

1 insurer from its duties and responsibilities contained in other
2 provisions of this act or in case law. The duties and
3 responsibilities of an insurer under this chapter are cumulative to
4 preexisting duties and responsibilities.

5 Sec. 3072. As used in this chapter:

6 (a) "Agent" means a person authorized to represent an insurer
7 with respect to a claim.

8 (b) "Bad-faith failure to settle" means an insurer's failure
9 to settle a claim when, considering all of the circumstances, the
10 insurer could and should have done so had it acted fairly and
11 reasonably toward its insured and with due regard for the insured's
12 interests.

13 (c) "Claimant" means a first-party claimant, a third-party
14 claimant, or both, and includes the claimant's designated legal
15 representative and a member of the claimant's immediate family
16 designated by the claimant. Claimant includes an insured if the
17 insured is making a first-party claim or otherwise asserting a
18 right to payment under the insured's insurance policy or insurance
19 contract.

20 (d) "First-party claimant" means a person asserting a right to
21 payment under an insurance policy or insurance contract, or from a
22 person that has obtained permission from a regulatory agency to be
23 self-insured, arising out of the occurrence of a contingency of
24 loss covered by the policy or contract.

25 (e) "Insurance policy" or "insurance contract" means a
26 contract of insurance, indemnity, suretyship, or annuity issued or
27 proposed or intended for issuance by a person engaged in the
28 business of insurance.

29 (f) "Investigation" means all activities of an insurer

1 directly or indirectly related to the determination of insurance
2 coverage and determination of liability under coverages afforded by
3 an insurance policy or insurance contract.

4 (g) "Third-party claimant" means a person asserting a claim
5 against a person that is insured under an insurance policy or
6 insurance contract.

7 Sec. 3073. After a claim is made under an insurance policy
8 issued by an authorized or unauthorized insurer, the claimant is
9 entitled to have the claim handled in accordance with this chapter.

10 Sec. 3074. (1) An insurer shall exercise good faith and fair
11 dealing in the investigation, adjustment, evaluation, and payment
12 of a claim to which this chapter applies.

13 (2) An insurer shall not do any of the following:

14 (a) Delay payment of a claim, deny payment of a claim, or fail
15 to pay a claim, unless there is a reasonable basis for and support
16 in a provision of the policy for the action.

17 (b) After a civil action has been filed regarding the action,
18 change the factual or legal basis for the action unless the change
19 is based on newly discovered evidence after the action was filed.

20 (c) Abuse its relationship with an insured or use an economic
21 advantage that puts the insurer in a position of actual or apparent
22 authority over the insured or gives the insurer power to affect the
23 insured's interests.

24 (3) An insurer shall give at least equal consideration to the
25 interests of the policyholder and claimant as it does to its own
26 interests in all aspects of investigating, adjusting, evaluating,
27 and paying a claim.

28 (4) An insurer shall establish and maintain reasonable written
29 standards for the prompt investigation, adjustment, evaluation, and

1 payment of claims.

2 (5) An insurer shall investigate and evaluate a claim and the
3 materials and evidence related to the claim in an objective manner.

4 (6) An insurer shall give all reasonable benefit of the doubt
5 to the claimant in the investigation and evaluation of a claim.

6 (7) An ambiguity in an insurance contract or policy must be
7 construed in favor of the insured.

8 Sec. 3075. (1) An insurer shall provide to a claimant a copy
9 of all applications for insurance, policies of insurance including
10 all endorsements and declarations, and all underwriting files
11 applicable to the policies of insurance on request of the claimant
12 not later than 7 days after the date of the request.

13 (2) An insurer shall provide to a claimant a copy of all
14 statements made by the claimant, whether written, recorded, or in
15 electronic format, not later than 7 days after a request by the
16 claimant.

17 (3) An insurer shall provide prompt updates on the status of a
18 claim not later than 7 days after a request by the claimant. An
19 insurer shall provide, without a request from the claimant, written
20 status updates to the claimant every 30 days advising of all of the
21 following:

22 (a) The status of the claim.

23 (b) What additional information, if any, is necessary for the
24 insurer to make a claims decision.

25 (c) When a claims decision can reasonably be expected to be
26 made.

27 (4) An insurer shall not deny or forfeit a claimant's claim
28 for failure to comply with a policy condition unless the insurer
29 first provides the claimant with written notice that a policy

1 condition has not been met and provides the claimant a reasonable
2 period of time, not less than 30 days, to cure the defect in
3 satisfying the condition.

