

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1540

By: Henry

AS INTRODUCED

An Act relating to civil procedure; amending 36 O.S. 2001, Sections 105, 1204, 1250.5 and 3629, which relate to unfair competition and settlement practices; modifying definition; prohibiting payment of specified commissions under certain circumstances; adding unfair settlement practice; providing specified options for certain claims; specifying requirements for certain payments; prohibiting withdrawal from certain agreements for specified reasons; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 2001, Section 105, is amended to read as follows:

Section 105. "Transact" with respect to insurance includes any of the following:

1. Solicitation and inducement~~;~~;
2. Preliminary negotiations~~;~~;
3. Effectuation of a contract of insurance~~;~~;
4. Transaction of matters subsequent to effectuation of the contract and arising out of it; and
5. The offering of future payments, within the meaning of 26 U.S.C. Section 104, that are to be funded through the issuance of an annuity, if the settlement negotiations take place in this state or the intended annuitant is a resident of this state, regardless of who is intended to own the annuity.

SECTION 2. AMENDATORY 36 O.S. 2001, Section 1204, is amended to read as follows:

Section 1204. The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

1. Misrepresentations and false advertising of policy contracts. Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance.

2. False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business which is untrue, deceptive or misleading. No insurance company shall issue, or cause to be issued, any policy of insurance of any type or description upon life, or property, real or personal, whenever such

policy of insurance is to be furnished or delivered to the purchaser or bailee of any property, real or personal, as an inducement to purchase or bail said property, real or personal, and no other person shall advertise, offer or give free insurance, insurance without cost or for less than the approved or customary rate, in connection with the sale or bailment of real or personal property, except as provided in subsection B, Section 4101 of Article 41 (Group Life Insurance and Group Annuity Contracts). No person that is not an insurer shall assume or use any name which deceptively infers or suggests that it is an insurer.

3. Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

4. Boycott, coercion and intimidation. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

5. False financial statements. Filing with any supervisory or other public official, or making, publishing, disseminating, circulating or delivering to any person, or placing before the public or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person or placed before the public, any false statement of financial condition of an insurer with intent to deceive.

Making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs,

or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer.

6. Stock operations and advisory board contracts. Issuing or delivering or permitting agents, officers, or employees to issue or deliver agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

7. Unfair discrimination.

~~(a)~~ a. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

~~(b)~~ b. Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

~~(c)~~ c. As to kinds of insurance other than life and accident and health, no person shall make or permit any unfair discrimination in favor of particular persons, or between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors, or expense elements, in the terms or conditions of any insurance contract, or in the rate

or amount of premium charged therefor. This subsection shall not apply as to any premium rate in effect pursuant to Article 9 of the Insurance Code.

8. Rebates.

~~(a)~~ a. Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of insurance or agreement as to such contract other than as plainly expressed in the contract issued thereon; or paying or allowing, or giving or offering to pay, allow or give, directly or indirectly, as inducement to any contract of insurance, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; except in accordance with an applicable rate filing, rating plan or rating system filed with and approved by the Board; or giving or selling or purchasing or offering to give, sell, or purchase as inducement to such insurance, or in connection therewith, any stocks, bonds or other securities of any company, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract or receiving or accepting as inducement to contracts of insurance, any rebate of premium payable on the contract, or any special favor or advantage in the dividends or other benefit to accrue thereon, or any valuable consideration or inducement not specified in the contract.

~~(b)~~ b. Nothing in ~~subsection~~ paragraph 7 of this section or ~~paragraph (a)~~ subparagraph a of this subsection ~~paragraph~~ shall be construed as including within the

definition of discrimination or rebates any of the following practices:

- (1) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided, that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interest of the company and its policyholders;
- (2) In the case of life or accident and health insurance policies issued on the industrial debit or weekly premium plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense;
- (3) Making a readjustment of the rate of premium for a policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;
- (4) In the case of life insurance companies, allowing its bona fide employees to receive a commission on the premiums paid by them on policies on their own lives;
- (5) Issuing life or accident and health policies on a salary saving or payroll deduction plan at a

reduced rate commensurate with the savings made by the use of such plan;

- (6) Paying commissions or other compensation to duly licensed agents or brokers, or allowing or returning to participating policyholders, members or subscribers, dividends, savings or unabsorbed premium deposits; however, payment of commissions or other compensation may not be made to self-insured defendants, property and casualty insurers, their parent entities, subordinates or affiliates, or any officer or employee of the same, when any of these entities or individuals is a party to the settlement of the claim.

~~(e)~~ c. As used in this section, the word "insurance" includes suretyship and the word "policy" includes bond.

