

PROPOSED AMENDMENT

SENATE AMENDMENTS TO H.B. 2439

(Reference to House engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 23-930, Arizona Revised Statutes, is amended to
3 read:

4 23-930. Unfair claim processing practices; bad faith; benefit
5 penalties; civil penalty; hearing; enforcement; definitions

6 A. The commission has exclusive jurisdiction ~~as prescribed in this~~
7 ~~section~~ over complaints involving alleged unfair claim processing practices
8 or bad faith by ~~an employer~~. A self-insured employer, insurance carrier or
9 claims processing representative relating to any aspect of ~~this chapter~~ THE
10 ADMINISTRATION OF A WORKERS' COMPENSATION CLAIM. The commission shall
11 investigate allegations of unfair claim processing or bad faith either on
12 receiving a complaint or on its own motion.

13 B. A COMPLAINT OF UNFAIR CLAIM PROCESSING OR BAD FAITH MUST BE FILED
14 WITH THE COMMISSION WITHIN ONE YEAR AFTER ANY OF THE FOLLOWING, WHICHEVER IS
15 LATER:

16 1. THE ACTION OR OMISSION ALLEGED AS THE BASIS OF THE COMPLAINT
17 OCCURRED.

18 2. A NOTICE OF CLAIM STATUS ACCEPTING LIABILITY FOR THE DISPUTED
19 BENEFITS BECOMES FINAL.

20 3. AN AWARD OF BENEFITS ISSUED BY THE COMMISSION BECOMES FINAL.

21 C. A COMPLAINT THAT IS NOT FILED AS PROVIDED BY SUBSECTION B OF THIS
22 SECTION SHALL BE DISMISSED WITH PREJUDICE. THE ONE-YEAR FILING REQUIREMENT
23 PROVIDED BY SUBSECTION B OF THIS SECTION IS THE LIMITATION OF ACTIONS FOR ANY
24 CLAIM OR COMPLAINT IN TORT OR CONTRACT ARISING OUT OF THE ADMINISTRATION OF
25 THE WORKERS' COMPENSATION CLAIM FOR BENEFITS.

26 ~~B.~~ D. If the commission finds that unfair claim processing or bad
27 faith has occurred in the ~~handling~~ ADMINISTRATION of a particular claim, it
28 shall award the ~~claimant~~ EMPLOYEE, in addition to any benefits it finds are
29 due and owing, a benefit penalty ~~of twenty-five per cent of the benefit~~

1 ~~amount ordered to be paid or five hundred dollars, whichever is more.~~ AS
2 FOLLOWS:

3 1. FOR A FINDING THAT AN INITIAL CLAIM FOR BENEFITS UNDER THIS CHAPTER
4 WAS DENIED WITHOUT ANY REASONABLE BASIS, A BENEFIT PENALTY OF FIVE THOUSAND
5 DOLLARS SHALL BE AWARDED ON A CLAIM FOUND COMPENSABLE THAT DOES NOT RESULT IN
6 INITIAL TEMPORARY DISABILITY OR A PERIOD OF DISABILITY OF NOT MORE THAN
7 FOURTEEN DAYS. A BENEFIT PENALTY OF TEN THOUSAND DOLLARS OR ONE HUNDRED
8 PERCENT OF THE DISABILITY BENEFITS OWED, WHICHEVER IS MORE, SHALL BE AWARDED
9 FOR A COMPENSABLE CLAIM THAT RESULTS IN A PERIOD OF DISABILITY OF MORE THAN
10 FOURTEEN DAYS.

11 2. FOR A FINDING OF UNFAIR CLAIM PROCESSING ON AN ACCEPTED CLAIM, A
12 BENEFIT PENALTY OF ONE THOUSAND DOLLARS.

13 3. FOR A FINDING OF BAD FAITH THAT RESULTS FROM A DELAY OR FAILURE TO
14 PAY TEMPORARY OR PERMANENT DISABILITY BENEFITS ON AN ACCEPTED CLAIM, A
15 BENEFIT PENALTY OF FIVE THOUSAND DOLLARS.

