



STATE OF ARIZONA
DEPARTMENT OF INSURANCE

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CHARLES R. COHEN
Director of Insurance

Former Director Susan Gallinger issued the following Circular Letter on October 25, 1990:

CIRCULAR LETTER NO. 90-7A

TO: ALL PROPERTY AND CASUALTY INSURERS; INSURANCE TRADE ASSOCIATIONS, AGENTS' ASSOCIATIONS AND OTHER INTERESTED PARTIES

FROM: SUSAN GALLINGER, DIRECTOR OF INSURANCE

DATE: OCTOBER 25, 1990

RE: "MOVING" AUTO INSURANCE POLICYHOLDERS TO NEW COMPANIES

Recently, the Department of Insurance has received information indicating that some insurers are encouraging their agents to engage in conduct that may violate Arizona law. Since the Insurance Department assumes that such insurers would not knowingly engage in such conduct, the following summary of Arizona's noncancellation/nonrenewal, the Unfair Claims Settlement Practices Act and the Unfair Practices and Frauds Act is provided.

A.R.S. § 20-1631(B) prohibits insurers from cancelling or nonrenewing personal auto insurance policies* which have been in effect for more than 60 days except for a very limited number of reasons specified in the statute. As noted above, some insurers have encouraged their agents to "move" auto insurance policyholders to other insurers because the (original) insurer wishes to stop underwriting auto insurance and/or to withdraw from the auto insurance market in Arizona. In some cases, the insurer has told the agent that his/her commissions will be reduced below the current level on any auto policy not "moved" to a new insurer. In other cases insurers have offered to pay agents to "move" auto policyholder to new insurers.

If the agent in the above referenced circumstances has not explained to the insured that 1) the insured may be cancelled for any (or no) reason by the "new" insurer for a period of 60 days AND 2) the policyholder is being asked to "move" to a

* All references to auto insurance in this Circular mean personal lines auto insurance only.

new company because of the agent's commission or other compensation, the agent (and thus the insurer as principal of the agent) will have omitted to the state material facts. Such omissions are prohibited by the provisions of A.R.S. §§ 20-443(1) and 20-443(5) which proscribe misrepresentation of "the terms of any policy issued or to be issued or the benefits or advantages promised" and any "misrepresentation to any policyholder for the purpose of inducing or tending to induce such policyholder to ... surrender ... or convert any insurance policy". In addition, the Unfair Claims Settlement Practices Act (A.R.S. § 20-461) specifically prohibits such conduct.

The above described conduct is also addressed by the Unfair Practices and Frauds Act (A.R.S. §§ 20-441 et seq.). A.R.S. § 20-442 prohibits any person from engaging in any unfair method of competition or unfair or deceptive act or practice in the business of insurance. By enacting the Unfair Practices and Frauds Act, Arizona has assumed the authority which existed under the Federal Trade Commission Act (FTCA) to prohibit unfair or deceptive acts or practices by insurers. A.R.S. § 20-442 was adopted from Section 5 of the FTCA and is intended to protect consumers from unfair practices by establishing a standard of fairness. An insurer's inducing its agents to have insureds purchase new auto insurance policies when such purchases may not be in the insured's best interest constitutes an unfair and deceptive practice under A.R.S. § 20-442.

The Insurance Department will vigorously enforce the above referenced statutes in order to protect consumers from any and all unfair practices and other violations. Questions about Arizona's noncancellation/nonrenewal law, the Unfair Claims Practices Act or Unfair Practices and Frauds Act, and/or whether its nonrenewal activities constitute violations should be addressed to Assistant Director, Mary Butterfield, 2910 N. 44th Street, Suite 210, Phoenix, Arizona 85018.