9. Coercion prohibited. Requiring as a condition precedent to the purchase of, or the lending of money upon the security of, real or personal property, that any insurance covering such property, or liability arising from the ownership, maintenance or use thereof, be procured by or on behalf of the vendee or by the borrower in connection with such purchase or loan through any particular person or agent or in any particular insurer, or requiring the payment of a reasonable fee as a condition precedent to the replacement of insurance coverage on mortgaged property at the anniversary date of the policy; provided, however, that this provision shall not prevent the exercise by any such vendor or lender of the right to approve or disapprove any insurer selected to underwrite the insurance; but any disapproval of any insurer shall be on reasonable grounds.

10. Inducements. No insurer, agent, broker, solicitor, or other person shall, as an inducement to insurance or in connection with any insurance transaction, provide in any policy for or offer, sell, buy, or offer or promise to buy, sell, give, promise, or allow

to the insured or prospective insured or to any other person in his behalf in any manner whatsoever:

- ~~(a)~~ a. Any employment.
- ~~(b)~~ b. Any shares of stock or other securities issued or at any time to be issued or any interest therein or rights thereto.
- ~~(c)~~ c. Any advisory board contract, or any similar contract, agreement or understanding, offering, providing for, or promising any special profits.
- ~~(d)~~ d. Any prizes, goods, wares, merchandise, or tangible property of an aggregate value in excess of Twenty-five Dollars (\$25.00).
- ~~(e)~~ e. Any special favor, advantage or other benefit in the payment, method of payment or credit for payment of the premium through the use of credit cards, credit card facilities, credit card lists, or wholesale or retail credit accounts of another person. The provisions of this paragraph shall not apply to individual policies insuring against loss resulting from bodily injury or death by accident as defined by Article 44 of the Oklahoma Insurance Code.

11. Premature disposal of premium notes prohibited. No insurer or agent thereof shall hypothecate, sell, or dispose of a promissory note received in payment of any part of a premium on a policy of insurance applied for prior to the delivery of the policy.

12. Fraudulent statement in application; penalty. Any insurance agent, examining physician, or other person who knowingly or willfully makes a false or fraudulent statement or representation in or relative to an application for insurance, or who makes any such statement to obtain a fee, commission, money, or benefit shall be guilty of a misdemeanor.

SECTION 3. AMENDATORY 36 O.S. 2001, Section 1250.5, is amended to read as follows:

Section 1250.5. Any of the following acts by an insurer, if committed in violation of Section 1250.3 of this title, constitutes an unfair claim settlement practice:

1. Failing to fully disclose to first party claimants, benefits, coverages, or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim;

2. Knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;

3. Failing to adopt and implement reasonable standards for prompt investigations of claims arising under its insurance policies or insurance contracts;

4. Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear;

5. Failing to comply with the provisions of Section 1219 of this title;

6. Denying a claim for failure to exhibit the property without proof of demand and unfounded refusal by a claimant to do so;

7. Except where there is a time limit specified in the policy, making statements, written or otherwise, which require a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices an insurer's rights;

8. Requesting a claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment;

9. Issuing checks or drafts in partial settlement of a loss or claim under a specified coverage which contain language which releases an insurer or its insured from its total liability;

10. Denying payment to a claimant on the grounds that services, procedures, or supplies provided by a treating physician or a hospital were not medically necessary unless the health insurer or administrator, as defined in Section 1442 of this title, first obtains an opinion from any provider of health care licensed by law and preceded by a medical examination or claim review, to the effect that the services, procedures or supplies for which payment is being denied were not medically necessary. Upon written request of a claimant, treating physician, or hospital, such opinion shall be set forth in a written report, prepared and signed by the reviewing physician. The report shall detail which specific services, procedures, or supplies were not medically necessary, in the opinion of the reviewing physician, and an explanation of that conclusion. A copy of each report of a reviewing physician shall be mailed by the health insurer, or administrator, postage prepaid, to the claimant, treating physician or hospital requesting same within fifteen (15) days after receipt of such written request. As used in this paragraph, "physician" means a person holding a valid license to practice medicine and surgery, osteopathic medicine, podiatric medicine, dentistry, chiropractic, or optometry, pursuant to the state licensing provisions of Title 59 of the Oklahoma Statutes;

11. Compensating a reviewing physician, as defined in paragraph 10 of this subsection, on the basis of a percentage of the amount by which a claim is reduced for payment;

