

Arizona Laws 101

a handbook for non-lawyers

Donald A. Loose

Arizona Laws 101: A Handbook for Non-Lawyers

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For Nancy

Author's Note & Acknowledgements

I have been practicing law for 25 years. In that time, I have counseled thousands of individuals and businesses on almost every area of Arizona law. You might say that I have been researching, learning, and applying the laws discussed in this book for a quarter of a century.

First and foremost, this is a handbook for non-lawyers. I attempted to write each chapter in such a way that a person without legal training will have no difficulty understanding the legal principles discussed.

This book actually is an outgrowth of a legal newsletter that I began writing for my clients in 1983. I had no intention of writing a book until the year before last, when I realized that I could use the same approach I had employed for years writing my newsletter, only on a much larger scale, to writing a book about Arizona laws. Although I grossly underestimated the amount of time required to write this book, the process of writing about the law was more enjoyable and rewarding than I had ever imagined.

In writing this book, I frequently used *he*, *his* and *him*, instead of *she*, *hers* or *her*. No discrimination was intended. Under the rules of English grammar, the pronouns *he*, *his* and *him* may generally be used to stand for the common gender. The pronouns *she*, *hers* and *her*, by contrast, refer only to the feminine gender. To avoid using a feminine gender pronoun

where no specific gender was intended, I chose instead to use a common gender pronoun. The reader is thus free to assume whatever gender he or she desires.

I owe a debt of gratitude to Cheree Brown, Lisa Lakin, Joni Helfrich and Lou Silverman for reviewing drafts of this book, and providing me with their comments. The book is better because of their efforts. I am also grateful to my partner, Kyle Brown, and to my associates, Denise Scammon and Robert Metli, for covering my caseload for six weeks while I was away from the office completing this project.

Lastly, I would like to thank my wife, Nancy, for her continuous enthusiasm and support for this project. Without her, this book would not exist.

Don Loose
January 2005

Introduction

This is a handbook for non-lawyers. It has been written so that a person without legal training should be able to readily understand the principles set forth. The 101 laws covered in this book have been selected because of their relevance to events occurring in everyday life.

While this book does contain legal information, it is not a substitute for qualified legal advice. The reader is advised to seek legal counsel regarding any legal matter discussed in this book. The author does not purport to give legal advice to the reader.

Because this is a handbook of Arizona laws, federal laws have not been included. Accordingly, the reader will not find any detailed information about bankruptcy, federal trademark registration, or any other subject governed by federal law. This book does, however, include the laws that every Arizona resident needs to know to be a responsible citizen of the 48th state!

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PART ONE

Criminal & Traffic Laws;
Citizens' Rights and Duties

5

Leaving the Scene of an Accident

“ACCIDENT n. An inevitable occurrence due to the action of immutable natural laws.”—Ambrose Bierce

Accidents Involving Death or Injuries

The driver of a vehicle involved in an accident resulting in injury or death must immediately stop his vehicle at the scene of the accident, or as close to the accident scene as possible and immediately return to the scene.

The driver must remain at the scene of the accident until he has given certain required information and has rendered reasonable assistance to any person injured in the accident. The driver must give his name and address and the registration number of the vehicle he was driving. On request, the driver must show his driver license to the person struck or to the driver or occupants of the vehicle collided with. The driver must also make arrangements for the carrying of an injured person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that treatment is necessary, or if the transportation is requested by the injured person.

The driver must give notice of the accident immediately by the quickest means of communication (by cell phone, if possible), to the proper law enforcement agency. The law enforcement officer who investigates the accident will prepare a written accident report.

Accidents Involving Only Damage to a Vehicle

The driver of a vehicle involved in an accident resulting only in damage to a vehicle that is driven must immediately stop at the scene of the accident, or as close to the accident scene as possible and immediately return to the scene. The driver must remain at the accident scene until he has given the required information to the other driver (see discussion above). The stop must be made without obstructing traffic more than is necessary.

If the vehicle struck is unattended (*e.g.*, in a parking lot), the driver must immediately stop and either: 1) locate and notify the operator or owner of his name and address, and the name and address of the owner of his vehicle, or 2) leave a note containing that information in a conspicuous place on the vehicle that was struck.