16 4. FOR A FINDING OF BAD FAITH THAT RESULTS IN A DENIAL OR DELAY OF
17 MEDICAL TREATMENT ON AN ACCEPTED CLAIM, A BENEFIT PENALTY OF FIVE THOUSAND
18 DOLLARS FOR EACH OCCURRENCE OF DENIED OR DELAYED TREATMENT. IF THE
19 COMMISSION DETERMINES, BASED ON COMPETENT MEDICAL EVIDENCE, THAT THE DELAY OF
20 MEDICAL TREATMENT PERMANENTLY AGGRAVATED THE EMPLOYEE'S MEDICAL CONDITION OR
21 RESULTED IN GREATER PERMANENT DISABILITY, AN ADDITIONAL TEN THOUSAND DOLLARS
22 MAY BE AWARDED TO THE EMPLOYEE.

23 E. THE BENEFIT PENALTY PROVIDED BY THIS SECTION IS THE EMPLOYEE'S
24 EXCLUSIVE REMEDY FOR UNFAIR CLAIM PROCESSING OR BAD FAITH COMMITTED BY THE
25 SELF-INSURED EMPLOYER, INSURANCE CARRIER OR CLAIM PROCESSING REPRESENTATIVE,
26 EXCEPT THAT AFTER A COMMISSION AWARD FOR A BENEFIT PENALTY UNDER THIS SECTION
27 BECOMES FINAL, THE EMPLOYEE MAY FILE A CIVIL ACTION TO RECOVER COMPENSATORY
28 DAMAGES FOR INJURIES THAT ARE SEPARATE AND INDEPENDENT OF THE WORKERS'
29 COMPENSATION INJURY AND THAT ARISE OUT OF THE WILFUL MISCONDUCT OF THE
30 SELF-INSURED EMPLOYER, INSURANCE CARRIER OR CLAIM PROCESSING REPRESENTATIVE
31 THAT RESULTED IN THE UNFAIR CLAIM PROCESSING OR BAD FAITH HANDLING OF THE
32 CLAIM. A COURT DOES NOT HAVE JURISDICTION OVER A COMPLAINT ALLEGING WILFUL
33 MISCONDUCT PURSUANT TO THIS SUBSECTION UNTIL THE COMMISSION ISSUES A FINAL

1 AWARD ON THE COMPLAINT. THE CIVIL ACTION SHALL BE FILED IN A COURT OF
2 COMPETENT JURISDICTION WITHIN NINETY DAYS AFTER THE DATE THAT THE AWARD
3 BECOMES FINAL. PUNITIVE DAMAGES ARE NOT RECOVERABLE IN ANY CIVIL ACTION
4 BROUGHT PURSUANT TO THIS SUBSECTION. ANY CLAIM FOR COMPENSATORY DAMAGES NOT
5 FILED AS PROVIDED BY THIS SUBSECTION SHALL BE DISMISSED WITH PREJUDICE.

6 ~~E.~~ F. If the commission finds that ~~an employer,~~ A self-insured
7 employer, insurance carrier or claim processing representative has a history
8 or pattern of repeated unfair claim processing practices or bad faith, it may
9 impose a civil penalty of ~~up to one~~ NOT MORE THAN FIVE thousand dollars for
10 each violation found. The civil penalty shall be deposited, pursuant to
11 sections 35-146 and 35-147, in the state general fund.

12 ~~D.~~ G. Any party aggrieved by an order of the commission under this
13 section may request a hearing pursuant to section 23-947. The hearing and
14 decision shall be conducted pursuant to ~~the provisions of~~ section 23-941.

