

STATE OF NEW YORK

7285

2021-2022 Regular Sessions

IN ASSEMBLY

May 3, 2021

Introduced by M. of A. WEINSTEIN, CUSICK, CYMBROWITZ, HYNDMAN, PAULIN, COLTON, ABINANTI, SEAWRIGHT, SANTABARBARA, ZEBROWSKI, TAYLOR, CARROLL, DINOWITZ, WEPRIN, JACOBSON, GOTTFRIED, SIMON, GRIFFIN -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to unfair claim settlement practices

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The insurance law is amended by adding a new section 2601-a to read as follows:

§ 2601-a. Unfair claim settlement practices; civil remedy. (a) The holder of a policy issued or renewed pursuant to article thirty-four of this chapter or injured person shall have a private right of action against any insurer doing business in this state for damages as provided in this section upon proof by a preponderance of the evidence that such insurer's refusal to pay or unreasonably delay payment to the policyholder or injured person of amounts claimed to be due under a policy was not reasonably justified. An insurer is not reasonably justified in refusing to pay or is unreasonably delaying payment when the insurer:

(1) failed to provide the policyholder with accurate information concerning policy provisions relating to the coverage at issue;

(2) failed to effectuate a prompt and fair settlement of a claim or any portion thereof, in that the insurer failed to reasonably accord at least equal or more favorable consideration to its insured's interests as it did to its own interests, and thereby exposed the insured to a judgment in excess of the policy limits;

(3) failed to provide a timely written denial of a policyholder's claim with a full and complete explanation of such denial, including references to specific policy provisions wherever possible;

(4) failed to make a final determination and notify the policyholder in writing of its position on both liability for and the insurer's valu-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 ation of a claim within six months of the date on which it received
2 actual or constructive notice of the loss upon which the claim is based;

3 (5) failed to act in good faith by compelling a policyholder to insti-
4 tute suit to recover amounts due under its policy by offering substan-
5 tially less than the amounts ultimately recovered in suit brought by
6 such policyholder;

7 (6) failed to advise a policyholder that a claim may exceed policy
8 limits, that counsel assigned by the insurer may be subject to a
9 conflict of interest, or that the policyholder may retain independent
10 counsel;

11 (7) failed to provide, on request of the policyholder or their repre-
12 sentative, all reports, letters or other documentation arising from the
13 investigation of a claim and evaluating liability for or valuation of
14 such claim;

15 (8) refused to pay a claim without conducting a reasonable investi-
16 gation;

17 (9) negotiated or settled a claim directly with a policyholder known
18 to be represented by an attorney without the attorney's knowledge or
19 consent. The provisions of this paragraph shall not be deemed to prohib-
20 it routine inquiries to a policyholder to obtain details concerning the
21 claim; or

22 (10) acted in violation of section two thousand six hundred one of
23 this article or any regulation promulgated pursuant thereto.

24 (b) Any policyholder who establishes liability pursuant to subsection
25 (a) of this section shall be entitled to recover, in addition to amounts
26 due under the policy, costs and disbursements, consequential damages,
27 reasonable attorneys' fees incurred by the policyholder, interest from
28 the date of the loss, and punitive damages as determined by the finder
29 of fact.

30 (c) Any policyholder may recover damages from an insurer doing busi-
31 ness in this state pursuant to this section either as part of an action
32 to recover under the terms of an insurance policy or in a separate
33 action.

34 (d) In any trial of a cause of action asserted against an insurer
35 pursuant to this section, evidence of settlement discussions written and
36 verbal offers to compromise and other evidence relating to the claims
37 process shall be admissible. If causes of action relating to liability
38 of the insurer under the policy and under this section are alleged in
39 the same action, the court may bifurcate the trial of issues so as to
40 avoid prejudice to the insurer on the issue of liability under the poli-
41 cy and facilitate admissibility of evidence on the causes of action
42 asserted pursuant to this section.

43 (e) All amounts recovered from an insurer as damages and reasonable
44 attorneys' fees in any action authorized in this section shall be
45 excluded by the insurer in its determinations of the premiums it will
46 charge all policyholders on all policies issued by it.