Failure to Stop

If a driver fails to stop and fulfill his legal obligations at the scene of an accident involving death or personal injuries, he is guilty of a felony. If he fails to stop and fulfill his legal obligations at the scene of an accident involving only property damage, he is guilty of a misdemeanor. In either case, failure to stop at the scene of an accident is a criminal offense, punishable by jail time and/or a fine.

In addition to the criminal penalties, a driver may lose his driving privileges for failing to stop and fulfill his legal obligations. The Department of Transportation will revoke the driving privileges, for five years, of a driver convicted of failing to stop at the scene of an accident involving death or serious physical injury, and for three years of a driver convicted of failing to stop at the scene of an accident resulting in an injury other than death or serious physical injury. In a case involving only property damage, the court may order the Department to suspend his license for one year.

PART TWO

Consumer Laws

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Residential Landlord-Tenant Act

The relationships of residential landlords and tenants in Arizona is controlled by the Arizona Residential Landlord and Tenant Act.

In Arizona, the rental of “dwelling units” is controlled by the Arizona Residential Landlord and Tenant Act. The Act does not apply to the rental of non-residential property, such as commercial and industrial real estate, or to transient occupancy in a hotel or motel. This chapter looks at some of the rights and obligations of residential landlords and tenants under the Act.

Landlord’s Obligations

The landlord, at the beginning of the rental term, must notify the tenant in writing of the name of the manager of the property, and the owner of the property or his agent for legal process. This information must be kept current. Where there is a written rental agreement, the landlord must provide a signed copy to the tenant. (The tenant must sign and deliver to the landlord one fully executed copy.) The landlord must advise the tenant that a free copy of the Act is available from the Secretary of State, but he is not required to supply a copy of the Act.

A landlord may not discriminate. It is illegal, for example, to refuse to rent to people with children, unless there is another legal basis for the refusal.

A landlord also is obligated to:

1. Comply with the requirements of building codes materially affecting health and safety.
2. Make all repairs and do whatever is necessary to keep the premises in a fit and livable condition.
3. Keep all common areas in a clean and safe condition.
4. Maintain in good and safe working order all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances supplied by him.
5. Provide receptacles for the removal of ashes, garbage, rubbish and other waste, and arrange for their removal.
6. Supply running water and reasonable amounts of hot water, and reasonable heat and air conditioning or cooling where those units are available.

Tenant's Rights

If a landlord breaches one or more of his obligations, the tenant may deliver a written notice to the landlord specifying the facts of the breach. If the noncompliance involves health and safety, the notice must state that the rental agreement will terminate on a date not less than five days after receipt of the notice, if the breach is not remedied within five days. For any other significant breach, the time period to terminate the rental agreement and to remedy the breach cannot be less than 10 days.

If the landlord remedies the breach within the time limit stated in the tenant's notice, the tenant may not terminate the rental agreement. If the landlord fails to remedy the breach and the tenant elects to terminate the rental agreement, the tenant may sue the landlord for damages caused by the wrongful eviction.

Tenant's Self-Help

When a landlord fails to comply with his obligations *and* the cost of repair is less than \$300 or an amount equal to one-

half of the monthly rent, whichever is greater, the tenant may notify the landlord in writing of his intent to correct the condition. The tenant may have the work done by a licensed contractor within 10 days after the written notice, or immediately after the notice in the case of an emergency. The tenant must deliver to the landlord an itemized statement and a lien waiver from the contractor, and then may deduct the cost of the work from his rent.

When a landlord fails to supply essential services, hot or cold water, heat, or air conditioning (where the units are installed or offered), the tenant, after giving reasonable notice to the landlord, may obtain the missing essential services and deduct the cost from the rent, recover damages from the landlord, or obtain substitute housing during the period of the landlord's noncompliance and be excused from paying rent.

Tenant's Obligations

A tenant is required to:

1. Maintain the dwelling unit in a clean and safe condition.
2. Use utilities and other facilities in a reasonable manner.
3. Not deliberately or negligently destroy or deface the premises.
4. Conduct himself in a manner that will not disturb his neighbor's peaceful enjoyment of the premises.
5. Pay his rent on time.
6. Use and occupy the premises only as a dwelling unit, unless otherwise agreed.
7. Allow the landlord reasonable access to the dwelling unit to inspect the premises, make repairs, decorations, alterations, or improvements, supply services, or to show the property to third parties.

