



Article Number V

Unfair Claims Settlement Acts & Regulations: Enforcement & Consequences

A review of the Model Act and Regulations as originally drafted by the National Association of Insurance Commissioners (NAIC) demonstrates that their intent was for violations to be dealt with through the imposition of administrative remedies rather than judicial penalties in civil litigation. The requirements imposed such as (1) acknowledging receipt of a claim within a relatively brief time period; (2) responding in writing to communications; and (3) providing assistance and forms without requiring a showing of specific harm flowing from a violation makes judicial remedies such as a directed verdict of bad faith and/or the imposition of monetary damages a penalty that often does not match the behavior.

A number of states have attempted to correct this imbalance by providing statutorily that violations of the unfair claims settlement practices act and/or regulations do not form the basis of a private right of action, either for first or third party claimants. In others, the appellate courts have held that no private right of action exists.

Neither of these corrective measures, however, provides complete protection from civil consequences for a violation in the course of claims handling. At least six states have been identified wherein the courts permit the introduction of evidence of violations as being a breach of an industry standard. This evidence is generally put on through an expert witness. At least one of these jurisdictions is Alaska which statutorily prohibits a private cause of action.

It is not possible within the scope of this article to do a through jurisdiction by jurisdiction review of all of the nuances of enforcement and/or consequences of violations. That would be more appropriately addressed in a separate series of articles or in several chapters in a textbook. What is possible is to provide an overview. Claims professionals should review any concerns with an attorney in their specific jurisdiction.

A general principal that does not merit discussion is that every state has some form of administrative agency which is tasked with monitoring the behavior of insurance companies and their agents, i.e. brokers, independent adjusters and

defense counsel. This may exist within the context of the model act and regulations which define the scope of the regulations as applying "to all persons transacting a business of insurance who participate in the investigation, adjustment, negotiation, or settlement of a claim under all types of insurance."
3 Alaska Administrative Code 26.020.

Or, it may exist under other regulations such as those that establish the department of insurance for that particular state. A claims professional must be well-versed in the requirements imposed by the particular department of insurance and the governing regulations.

States which have by statute or regulation mandated that no private right of action exists are:

Alabama -- ADC 482-1-125-.02
Alaska – AS 21.36.125(b)
Arizona – ARS 20-461E
Georgia – GA. Code Ann. § 33-6-37.
Indiana – IC 27-4-1-18
Kentucky – 806 KAR 12:095 § 2(3)
Maine – 24 A.M.R.S.A. § 2164-D(8)
Nebraska – 210 NAC § 60-002
North Carolina – N.C.G.S.A. § 58- 63-15(11)
Rhode Island – RI ST. § 27-9.1-1
Utah – U.C.A. 1953 § 31A-26-303(5)
Virginia – Va. Code. Ann. § 38.2-510B

Other states appear to have provided by appellate decisions that no private right of action exists. Since this is a moving target, claims professionals should make certain that any information herein has not been superseded by an appellate court. Research performed at the time of the writing of this article indicated that a partial list of these jurisdictions would include:

California	Nevada
Delaware	Ohio
Hawaii	Oklahoma
Illinois	Oregon
Louisiana	Pennsylvania
Massachusetts	South Carolina
Michigan	Tennessee
Minnesota	Vermont
New York	Wisconsin
New Jersey	Wyoming

A partial list of states which appear to permit by legislation or appellate decisions a private right of action are:

Connecticut (see discussion below)
Florida -- appellate decision
Maryland – MD Code, Insurance § 27-301(b)(2) & (3)
Montana – MT ST 33-18-242(1)
North Dakota -- appellate decision
New Mexico – N.M.S.A. 1978 § 59A-16-30
Texas (see discussion below)
Washington (see discussion below)
West Virginia -- appellate decision

Connecticut, Texas and Washington appear to have paired their enforcement of violations of the unfair claims practices act and/or regulations with the enforcement of their Unfair Trade Practices Acts thereby creating a private right of action.

Finally, a partial list of states which appear to permit the introduction of evidence of violations as indicating a breach of an industry standard would include:

Alaska	Mississippi
Colorado	North Carolina
Idaho	New Hampshire

This latter category is almost certainly larger than the six states listed. These were the ones which were identified during the research for this article. Since the admissibility at a bad faith trial of evidence of violations is a creation of the courts, it will be necessary for the claims professional to check with an attorney in the jurisdiction. It is a safe rule of thumb, however, to assume that all violations of the Unfair Claims Settlement Practices Act and/or Regulations can be described to a jury by a claims expert appearing for the insured as being a violation of an industry standard. The principal questions will be

1. What frequency of violations will be necessary to constitute bad faith;
2. The weight the jury should give to this testimony; and
3. Whether it is necessary for the plaintiff to show actual damages flowing from the violations.

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