4 (5) An insurer shall provide reasonable notice for any
5 examinations under oath taken on a claim and permit attendance of
6 the claimant's attorney at all examinations under oath.

7 (6) An insurer shall provide a claimant transcripts of all
8 examinations under oath taken on a claim at any time during the
9 pendency of the claim. An insurer shall not interfere with the
10 claimant's efforts to obtain, or prohibit the claimant from
11 obtaining, at the claimant's expense, a transcript of the testimony
12 at the examination under oath from the court reporter or other
13 person who recorded the testimony. An insurer shall not instruct
14 any court reporter or other person to withhold the transcript from
15 the claimant if the claimant pays the court reporter's fee for a
16 copy of the transcript.

17 (7) An insurer shall provide the claimant all documentation
18 relating to the examination of any scene, artifact, or item not
19 later than 7 days after receiving a request for this information
20 from the claimant, if the examination occurred without the claimant
21 or a representative of the claimant being present at the time of
22 the examination.

23 (8) An insurer or the insurer's agent, employee, or
24 representative shall not make a statement to a claimant, either
25 directly or indirectly, suggesting or implying that the claimant
26 should, or encouraging the claimant to, not retain, or terminate a
27 contract for services with, legal counsel or other claims
28 professionals, including, but not limited to, public adjusters.

29 (9) An insurer shall not refuse to grant a request by a

1 claimant for an extension of time to provide information or
2 documents or to meet policy conditions, terms, or requirements,
3 unless the extension of time will result in actual material
4 prejudice to the insurer.

5 (10) An insurer shall pay a claimant's additional living
6 expenses under a fire policy and pay business interruption and
7 extra expenses under a commercial or business policy during the
8 investigation of a claim under the policy. If an insurer denies a
9 claim under a policy described in this subsection, the insurer
10 shall not terminate the payments described in this subsection
11 before 30 days after the insurer notified the claimant of the
12 denial. If an insurance policy described in this subsection limits
13 coverage based on the amount of time that has elapsed after the
14 date of the loss, the time limit for the expiration of coverage
15 must be tolled until after the insurer has granted the claim for
16 property damage and paid the actual cash value of the property
17 damage.

18 (11) If an insurer issues a fire insurance policy that
19 provides the replacement cost of damaged property, the insurer
20 shall provide the claimant a reasonable period of time after
21 payment of the actual cash value of the property to complete the
22 repair or replacement without regard to a time limit set forth in
23 the fire insurance policy for the repair and replacement of the
24 property.

25 Sec. 3076. (1) An insurer or an adjuster, agent, or other
26 representative of an insurer shall not misrepresent pertinent facts
27 or fail to fully disclose to a first-party claimant all pertinent
28 benefits, coverages, coverage limits, or other provisions of an
29 insurance policy or insurance contract under which the claim is

1 presented, regardless of the relationship of the claimant to the
2 policyholder.

3 (2) An insurer shall act in good faith to effectuate a prompt,
4 fair, and equitable settlement of a claim in which liability has
5 become reasonably clear.

6 (3) An insurer shall not deny a claim without conducting a
7 reasonable investigation based on all available information and
8 after conducting an objective evaluation of the available
9 information giving the benefit of any doubts and resolving any
10 disputes in favor of coverage.

11 (4) An insurer shall not deny a claim for failure to provide
12 written notice of loss or proof of loss within a specified time
13 limit unless the failure to comply with the time limit materially
14 prejudices the insurer's rights and unless the insurer has
15 specified ahead of time the reasonable materials that constitute
16 proof of loss and has provided adequate time to provide proof.

17 (5) An insurer shall not request that a first-party claimant
18 sign a release as a condition for payment under an insurance policy
19 that extends beyond the subject matter that gave rise to the claim
20 payment unless specifically negotiated by the claimant.

21 (6) An insurer shall not, in partial settlement of a loss or
22 claim under a specific coverage, issue a check or draft that
23 contains language that releases the insurer from its total
24 liability, liability for additional damages, or liability under
25 other coverages.

26 (7) An insurer shall set out with specificity the factual and
27 legal basis for the action in writing and provide the writing to
28 the claimant not later than 7 days after the action.