12. Violating the provisions of the Health Care Fraud Prevention Act;

13. Compelling, without just cause, policyholders to institute suits to recover amounts due under its insurance policies or insurance contracts by offering substantially less than the amounts ultimately recovered in suits brought by them, when such policyholders have made claims for amounts reasonably similar to the amounts ultimately recovered;

14. Failing to maintain a complete record of all complaints which it has received during the preceding three (3) years or since the date of its last financial examination conducted or accepted by the Commissioner, whichever time is longer. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. For the purposes of this paragraph, "complaint" means any written communication primarily expressing a grievance; ~~or~~

15. Requesting a refund of all or a portion of a payment of a claim made to a claimant or health care provider more than twenty-four (24) months after the payment is made. This paragraph shall not apply:

- a. if the payment was made because of fraud committed by the claimant or health care provider, or
- b. if the claimant or health care provider has otherwise agreed to make a refund to the insurer for overpayment of a claim; or

16. Receiving a rebate from commissions or other payment, including a refund of unabsorbed premium deposits or other consideration, whether disclosed to the claimant or undisclosed, from a life insurance company issuing an annuity or from the issuance of an obligation of the United States, whether paid directly or through a broker or agent handling a transaction involving future payments within the meaning of 26 U.S.C. Section 104.

SECTION 4. AMENDATORY 36 O.S. 2001, Section 3629, is amended to read as follows:

Section 3629. A. An insurer shall furnish, upon written request of any insured claiming to have a loss under an insurance contract issued by such insurer, forms of proof of loss for completion by such person, but such insurer shall not, by reason of

the requirement so to furnish forms, have any responsibility for or with reference to the completion of such proof or the manner of any such completion or attempted completion.

B. It shall be the duty of the insurer, receiving a proof of loss, to submit a written offer of settlement or rejection of the claim to the insured within ninety (90) days of receipt of that proof of loss. Upon a judgment rendered to either party, costs and attorney fees shall be allowable to the prevailing party. For purposes of this section, the prevailing party is the insurer in those cases where judgment does not exceed written offer of settlement. In all other judgments the insured shall be the prevailing party. If the insured is the prevailing party, the court in rendering judgment shall add interest on the verdict at the rate of fifteen percent (15%) per year from the date the loss was payable pursuant to the provisions of the contract to the date of the verdict. This provision shall not apply to uninsured motorist coverage.

C. In claims that have not been filed as lawsuits and in pre-judgment and post-judgment lawsuit cases, the parties may specifically discuss the option and advantages for the physically injured claimant, or plaintiff if a lawsuit has been filed, or workers' compensation claimant of settlement through the use of periodic payments within the meaning of 26 U.S.C. Section 104. If, in connection with a settlement, the claimant or plaintiff chooses to receive payment in the form of future periodic or lump sum payments, the self-insured defendant or the responsible liability carrier shall be obligated to provide such payments, and the following shall apply:

1. To the extent the liability for payment of damages to the claimant qualifies for assignment under 26 U.S.C. Section 130, the defendant or defendant's liability carrier shall assign the liability to make such periodic payments to a third-party assignee

selected by the claimant. This will be accomplished by the payment of settlement funds by the defendant or defendant's insurer to the assignment company as consideration, for the acceptance of the future payment liability, and the signing of the appropriate qualified assignment document. The defendant's or defendant's liability carrier's approval of such selection shall not be required;

2. If requested by the claimant or plaintiff or the attorney for the claimant or plaintiff, all settlement offers during settlement negotiations, including the exchange of correspondence, settlement conferences, mediations and arbitrations, shall be conveyed in terms of cash paid at the time of settlement. Before the claimant or plaintiff has actually or constructively received the settlement funds, the claimant or plaintiff may elect to defer all or part of the settlement funds that have been offered during negotiations and accept instead future payments in the amount that can be purchased with the deferred settlement funds;

3. Because the claimant or plaintiff bears all risk of financial failure of the third-party obligor or the annuity issuer, the claimant or plaintiff shall have the right to select, independently of the self-insured defendant or casualty insurer, a properly licensed and appointed "structured settlement" broker to arrange the future payment transaction on behalf of the claimant; and

4. Once the parties agree to an amount of money that the defendant or defendant's insurer will spend for the benefit of, but not necessarily pay directly to, the claimant or plaintiff at the time of settlement, neither the defendant nor the defendant's liability insurer may withdraw from the agreement because of:

- a. the claimant's or plaintiff's desire to have all or part of the settlement amount fund future payments,

b. the claimant's or plaintiff's choice of the third-party assignee or annuity issuer, or

c. the claimant's or plaintiff's selection of the broker to handle the future payment transaction.

SECTION 5. This act shall become effective November 1, 2002.

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