15 H. NOT LATER THAN THIRTY DAYS BEFORE THE DATE OF THE INITIAL HEARING,
16 THE DEFENDANT MAY MOVE TO DISMISS THE COMPLAINT ON ANY OF THE FOLLOWING
17 GROUNDS:

18 1. THE ALLEGED ACTS, IF ASSUMED TO BE TRUE, DO NOT SUPPORT A FINDING
19 OF UNFAIR CLAIM PROCESSING OR BAD FAITH AS A MATTER OF LAW.

20 2. THE ALLEGED ACTS WERE THE SAME ACTS ALLEGED IN A PREVIOUS
21 COMMISSION PROCEEDING ADJUDICATED TO CONCLUSION.

22 3. THE COMPLAINT WAS NOT TIMELY FILED AS PROVIDED BY SUBSECTION B OF
23 THIS SECTION.

24 4. THE COMPLAINT RELATES TO A CLAIM FOR WORKERS' COMPENSATION BENEFITS
25 THAT HAS NOT BEEN ACCEPTED OR ADJUDICATED.

26 I. A RESPONSE SHALL BE FILED WITHIN TEN DAYS AFTER THE MOTION TO
27 DISMISS IS FILED. THE ADMINISTRATIVE LAW JUDGE SHALL RULE ON THE MOTION
28 BEFORE THE INITIAL HEARING.

29 J. A SELF-INSURED EMPLOYER, INSURANCE CARRIER OR CLAIM PROCESSING
30 REPRESENTATIVE THAT IS ORDERED TO PAY A BENEFIT PENALTY PURSUANT TO THIS
31 SECTION SHALL PAY THE BENEFIT PENALTY NO LATER THAN THE FIRST BUSINESS DAY
32 AFTER THE DATE THE AWARD BECOMES FINAL. INTEREST SHALL ACCRUE ON THE BENEFIT

1 PENALTY PURSUANT TO SECTION 44-1201 FROM THE DATE ON WHICH THE PAYMENT IS DUE
2 PURSUANT TO THIS SUBSECTION.

3 K. A FINAL AWARD FOR UNFAIR CLAIM PROCESSING OR BAD FAITH MAY BE
4 ENFORCED UNDER THE PROVISIONS OF TITLE 12, CHAPTER 9, ARTICLE 3.

5 ~~E.~~ L. The commission shall adopt by rule a definition of unfair claim
6 processing practices and bad faith. In adopting a rule under this
7 subsection, the commission shall consider, among other factors, recognized
8 and approved claim processing practices within the insurance industry, the
9 commission's own experience in processing workers' compensation claims and
10 the workers' compensation and insurance laws of this state.

11 ~~F.~~ M. This section shall DOES not ~~be construed as limiting~~ LIMIT or
12 ~~interfering~~ INTERFERE with the authority of the department of insurance as
13 provided by law to regulate any insurance carriers, including the
14 jurisdiction of the department of insurance over unfair claim settlement
15 practices as provided in section 20-461.

16 N. FOR THE PURPOSES OF THIS SECTION:

17 1. "OCCURRENCE" MEANS A SPECIFIC RECOMMENDED SURGICAL PROCEDURE,
18 MEDICATION, CONSULTATION, DIAGNOSTIC STUDY OR MEDICAL APPARATUS OR A
19 RECOMMENDED TREATMENT PLAN THAT MAY INVOLVE MORE THAN ONE VISIT TO A
20 PROVIDER, INCLUDING A COURSE OF PHYSICAL THERAPY.

21 2. "WILFUL MISCONDUCT" MEANS THAT THE DENIAL, DELAY OR TERMINATION OF
22 BENEFITS WAS COMMITTED WITH KNOWLEDGE THAT THE ACT LACKED ANY REASONABLE
23 BASIS IN LAW OR FACT AND THAT THE ACT WAS COMMITTED WITH INTENT TO INFLICT
24 HARM ON THE EMPLOYEE.

25 Sec. 2. Nonseverability

26 If any portion of this act is finally adjudicated invalid, the entire
27 act is void. The provisions of this act are intended to be nonseverable."

28 Amend title to conform

DON SHOOTER

3/19/15
8:40 AM
S: CS/lis