29 Sec. 3077. An insurer's investigation and claim files must be

1 deemed to be prepared in the ordinary course of business and are
2 subject to production to a claimant after a claim has been denied.
3 The files must contain all notes and documents pertaining to the
4 investigation, adjustment, and denial of the claim regardless of an
5 insurer's designation of what constitutes a claim file, and in such
6 detail that pertinent events and the dates of the events can be
7 reconstructed.

8 Sec. 3078. (1) This section applies in an action against an
9 insurer for bad-faith failure to settle a third-party claim,
10 whether under statute or common law.

11 (2) In handling a claim, an insurer has a nondelegable duty to
12 its insured and a claimant to handle the claim in good faith by
13 complying with subsection (3).

14 (3) In addition to the standards in sections 3073 to 3077,
15 once an insurer receives actual notice of an event or loss that
16 could give rise to a covered liability claim, and continuing until
17 the conclusion of the insurer's duty to defend, the insurer must do
18 all the following:

19 (a) Assign an insurance adjuster to investigate the claim and
20 resolve any questions concerning the existence or extent of the
21 insured's coverage.

22 (b) Advise the insured or claimant of any additional relevant
23 information that is necessary for the evaluation of whether to
24 settle a claim within the applicable policy limits.

25 (c) Exercise due diligence and good faith in advising the
26 insured of any cooperation required to settle the claim, the
27 purpose of the required cooperation, and the consequences of
28 refusing to cooperate, and confirming that advice in writing to the
29 insured.

1 (d) Provide reasonable assistance to the insured or the
2 insured's representative to comply with the insured's obligations
3 to cooperate and to satisfy any conditions to payment of a
4 claimant's settlement offer.

5 (e) On request, provide all communications related to a claim
6 against the insured to the insured or the insured's representative.

7 (f) Communicate all of the following to an insured or the
8 insured's representative:

9 (i) The identity of any other person that the insurer has
10 reason to believe may be liable.

11 (ii) The insurer's evaluation of the claim.

12 (iii) The likelihood and possible extent of an excess judgment.

13 (iv) Steps the insured can take to avoid exposure to an excess
14 judgment.

15 (v) Any settlement offers, and anything required of the
16 insured to accept a settlement offer.

17 (vi) The basis for the insurer's rejection or nonacceptance of
18 any settlement offer.

19 (g) Take all reasonable and available actions to avoid or
20 minimize excess exposure to the insured. The insurer shall give
21 fair consideration to any settlement offer that is not unreasonable
22 under the facts and accept it, if possible, if a reasonably prudent
23 person, faced with the prospect of paying the total recovery, would
24 do so.

25 (4) A claim for bad-faith failure to settle a claim or action
26 may be brought by the insured, a judgment creditor of the insured,
27 or an assignee of the insured, including, but not limited to, a
28 bankruptcy trustee, personal representative, heir, survivor,
29 receiver, or other successor in interest including the party

1 injured by the insured. If an insurer fails to make an offer within
2 the policy limits when liability is reasonably clear and it is
3 reasonably clear that damages may exceed the policy limits, the
4 insurer's liability is not limited to the policy limits.

5 Sec. 3079. (1) A person damaged by an insurer's violation of
6 this chapter or section 2026(1) may maintain an action against the
7 insurer and may recover all of the following damages:

8 (a) The unpaid benefits under the policy.

9 (b) Monetary loss and damage to credit reputation experienced
10 and reasonably likely to be experienced in the future.

11 (c) Emotional distress, humiliation, and anxiety experienced
12 and reasonably probable to be experienced in the future.

13 (d) Penalty interest of 12% per annum on all first-party
14 claims that have not been paid within 60 days after the insurer
15 receives proof of the amount of the claim.

16 (e) Exemplary damages.

17 (f) Punitive damages.

18 (g) A reasonable attorney fee based on whichever of the
19 following is greater:

20 (i) The amount of time expended by the attorney at a reasonable
21 hourly rate.

22 (ii) A contingent fee representing 33-1/3% of the amount paid
23 or owed by the insurer.

24 (h) The legal costs incurred, including expert fees and other
25 expenses incurred in pursuing payments owed by the insurer.

26 (2) If a person that is entitled to recover under subsection
27 (1) (d), (g), or (h) is also entitled to recover interest, an
28 attorney fee, or legal costs under another statutory provision,
29 including, but not limited to, a provision of this act, because of

1 the insurer's misconduct as described in subsection (1), the
2 insurer shall pay to the person only whichever of the interest,
3 attorney fee, or legal costs amount is larger.