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INSURANCE CODE - INS

DIVISION 1. GENERAL RULES GOVERNING INSURANCE [100 - 1879.8] (*Division 1 enacted by Stats. 1935, Ch. 145.)*

PART 2. THE BUSINESS OF INSURANCE [680 - 1879.8] (*Part 2 enacted by Stats. 1935, Ch. 145.)*

CHAPTER 1. General Regulations [680 - 1113] (*Chapter 1 enacted by Stats. 1935, Ch. 145.)*

ARTICLE 5.1. Unlawful Practices [755 - 758.7] (*Heading of Article 5.1 renumbered from Article 5 (as added by Stats. 1989, Ch. 1099) by Stats. 1990, Ch. 216, Sec. 86.)*

755. If at the time of the solicitation and issuance of a policy of life or disability insurance, or of a surety bond which by its terms continues until canceled, a person may lawfully receive commissions on it, that person, or in the event of that person's death, his or her estate or heirs may continue to receive commissions on it during the continuance in force or renewal of the policy or bond without being licensed under the provisions of Chapter 5 (commencing with Section 1621) of Part 2 if all of the following requirements are met:

(a) The recipient does not transact insurance in connection with the policy or bond while not so licensed.

(b) The payment is made pursuant to a contract entered into, before that solicitation and issuance, between the insurer paying or allowing the commission and that person.

(*Added by Stats. 1989, Ch. 1099, Sec. 1. Effective September 30, 1989.*)

756. When the premium on a policy insuring an employer is based upon the amount or segregation of the employer's payroll, and the employer, personally or knowingly through his or her employee, procures a lower premium by willfully misrepresenting the amount or segregation, that misrepresentation is an unlawful act as to the employer.

In addition to any penalty provided by law, the employer in that case is liable to the state in an amount 10 times the difference between the lower premium paid and the premium properly payable. The commissioner shall collect the amount so payable and may bring a civil action in his or her name as commissioner to enforce collection unless the misrepresentation is made to, and the lower premium procured from the State Compensation Insurance Fund. In the latter case the liability to the state under this section shall be enforced in a civil action in the name of the State Compensation Insurance Fund and any amount so collected shall become a part of that fund.

(*Added by Stats. 1989, Ch. 1099, Sec. 1. Effective September 30, 1989.*)

757. When a statement of the amount or segregation of a payroll is materially false, and an insurer, through a person employed by it in a managerial capacity, accepts the statement as the basis for the premium on a policy, the acceptance is an unlawful act if the accepting employee knows of the falsity.

(*Added by Stats. 1989, Ch. 1099, Sec. 1. Effective September 30, 1989.*)

758. (a) It is unlawful for an insurer to require an auto body repair shop registered pursuant to Sections 9884 and 9889.52 of the Business and Professions Code, 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. However, the insurer and the auto body repair shop may agree in writing to terms and conditions under which the rental vehicle charges become the responsibility of the auto body repair shop when the shop fails to complete work within the agreed-upon time for repair of the damaged vehicle.

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

(c) Any insurer that conducts an auto body repair labor rate survey to determine and set a specified prevailing auto body rate in a specific geographic area shall report the results of that survey to the department, which shall make the information available upon

request. The survey information shall include the names and addresses of the auto body repair shops and the total number of shops surveyed.

(Added by Stats. 2000, Ch. 867, Sec. 15. Effective January 1, 2001.)

758.5. (a) No insurer shall require that an automobile be repaired at a specific automotive repair dealer, as defined in Section 9880.1 of the Business and Professions Code.

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

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

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

(2) An insurer may provide the claimant with specific truthful and nondeceptive information regarding the services and benefits available to the claimant during the claims process. This may include, but is not limited to, information about the repair warranties offered, the type of replacement parts to be used, the anticipated time to repair the damaged vehicle, and the quality of the workmanship available to the claimant.

(3) If an insurer's recommendation of an automotive repair dealer is accepted by the claimant, the insurer shall cause the damaged vehicle to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy or as is otherwise allowed by law. If the recommendation of an automotive repair dealer is done orally, and if the oral recommendation is accepted by the claimant, the insurer shall provide the information contained in this paragraph, as noted in the statement below, to the claimant at the time the recommendation is made. The insurer shall mail or provide the notice required by this paragraph within five calendar days from the acceptance of the recommendation. The written notice required by this paragraph shall include the following statement plainly printed in no less than 10-point type in a separate and freestanding document:

"WE ARE PROHIBITED BY LAW FROM REQUIRING THAT REPAIRS BE DONE AT A SPECIFIC AUTOMOTIVE REPAIR DEALER. YOU ARE ENTITLED TO SELECT THE AUTO BODY REPAIR SHOP TO REPAIR DAMAGE COVERED BY US. WE HAVE RECOMMENDED AN AUTOMOTIVE REPAIR DEALER THAT WILL REPAIR YOUR DAMAGED VEHICLE. WE RECOMMEND YOU CONTACT ANY OTHER AUTOMOTIVE REPAIR DEALER YOU ARE CONSIDERING TO CLARIFY ANY QUESTIONS YOU MAY HAVE REGARDING SERVICES AND BENEFITS. IF YOU AGREE TO USE OUR RECOMMENDED AUTOMOTIVE REPAIR DEALER, WE WILL CAUSE THE DAMAGED VEHICLE TO BE RESTORED TO ITS CONDITION PRIOR TO THE LOSS AT NO ADDITIONAL COST TO YOU OTHER THAN AS STATED IN THE INSURANCE POLICY OR AS OTHERWISE ALLOWED BY LAW. IF YOU EXPERIENCE A PROBLEM WITH THE REPAIR OF YOUR VEHICLE, PLEASE CONTACT US IMMEDIATELY FOR ASSISTANCE."

(c) Except as provided in subparagraph (A) of paragraph (1) of subdivision (b), or as to information of the kind authorized by paragraph (2) of subdivision (b), after the claimant has chosen an automotive repair dealer, the insurer shall not suggest or recommend that the claimant select a different automotive repair dealer.

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

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

(2) If the claimant elects to have the vehicle repaired at the shop of his or her choice, the insurer shall not limit or discount the reasonable repair costs based on charges that would have been incurred had the vehicle been repaired by the insurer's chosen shop.

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

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

(g) The changes to this section made by the act enacted during the 2009–10 Regular Session that amended this section shall only apply to actions filed on or after January 1, 2010.

(Amended by Stats. 2009, Ch. 387, Sec. 1. (AB 1200) Effective January 1, 2010.)

758.6. Insurers shall not engage in capping. For the purposes of this section, "capping" means offering or paying an amount that is unrelated to a methodology used in determining paint and materials charges that is accepted by automobile repair shops and insurers.

(Added by Stats. 2008, Ch. 526, Sec. 2. Effective January 1, 2009.)

758.7. An insurer, upon receiving notice from an insured, shall reimburse any fees and extra premium charged to an insured due to a late premium payment or a lapse in coverage under the policy if the late payment or lapse in coverage was the result of fraud committed by an agent or broker licensed pursuant to this code and one of the following has occurred:

- (a) The agent or broker has been convicted of fraudulent activity in court.
- (b) An administrative penalty has been imposed on the agent or broker for fraudulent activity.
- (c) The agent or broker has been charged with fraud in court or in an administrative action and has agreed to plead guilty to a lesser charge for the fraudulent activity of which he or she is accused.

(Added by Stats. 2004, Ch. 160, Sec. 1. Effective January 1, 2005.)