guarantee Association, or insured against insolvency as defined
40 in Section 119.5. This subdivision shall not be interpreted to

1 prohibit any activity of the California Insurance Guarantee
2 Association or the commissioner authorized, directly or by
3 implication, by Article 14.2 (commencing with Section 1063).

4 (h) Knowingly committing or performing with such frequency
5 as to indicate a general business practice any of the following
6 unfair claims settlement practices:

7 (1) Misrepresenting to claimants pertinent facts or insurance
8 policy provisions relating to any coverages at issue.

9 (2) Failing to acknowledge and act reasonably promptly upon
10 communications with respect to claims arising under insurance
11 policies.

12 (3) Failing to adopt and implement reasonable standards for the
13 prompt investigation and processing of claims arising under
14 insurance policies.

15 (4) Failing to affirm or deny coverage of claims within a
16 reasonable time after proof of loss requirements have been
17 completed and submitted by the insured.

18 (5) Not attempting in good faith to effectuate prompt, fair, and
19 equitable settlements of claims in which liability has become
20 reasonably clear.

21 (6) Compelling insureds to institute litigation to recover amounts
22 due under an insurance policy by offering substantially less than
23 the amounts ultimately recovered in actions brought by the
24 insureds, when the insureds have made claims for amounts
25 reasonably similar to the amounts ultimately recovered.

26 (7) Attempting to settle a claim by an insured for less than the
27 amount to which a reasonable person would have believed he or
28 she was entitled by reference to written or printed advertising
29 material accompanying or made part of an application.

30 (8) Attempting to settle claims on the basis of an application
31 which was altered without notice to, or knowledge or consent of,
32 the insured, his or her representative, agent, or broker.

33 (9) Failing, after payment of a claim, to inform insureds or
34 beneficiaries, upon request by them, of the coverage under which
35 payment has been made.

36 (10) Making known to insureds or claimants a practice of the
37 insurer of appealing from arbitration awards in favor of insureds
38 or claimants for the purpose of compelling them to accept
39 settlements or compromises less than the amount awarded in
40 arbitration.

1 (11) Delaying the investigation or payment of claims by
 2 requiring an insured, claimant, or the physician of either, to submit
 3 a preliminary claim report, and then requiring the subsequent
 4 submission of formal proof of loss forms, both of which
 5 submissions contain substantially the same information.

6 (12) Failing to settle claims promptly, where liability has become
 7 apparent, under one portion of the insurance policy coverage in
 8 order to influence settlements under other portions of the insurance
 9 policy coverage.

10 (13) Failing to provide promptly a reasonable explanation of
 11 the basis relied on in the insurance policy, in relation to the facts
 12 or applicable law, for the denial of a claim or for the offer of a
 13 compromise settlement.

14 (14) Directly advising a claimant not to obtain the services of
 15 an attorney.

16 (15) Misleading a claimant as to the applicable statute of
 17 limitations.

18 (16) Delaying the payment or provision of hospital, medical,
 19 or surgical benefits for services provided with respect to acquired
 20 immune deficiency syndrome or AIDS-related complex for more
 21 than 60 days after the insurer has received a claim for those
 22 benefits, where the delay in claim payment is for the purpose of
 23 investigating whether the condition preexisted the coverage.
 24 However, this 60-day period shall not include any time during
 25 which the insurer is awaiting a response for relevant medical
 26 information from a health care provider.

27 *(17) Failing to estimate the cost of automotive repairs in*
 28 *accordance with accepted trade standards for good and*
 29 *workmanlike automotive repair. Estimates shall allow for repairs*
 30 *to be made by auto body repair shops, as defined in Section*
 31 *9889.51 of the Business and Professions Code. The estimates shall*
 32 *be based on any of the following:*

33 *(A) Original equipment manufacturer repair specifications.*

34 *(B) Nationally distributed and periodically updated collision*
 35 *estimating guides.*

36 *(C) Generally accepted practices by the auto body repair and*
 37 *insurance industries.*

38 *(18) If the repair costs will exceed the written repair estimates*
 39 *prepared by or for the insurer, adjusting a claimant's written*
 40 *repair estimate without providing one of the following:*

1 (A) An edited copy of the claimant's auto body repair shop
2 estimate.

3 (B) An edited copy of the insurer's estimate.

4 (C) A supplemental estimate prepared by the insurer adjusting
5 the itemized supplemental request from the claimant's auto body
6 repair shop.

7 (19) Requiring the use of nonoriginal equipment manufacturer
8 replacement crash parts in the repair of an automobile, unless the
9 insurer specifying the use of nonoriginal equipment manufacturer
10 replacement crash parts only specified parts that are distributed
11 by entities that do all of the following:

12 (A) Agree to pay the cost of any modifications to the parts that
13 may be necessary to effect the repair.

14 (B) Agree to pay the cost to the auto body repair shop associated
15 with returning the part, and to replace the part.

16 (C) Have in place a program to analyze parts returned with
17 defects and report the part number, lot number, and nature of each
18 defect to the manufacturer and any entity that certifies the parts.
19 An insurer shall obtain from the distributor and report the defect
20 information identified in this subparagraph to the Department of
21 Insurance upon request.

22 (D) Indemnify the auto body repair shop for any part verified
23 by the distributor to be defective. For purposes of this paragraph,
24 a part with a defect rate of 5 percent or greater installed in 1,000
25 or more vehicles shall be considered to be defective.

26 (i) Canceling or refusing to renew a policy in violation of
27 Section 676.10.

28 ~~SECTION 1. Section 758 of the Insurance Code is amended~~
29 ~~to read:~~

30 ~~758. (a) It is unlawful for an insurer to require an auto body~~
31 ~~repair shop registered pursuant to Sections 9884 and 9889.52 of~~
32 ~~the Business and Professions Code, as a condition of participation~~
33 ~~in the insurer's direct repair program, to pay for the cost of an~~
34 ~~insured's rental vehicle that is replacing an insured vehicle~~
35 ~~damaged in an accident, or to pay for the towing charges of the~~
36 ~~insured with respect to that accident. However, the insurer and the~~
37 ~~auto body repair shop may agree in writing to terms and conditions~~
38 ~~under which the rental vehicle charges become the responsibility~~
39 ~~of the auto body repair shop when the shop fails to complete work~~
40 ~~within the agreed-upon time for repair of the damaged vehicle.~~

1 ~~(b) A registered auto body repair shop that is denied participation~~
2 ~~in an insurer's direct repair program may report a denial to the~~
3 ~~department, which shall maintain a record of all those denials for~~
4 ~~the purposes of gathering market conduct information. An insurer,~~
5 ~~upon the written request of the department, shall disclose the fact~~
6 ~~that a denial was made.~~

7 ~~(c) Any insurer that conducts an auto body repair labor rate~~
8 ~~survey to determine and set a specified prevailing auto body rate~~
9 ~~in a specific geographic area shall report the results of that survey~~
10 ~~to the department, which shall make the information available~~
11 ~~upon request. The survey information shall include the names and~~
12 ~~addresses of the auto body repair shops and the total number of~~
13 ~~shops surveyed.~~