47 (f) An action may also be maintained by any injured person or repre-
48 sentative thereof including, but not limited to, a guardian, administra-
49 tor, executor, individual with a power of attorney or any other personal
50 representative against an insurer to recover damages including costs and
51 disbursements, consequential damages, reasonable attorney's fees, inter-
52 est from the time of failure to offer a fair and reasonable settlement
53 in accordance with this section, and punitive damages as determined by
54 the finder of fact or court, not limited to the policy limits, where a
55 preponderance of the evidence establishes that the insurer failed to
56 effectuate a prompt and fair settlement of a claim or any portion there-

1 of, in that under the totality of the facts and circumstances related to
2 the claim, the insurer failed to reasonably accord at least equal or
3 more favorable consideration to its insured's interests as it did to its
4 own interests.

5 (g) At least thirty days prior to the filing of any action pursuant to
6 this section, a written demand for relief, identifying the claimant and
7 reasonably describing the unfair claim settlement act or practice and
8 the injury suffered, shall be mailed or delivered to any insurer doing
9 business in this state. Any insurer doing business in this state receiv-
10 ing such a demand for relief who, within thirty days of the mailing or
11 delivery of the demand for relief, makes a written tender of settlement
12 which is rejected by the claimant may, in any subsequent action, file
13 the written tender and an affidavit concerning its rejection and thereby
14 limit any recovery to the relief tendered if the finder of fact finds
15 that the relief tendered was reasonable in relation to the injury actu-
16 ally suffered by the claimant. In all other cases, if the finder of fact
17 finds for the claimant, recovery shall be in the amount of actual
18 damages; or up to three but not less than two times such amount if the
19 finder of fact finds that the unfair claim settlement act or practice
20 was a willful or knowing violation of subsection (a) or (f) of this
21 section or that the refusal to grant relief upon demand was not reason-
22 ably justified with knowledge or reason to know that the act or practice
23 complained of violated subsection (a) or (f) of this section. For the
24 purposes of this chapter, the amount of actual damages to be multiplied
25 by the finder of fact shall be the amount of the damages as determined
26 by the finder of fact on all claims arising out of the same and underly-
27 ing transaction or occurrence, regardless of the existence or nonexist-
28 ence of insurance coverage available in payment of the claim. In addi-
29 tion, the court shall award such other equitable relief, including an
30 injunction, as it deems to be necessary and proper. The demand require-
31 ments of this subsection shall not apply if the claim is asserted by way
32 of counterclaim or cross-claim.

33 (h) The rights enumerated in this section are not the exclusive reme-
34 dies available to the policyholder or injured person or representative
35 thereof including, but not limited to, a guardian, administrator, execu-
36 tor, individual with power of attorney or any other personal represen-
37 tative and do not preclude any common law claims or other statutory
38 claims that may exist or arise.

39 (i) Upon demand of a claimant policyholder or injured person pursuant
40 to this section, an insurer shall make available to the claimant or
41 injured person the entire claim file within thirty days.

42 (j) A policyholder or injured person shall have the right to a trial
43 by jury. No mandatory arbitration agreement within or part of any writ-
44 ten contract for insurance shall prohibit an action pursuant to this
45 section.

46 § 2. Section 3425 of the insurance law is amended by adding a new
47 subsection (t) to read as follows:

48 (t) No insurer shall refuse to issue or renew a covered policy solely
49 on the grounds that the policyholder has brought an action pursuant to
50 section two thousand six hundred one-a of this chapter.

51 § 3. Paragraph 4 of subsection (a) of section 2601 of the insurance
52 law, as amended by chapter 547 of the laws of 1997, is amended to read
53 as follows:

54 (4) [~~not attempting in good faith~~] where the insurer failed to effec-
55 tuate a prompt[7] and fair [~~and equitable settlements~~] settlement of
56 [~~claims submitted in which liability has become reasonably clear~~] a

claim or any portion thereof, in that the insurer failed to reasonably accord at least equal or more favorable consideration to its insured's interests as it did to its own interests, and thereby exposed the insured to a judgment in excess of the policy limits, except where there is a reasonable basis supported by specific information available for review by the department that the claimant has caused the loss to occur by arson. After receiving a properly executed proof of loss, the insurer shall advise the claimant of acceptance or denial of the claim within thirty working days;

§ 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to all acts and omissions by insurers occurring on or after such effective date.