Landlord's Rights

If the tenant fails to pay rent, the landlord may give five days' written notice of his intention to terminate the rental agreement. If rent is not paid within the five days, the landlord

may terminate the rental agreement and sue the tenant for possession of the premises. A court action for possession is called a "special detainer" action. The landlord may also bring a claim for damages for breach of the rental agreement.

Anytime prior to the entry of a judgment in a special detainer action for non-payment of rent, the tenant may reinstate the rental agreement by paying to the landlord the unpaid rent, late fees, and the landlord's attorney fees and costs. If the tenant is found guilty of special detainer, the landlord will be granted possession of the premises, late charges, fees and costs, and unpaid rent.

The landlord may immediately terminate a rental agreement for a tenant's serious misconduct. Serious misconduct includes, but is not limited to, illegal discharge of a firearm, criminal street gang activity, illegal drug activity, assault, or any serious property damage. In a special detainer action for serious misconduct, the court may grant the landlord the return of the premises within five days.

A landlord may also terminate a rental agreement for a tenant's noncompliance with the terms of the agreement. To terminate a rental agreement for noncompliance, the landlord must first give the tenant an opportunity to remedy the breach. If the noncompliance affects health and safety, the tenant will be given five days to remedy the breach; otherwise, the tenant will be given 10 days to do so.

If a tenant fails to maintain the premises, and the noncompliance can be remedied by repair, replacement, or cleaning, the landlord has the right of self-help. Except in cases of emergency, the landlord is required to give 14 days' notice of the breach and request that the tenant make the repairs. If the tenant fails to do so, the landlord may enter the dwelling and perform the work or hire it done in a workmanlike manner. The landlord can then submit an itemized bill for the reasonable value or actual costs of the work, which must be paid by the tenant as additional rent. There is no limit to the landlord's cost of repairs.

Security Deposits

A landlord is prohibited from demanding or receiving security in excess of one and one-half month's rent, unless voluntarily paid by the tenant. However, the landlord may charge, in addition to a security deposit, nonrefundable fees for cleaning and redecorating. The landlord does not have to account for nonrefundable fees at the termination of the rental agreement.

At the end of the rental period, the security deposit may be applied to unpaid rent and damages caused by the tenant. The landlord has a duty to account to the tenant for prepaid rent and security. Within 14 business days after the tenant's demand (following termination of the tenancy), the landlord is required to provide a written itemized statement of charges, and to return the unused portion of the security deposit to the tenant. Failure by the landlord to comply with this provision will allow the tenant to sue for any amounts wrongfully withheld by the landlord as security, plus damages equal to twice the amount wrongfully withheld.

Legal Tip:

Persons interested in this topic may download the Arizona Residential Landlord and Tenant Act from the Arizona Secretary of State's Web site, www.azsos.gov.

PART THREE

Family Law

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Prenuptial Agreements

"The legality of love"

Wine and roses...and prenuptials. While a premarital agreement is not appropriate in every case, one may be appropriate where one spouse has children by a prior marriage or where the spouses, for whatever reason, wish to provide in advance of marriage for the disposition of their property upon separation, divorce, or death.

Premarital agreements have not always been favored in Arizona. In fact, at one time, a contract before marriage providing that the husband would be relieved from the burden of supporting his wife in the event of divorce would have been contrary to public policy and, thus, unenforceable. The law has changed, however, and premarital agreements are no longer against public policy. Arizona, with a majority of other states, has adopted the Uniform Premarital Agreement Act, which, as the name implies, governs the scope and enforceability of premarital agreements.

Prospective spouses are now free to enter into an agreement in contemplation of marriage, which will be effective on marriage. A premarital agreement must be in writing and signed by both parties. The agreement is enforceable without consideration.

Scope of Premarital Agreements

The parties to a premarital agreement may contract with respect to a wide variety of issues, including:

1. The rights and obligations of each of the parties in any of the property of either or both of them, including income and earnings;
2. The right to buy, sell or use any property or assets during marriage;
3. The disposition of property on separation, divorce, death, or any other event;
4. The modification or elimination of spousal support (alimony);
5. The making of a will or trust to carry out the provisions of the agreement; and
6. The ownership of life insurance policies.

