

BUSINESS AND PROFESSIONS CODE

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ARTICLE II. INSURANCE, UNFAIR CLAIMS SETTLEMENT PRACTICES PROHIBITED

[Except as otherwise noted, the provisions of this Article II of the Business and Professions Code were enacted on October 8, 2020 by Ordinance No. 20-05, which became effective on the date of its enactment.]

Section 2-101. Purpose.

The Colorado River Indian Tribes have a duty and obligation to all its members and to the Tribes itself, to protect and preserve the political integrity, economic security, and health and welfare of the Tribes. In order to provide direct and indirect civic and economic benefits to the members of the Tribes, to residents of the Reservation and to the general public, and to promote economic development on the Reservation and to preserve tribal existence, the Tribes have determined that insurers, insurance producers, agents, reinsurers, brokers, representatives and claims handlers (Collectively, “Insurers”) transacting business with the Tribes, its members, its enterprises, or affecting insurable interests within the reservation to set forth standards for the investigation and disposition of claims arising under the issued policies. It is not intended to cover claims involving workers’ compensation, fidelity, or suretyship.

It is intended to create a regulatory scheme as well as a judicial cause of action for any violation of this Article.

Section 2-102. Definition of Insurer.

Insurer means insurance company, insurance producers, agents, reinsurers, brokers, representatives, adjusters and claims handlers transacting business with the Tribes, its members, its enterprises, or affecting insurable interests within the reservation

Section 2-103. Unfair Claims Settlement Practices Prohibited.

Unfair claims settlement practices as defined in Section 2-104 are prohibited.

Section 2-104. Unfair Claims Settlement Practices Defined.

Any of the following acts by an insurer constitutes an unfair claims settlement practice:

- (A) Knowingly misrepresenting to claimants and insureds relevant facts or policy provisions relating to coverages at issue;
- (B) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;

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- (C) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies;
- (D) Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear;
- (E) Compelling insureds or beneficiaries to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them;
- (F) Refusing to pay claims without conducting a reasonable investigation;
- (G) Failing to explicitly affirm or deny coverage of claims within a reasonable time after having completed its investigation related to such claim or claims (any claim not explicitly denied will be deemed admitted);
- (H) Attempting to settle or settling claims for less than the amount that a reasonable person would believe the insured or beneficiary was entitled by reference to written or printed advertising material accompanying or made part of an application;
- (I) Attempting to settle or settling claims on the basis of an application that was materially altered without notice to, or knowledge or consent of, the insured;
- (J) Making claims payments to an insured or beneficiary without indicating the coverage under which each payment is being made;
- (K) Unreasonably delaying the investigation or payment of claims by requiring both a formal proof of loss form and subsequent verification that would result in duplication of information and verification appearing in the formal proof of loss form;
- (L) Failing in the case of claims denials or offers of compromise settlement to promptly provide a reasonable and accurate explanation of the basis for such actions;
- (M) Failing to provide forms necessary to present claims within fifteen (15) calendar days of a request with reasonable explanations regarding their use; or
- (N) After having completed its investigation, failing to pay a claim after having failed to explicitly deny it.

Section 2-104.Special Relationship.

Insurers are deemed to have a special relationship with their insureds, wherein the insurer has a duty to its insured as that of a fiduciary.

Section 2-105. Applicability and Construction.

This Article shall apply to all outstanding and future claims, and shall be liberally construed to protect insureds and claimants. However, it shall not apply to any acts or omissions committed by an insurer prior to the enactment of this Article.

Section 2-106. Violations, Penalties, Appeal.

Any insurer who engages in an unfair claims settlement practice or who fails to respect the special relationship established in Article 2-104 shall be deemed to have violated this Article.

Any party aggrieved by an insurer as a consequence of that insurer's violation of this Article shall have a judicial cause of action against that insurer. The Tribal Court shall have personal and subject matter jurisdiction over all such claims and shall be empowered to impose special, general, and punitive damages against an insurer who has violated this Article.

Any insurer who violates, disobeys, omits, neglects or refuses to comply with, or resists or opposes the enforcement of any of the provisions of this Article, shall be assessed a civil penalty of Five Thousand Dollars (\$5,000).

A separate and distinct violation shall be regarded as committed each day an insurer continues any such violation, or permits any such violation to exist after notification thereof.

The Director of the Colorado River Indian Tribes' Department of Revenue and Finance or his designee ("Director") shall have the authority to take all action necessary to enforce the terms of this Article, including but not limited to the authority to assess penalties and costs of collection, and issue notices of violation of this Article. Notices of violation shall be provided, where applicable, by personal service or by sending notice to the insurer's last known address of record and depositing such into the U.S. certified mail, return receipt requested. Notice by certified mail shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery; (b) the date of mailing by certified mail; or (c) the day delivery is verified. Actual notice, however and from whoever received, shall always be effective.

A notice of violation shall be the final decision of the Director. A person receiving a notice of violation may protest the notice of violation. Any protest shall be filed within thirty (30) days from the date of issuance of the notice of violation. Protests shall be filed in Tribal Court in accordance with Tribal Law and the rules of the Tribal Court.

Section 2-107. Sovereign Immunity.

Nothing herein shall be construed as a waiver of the Tribes' sovereign immunity from suit.

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Section 2-108. Severability.

In any section, provision, phrase, addition, word, sentence or amendment of this article of its application to any Person is held invalid for any reason whatsoever, such invalidity shall not affect other provisions or applications of this Article that can be given effect without the invalid applications and to that end, the provisions of this Article are declared severable.

Section 2-109. Effective Date.

This Article shall be effective immediately upon enactment.