

# STATE OF NEW YORK

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7285--A

2021-2022 Regular Sessions

## IN ASSEMBLY

May 3, 2021

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Introduced by M. of A. WEINSTEIN, CUSICK, CYMBROWITZ, HYNDMAN, PAULIN, COLTON, ABINANTI, SEAWRIGHT, SANTABARBARA, ZEBROWSKI, TAYLOR, CARROLL, DINOWITZ, WEPRIN, JACOBSON, GOTTFRIED, SIMON, GRIFFIN, SOLAGES, ZINERMAN, GONZALEZ-ROJAS, DICKENS, ANDERSON, LUNSFORD, GLICK -- Multi-Sponsored by -- M. of A. WILLIAMS -- read once and referred to the Committee on Insurance -- reported and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

3 § 2601-a. Unfair claim settlement practices; civil remedy. (a) The  
4 holder of a policy issued or renewed pursuant to article thirty-four of  
5 this chapter or injured person shall have a private right of action  
6 against any insurer doing business in this state for damages as provided  
7 in this section upon proof by a preponderance of the evidence that such  
8 insurer's refusal to pay or unreasonably delay payment to the policy-  
9 holder or injured person of amounts claimed to be due under a policy is  
10 not reasonably justified. An insurer is not reasonably justified in  
11 refusing to pay or is unreasonably delaying payment when the insurer:

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

14 (2) fails to effectuate a prompt and fair settlement of a claim or any  
15 portion thereof, in that the insurer (i) fails to reasonably accord at  
16 least equal or more favorable consideration to its insured's interests  
17 as it did to its own interests, and thereby exposes the insured to a  
18 judgment in excess of the policy limits, or (ii) refuses to settle in

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

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1 response to a fair and reasonable settlement offer within the policy  
2 limits from an injured party;

3 (3) fails to provide a timely written denial of a policyholder's claim  
4 with a full and complete explanation of such denial, including refer-  
5 ences to specific policy provisions wherever possible;

6 (4) fails to make a final determination and notify the policyholder in  
7 writing of its position on both liability for and the insurer's valu-  
8 ation of a claim within a reasonable time not to exceed six months of  
9 the date on which it received actual or constructive notice of the loss  
10 upon which the claim is based;

11 (5) fails to act in good faith by compelling a policyholder to insti-  
12 tute suit or compel appraisal to recover amounts due under its policy by  
13 offering substantially less than the amounts ultimately recovered in  
14 suit or by appraisal;

15 (6) fails to advise a policyholder that a claim may exceed policy  
16 limits, that counsel assigned by the insurer may be subject to a  
17 conflict of interest, or that the policyholder may retain independent  
18 counsel;

19 (7) fails to provide, on request of the policyholder or their repre-  
20 sentative, all reports, letters or other documentation arising from the  
21 investigation of a claim and evaluating liability for or valuation of  
22 such claim;

23 (8) refuses to pay a claim without conducting a reasonable investi-  
24 gation;

25 (9) negotiates or settles a claim directly with a policyholder known  
26 to be represented by an attorney without the attorney's knowledge or  
27 consent. The provisions of this paragraph shall not be deemed to prohib-  
28 it routine inquiries to a policyholder to obtain details concerning the  
29 claim;

30 (10) negotiates or settles a claim directly with a policyholder known  
31 to be represented by a licensed public adjuster;

32 (11) negotiates or settles a claim directly with a contractor or unli-  
33 censed public adjuster;

34 (12) requires a policyholder to submit duplicative or repetitive  
35 information already submitted by a policyholder or an injured party; or

36 (13) acts in violation of section two thousand six hundred one of this  
37 article or any regulation promulgated pursuant thereto.

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

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

48 (d) In any trial of a cause of action asserted against an insurer  
49 pursuant to this section, evidence of settlement discussions written and  
50 verbal offers to compromise and other evidence relating to the claims  
51 process shall be admissible. If causes of action relating to liability  
52 of the insurer under the policy and under this section are alleged in  
53 the same action, the court may bifurcate the trial of issues so as to  
54 avoid prejudice to the insurer on the issue of liability under the poli-  
55 cy and facilitate admissibility of evidence on the causes of action  
56 asserted pursuant to this section.

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

5 (f) An action may also be maintained by any injured person or repre-  
6 sentative thereof including, but not limited to, a guardian, administra-  
7 tor, executor, individual with a power of attorney or any other personal  
8 representative against an insurer to recover damages including costs and  
9 disbursements, consequential damages, reasonable attorney's fees, inter-  
10 est from the time of failure to offer a fair and reasonable settlement  
11 in accordance with this section, and punitive damages as determined by  
12 the finder of fact or court, not limited to the policy limits, where a  
13 preponderance of the evidence establishes that the insurer fails to  
14 effectuate a prompt and fair settlement of a claim or any portion there-  
15 of, in that under the totality of the facts and circumstances related to  
16 the claim, the insurer fails to reasonably accord at least equal or more  
17 favorable consideration to its insured's interests as it did to its own  
18 interests.

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

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

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

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

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

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

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

13 (4) [~~not attempting in good faith~~] where the insurer fails to effectu-  
14 ate a prompt[, and fair [~~and equitable settlements~~] settlement of  
15 [~~claims submitted in which liability has become reasonably clear~~] a  
16 claim or any portion thereof, in that the insurer fails to reasonably  
17 accord at least equal or more favorable consideration to its insured's  
18 interests as it did to its own interests, and thereby exposes the  
19 insured to a judgment in excess of the policy limits, except where there  
20 is a reasonable basis supported by specific information available for  
21 review by the department that the claimant has caused the loss to occur  
22 by arson. After receiving a properly executed proof of loss, the insurer  
23 shall advise the claimant of acceptance or denial of the claim within  
24 thirty working days;

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