The parties may contract with respect to any other matter not listed above, so long as the provision is not in violation of a public policy or a statute imposing a criminal penalty. The right of a child to support may not be adversely affected by a premarital agreement.

Enforcement of Premarital Agreements

A premarital agreement is not enforceable if the person against whom enforcement is sought proves:

1. The person did not execute the agreement voluntarily; or
2. The agreement was unconscionable (grossly one-sided) when it was executed and before execution of the agreement that person:
 - a. Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party.
 - b. Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided.

- c. Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

The law contains an exception for modification or elimination of spousal maintenance. If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to be eligible for public assistance at the time of separation or divorce, the court, despite the terms of the agreement, may require payment of spousal support to alleviate the need for public support.

Legal Tips:

- Each party should fully disclose his or her assets prior to entering into a premarital agreement.
- Each party to a premarital agreement should be represented separately by legal counsel.
- Each party should retain a duplicate original of the agreement after it has been executed.

PART FOUR

Wills and Estates

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Health Care Directives

“How few of his friends’ houses would a man choose to be at when he is sick.”—Samuel Johnson

A health care directive is, as the name implies, a document prepared to deal with a person’s future health care decisions. In Arizona, there are three types of health care directives: 1) a health care power of attorney, 2) a prehospital medical care directive, and 3) a mental health care power of attorney. A living will, which may be attached to a health care power of attorney or executed separately, is discussed in the next chapter.

Why a chapter on health care directives? The answer is that health care directives constitute an important part of any comprehensive estate plan. Every person implementing an estate plan in Arizona should give serious consideration to executing one or more health care directives.

Each type of directive is discussed below.

1. Health Care Power of Attorney

A health care power of attorney is a written designation of an agent to make health care decisions. It is a durable power of attorney, which means that it survives the person’s subsequent disability or incompetency.

A person who is 18 years of age or older (the “principal”) may designate another adult (the “agent”) to make health care decisions on that person’s behalf. The health care power of

attorney must meet certain legal requirements, including that it be dated and signed, and notarized or witnessed by at least one adult. The principal must appear to be of sound mind and free from duress at the time the health care power of attorney is signed.

An agent designated in a health care power of attorney has full power to give or refuse consent to all medical, surgical, hospital and related health care. The power of attorney is only effective on the inability of the principal to make or communicate health care decisions. If the principal has also executed a living will, the agent will be directed to implement those choices that the principal initialed in the living will.

An amendment to the power of attorney, unless made only to indicate an agent's change of address or phone number, must meet all of the legal requirements applicable to executing the original document. A health care power of attorney, once made, continues in effect until those who may rely on it have notice of its revocation.

2. Prehospital Medical Care Directive

A prehospital medical care directive is a document that, in the event of cardiac or respiratory arrest by the patient, directs the withholding of cardiopulmonary resuscitation by emergency medical system and hospital emergency department personnel. Withholding of cardiopulmonary resuscitation pursuant to a prehospital medical care directive does not, however, include the withholding of other medical interventions, such as intravenous fluids, oxygen or other therapies deemed necessary to provide comfort care or to alleviate pain.

A prehospital medical care directive must be printed on an orange background and may be in either letter or wallet size. A person who has a valid prehospital medical care directive may wear an identifying bracelet on either his wrist or his ankle. The bracelet must be similar to identification bracelets worn in hospitals, be on an orange background, and state certain information in bold type.

3. Mental Health Care Power of Attorney

An adult, known as the principal, may designate another adult or adults, known as the agent, to act as agent and to make mental health care decisions on the principal's behalf. The principal may also designate an alternate adult or adults to act as agent if the original designated agent or agents are unwilling or unable to act.

The agent may make decisions about the mental health treatment on behalf of the principal if the principal is found incapable. If an adult does not have a mental health care power of attorney, an agent with a health care power of attorney (discussed in section 1 above) may make decisions about mental health treatment on behalf of the principal if the principal is found incapable. However, an agent may not consent to admit the principal to a level one behavioral health facility unless the authority is expressly stated in the power of attorney.

The decisions about mental health treatment on behalf of the principal must be consistent with any wishes the principal has expressed in the mental health care directive, mental health care power of attorney, health care power of attorney, or other advance directive.

Note About Legal Requirements for Directives

Due to space limitations, not all of the legal requirements for the health care directives discussed in this chapter have been included. For each type of directive, there are a host of specific requirements that must be followed. The requirements are set forth in Sections 36-3201 through 36-3287 of the Arizona Revised Statutes. For those interested, the text of those statutes may be obtained from the Arizona State Legislature's Web site, www.azleg.state.az.us.

Consistent with the author's advice concerning the drafting and execution of other estate planning documents discussed in this book, the author recommends that an attorney be retained to draft and oversee the execution of all health care directives. By using an attorney, legal compliance will be assured.

PART FIVE

Civil Lawsuits & Claims

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Wrongful Death Actions

“The survivors...may bring a lawsuit for wrongful death.”

Tragically, more than a thousand people die each year in automobile accidents on Arizona highways. The survivors of those persons may have wrongful death claims under Arizona law. In this chapter, we will examine the law governing wrongful death.

The survivors of a person whose death was the fault of another may bring a lawsuit for wrongful death. For a wrongful death action to exist, the deceased person (the “decedent”) must have had a valid personal injury claim. This means that the person causing the death would have been at fault if death had not occurred. The corollary to this rule is that if the person causing the death would not have been at fault if death had not occurred, there is no liability for wrongful death.

Illustration: The driver of Big Car causes an accident in which one person is injured and another killed. The injured person has an action for personal injury, and the survivors of the person killed have an action for wrongful death. Now, changing the facts. If the driver of Big Car was not at fault in causing the accident, the injured person would not have an action for personal injury and the survivors of the person killed would not have an action for wrongful death.

The Arizona Wrongful Death Statute allows a wrongful death action to be brought by the surviving husband or wife, or by the personal representative of the decedent's estate. If the decedent is a child, the action may be brought by either parent. The person bringing the action is called the plaintiff, but the action is pursued for the benefit of the beneficiaries. The beneficiaries on whose behalf the action is pursued are the surviving spouse, the children, and the parents of the decedent, or if none of these survive, the decedent's estate.

In a wrongful death action, there is a single recovery by the plaintiff on behalf of all the beneficiaries, identified in the above paragraph. The recovery will be allocated among the beneficiaries according to the loss suffered by each. If the recovery is on behalf of the decedent's estate, the money will be distributed according to the decedent's will or, if there is no will, according to the laws of intestate succession (which specify how property is to be distributed in the absence of a will).

In a wrongful death action, the jury must give such damages as it deems "fair and just." The amounts recovered are not subject to debts or liabilities of the deceased, unless the action is brought on behalf of the decedent's estate.

There are six types of damages that may be awarded in a wrongful death case. They are listed below:

Loss of love, affection, companionship, care, protection and guidance. These damages are commonly referred to as *loss of consortium* damages, and are largely discretionary.

Pain, grief, sorrow, anguish, stress, shock, and mental suffering experienced by the survivors. The survivors may recover damages for their pain and suffering, but except in an action for elder abuse, the survivors may not recover damages for the *decedent's* pain and suffering.

Loss of income and services. The survivors may recover damages for their economic loss caused by the death. The measure of these damages is the loss of economic support that each beneficiary would have received from the decedent. In cases where the wrongful death action is brought on behalf of

the estate, future earnings of the decedent can be used as the measure of damages.

Funeral and burial expenses. These expenses are recoverable if the beneficiary paid them or is liable for payment.

Medical expenses. Similar to funeral and burial expenses, discussed above, these damages are recoverable only if the beneficiary paid them or is liable for payment.

Punitive damages. Punitive damages, which are intended to punish the wrongdoer, are recoverable if the person causing the death acted with an “evil mind.” Punitive damages may be awarded in cases involving drunk drivers. The jury will determine the amount of punitive damages depending on the aggravating circumstances attending the wrongful act, neglect or default.

Legal Tips:

- A wrongful death action must be filed within two years of the death, or it will be forever barred by the statute of limitations. In some cases, especially those involving claims against government agencies, claims must be presented in a much shorter time period.
- Liability for wrongful death likely will be covered under an auto or homeowners policy of insurance.
- A person against whom a claim for wrongful death is made should immediately notify his insurance company and cooperate fully in the defense of the claim.

PART SIX

Business Law

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Workers' Compensation

An employer who fails to obtain coverage may be ordered to stop doing business.

The workers' compensation laws provide for the payment of compensation to workers who are injured on the job in Arizona. These laws provide an insurance fund and a schedule of benefits for workers engaged in manual or mechanical labor who are injured in the course of their employment. Employers subject to the workers' compensation laws are required to provide workers' compensation insurance to their employees.

Liability for Injuries

Except as discussed below, an employer who provides workers' compensation insurance is not liable for damages for injury or death of an employee, unless the employee rejected the workers' compensation coverage. If an employee rejects the employer's workers' compensation coverage, that employee retains the right to sue the employer for workplace injuries. To reject the coverage and retain the right to sue, an employee must give written notice to the employer *before* the injuries are sustained by him. An employer who receives such a notice from an employee must file it with his insurance carrier within five days.

An employer who fails to provide workers' compensation insurance may be sued for work injuries. In any action brought by an injured employee, proof of the injury will be

evidence of negligence on the part of the employer and *the burden will be on the employer to show freedom from negligence resulting in the injury.*

Every employer, except those in exempt occupations, must post and keep posted in a conspicuous place upon his premises, in English and Spanish and available for inspection by all workers, a notice advising employees of their right to reject the provisions of the compulsory compensation law. An employer must also advise employees that blank forms of notice are available to all employees at the office of the company. The required notice forms are available from any Arizona workers' compensation insurance carrier.

If an employer fails to post and keep posted the notice required by law, or fails to keep available at the place where the employees are hired the blank forms of notice to be signed by the employee, it will be optional for an injured employee to accept compensation under the workers' compensation law or to sue the employer in court for personal injury damages.

Payments from the Special Fund

An injured worker may file a claim for workers' compensation benefits with the Industrial Commission of Arizona (ICA). If the employer is not insured, the employee will be paid benefits identical to those paid by insurance carriers from the ICA's Special Fund. The employer will be notified by the ICA of his liability to the Special Fund, and this notice will include a penalty of 10% of the amount paid from the Special Fund or \$1,000, whichever is greater, plus interest on the amount expended. The payments made from the Special Fund and penalty act as a judgment against the employer.

Sanctions for Failure to Secure Coverage

An employer who fails to obtain coverage for his employees may be ordered by the court to stop doing business until he complies with the law and provides workers' compensation coverage. In addition, the ICA may assess a civil penalty on an employer who is not insured as required by law.

Employer's Duties after Injury or Death

Every employer who is required to furnish workers' compensation insurance must file with the ICA and his insurance carrier a written report of every injury or death. In the case of death, the report must be filed within 24 hours. In the case of injury or disease, the report must be filed within 10 days after receiving notice of the accident. The report form may be obtained from the workers' compensation carrier or the ICA. (It can also be downloaded from the ICA's Web site, www.ica.state.az.us.)

Upon learning of an accident resulting in injury to an employee, the employer must provide the employee with the name and address of the employer's insurance carrier, the policy number, and the expiration date.

Inspection of Records

The employer's books, records and payrolls must always remain open to the ICA or its assistants, in order for it to administer the law. An employer who refuses to submit his books, records and payroll for inspection may be penalized in the amount of \$500 for each offense. A commissioner may enter any place of employment to collect facts and statistics, and his admittance may not be refused by an employer.

Unfair Claim Processing and Bad Faith

The ICA has authority to investigate complaints of unfair claim processing practices or bad faith by an employer. If the ICA finds that unfair claim processing or bad faith occurred in the handling of a claim, it will award the claimant, in addition to any benefits it finds are due and owing, a benefit penalty of 25% of the benefit amount ordered to be paid or \$500, whichever is more. If the ICA finds that an employer has a history or pattern of repeated unfair claim processing practices or bad faith, it may impose a penalty of up to \$1,000 for each violation.