

6449

I N S E N A T E

January 12, 2010

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to the payment of first party benefits which are overdue; to amend the penal law, in relation to insurance fraud offenses; to amend the executive law, in relation to the use of the motor vehicle theft and insurance fraud prevention fund; and to establish the temporary panel on medical care and treatment under the no-fault system

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subsection (a) of section 5106 of the insurance law is
2 amended to read as follows:

3 (a) Payments of first party benefits and additional first party bene-
4 fits shall be made as the loss is incurred. Such benefits are overdue if
5 not paid within thirty days after the claimant supplies proof of the
6 fact and amount of loss sustained. If proof is not supplied as to the
7 entire claim, the amount which is supported by proof is overdue if not
8 paid within thirty days after such proof is supplied. All overdue
9 payments shall bear interest at the rate of two percent per month. If a
10 valid claim or portion was overdue, the claimant shall also be entitled
11 to recover his attorney's reasonable fee, for services necessarily
12 performed in connection with securing payment of the overdue claim,
13 subject to limitations promulgated by the superintendent in regulations.
14 PAYMENT OF THE INTEREST PENALTY AND REASONABLE ATTORNEYS FEES TO A
15 CLAIMANT WHEN PAYMENT OF A CLAIM IS OVERDUE SHALL BE THE EXCLUSIVE REME-
16 DY WHEN AN INSURER FAILS TO MAKE TIMELY PAYMENT. THE FAILURE OF AN
17 INSURER TO MAKE TIMELY PAYMENT OR ISSUE A DENIAL WITHIN THIRTY DAYS
18 AFTER PROOF OF CLAIM HAS BEEN SUBMITTED TO AN INSURER SHALL NOT PRECLUDE
19 SUCH INSURER FROM ISSUING A DENIAL OR ASSERTING A DEFENSE AFTER THE
20 THIRTY DAY PERIOD HAS ELAPSED.

21 S 2. Section 176.15 of the penal law, as amended by chapter 515 of the
22 laws of 1986, is amended to read as follows:

23 S 176.15 Insurance fraud in the fourth degree.

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

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1 A person is guilty of insurance fraud in the fourth degree when he OR
2 SHE commits a fraudulent insurance act OR ACTS and thereby wrongfully
3 takes, obtains or withholds, or attempts to wrongfully take, obtain or
4 withhold property with [a] AN AGGREGATE value in excess of [one thou-
5 sand] FIVE HUNDRED dollars.

6 Insurance fraud in the fourth degree is a class E felony.

7 S 3. Section 176.20 of the penal law, as amended by chapter 515 of the
8 laws of 1986, is amended to read as follows:

9 S 176.20 Insurance fraud in the third degree.

10 A person is guilty of insurance fraud in the third degree when he OR
11 SHE commits a fraudulent insurance act OR ACTS and thereby wrongfully
12 takes, obtains or withholds, or attempts to wrongfully take, obtain or
13 withhold property with [a] AN AGGREGATE value in excess of [three] ONE
14 thousand FIVE HUNDRED dollars.

15 Insurance fraud in the third degree is a class D felony.

16 S 4. Section 176.25 of the penal law, as added by chapter 515 of the
17 laws of 1986, is amended to read as follows:

18 S 176.25 Insurance fraud in the second degree.

19 A person is guilty of insurance fraud in the second degree when he OR
20 SHE commits a fraudulent insurance act OR ACTS and thereby wrongfully
21 takes, obtains or withholds, or attempts to wrongfully take, obtain or
22 withhold property with [a] AN AGGREGATE value in excess of [fifty] TWEN-
23 TY-FIVE thousand dollars.

24 Insurance fraud in the second degree is a class C felony.

25 S 5. Section 176.30 of the penal law, as added by chapter 515 of the
26 laws of 1986, is amended to read as follows:

27 S 176.30 Insurance fraud in the first degree.

28 A person is guilty of insurance fraud in the first degree when he OR
29 SHE commits a fraudulent insurance act OR ACTS and thereby wrongfully
30 takes, obtains or withholds, or attempts to wrongfully take, obtain or
31 withhold property with [a] AN AGGREGATE value in excess of [one million]
32 FIVE HUNDRED THOUSAND dollars.

33 Insurance fraud in the first degree is a class B felony.

34 S 6. Section 176.35 of the penal law, as added by chapter 635 of the
35 laws of 1996, is amended to read as follows:

36 S 176.35 Aggravated insurance fraud IN THE THIRD DEGREE.

37 A person is guilty of aggravated insurance fraud in the [fourth] THIRD
38 degree when he OR SHE commits [a fraudulent insurance act] THE OFFENSE
39 OF INSURANCE FRAUD IN THE FIFTH DEGREE, and has been previously
40 convicted within the preceding five years of any offense, an essential
41 element of which is the commission of a fraudulent insurance act.

42 Aggravated insurance fraud in the [fourth] THIRD degree is a class D
43 felony.

44 S 7. The penal law is amended by adding two new sections 176.36 and
45 176.37 to read as follows:

46 S 176.36 AGGRAVATED INSURANCE FRAUD IN THE SECOND DEGREE.

47 A PERSON IS GUILTY OF AGGRAVATED INSURANCE FRAUD IN THE SECOND DEGREE
48 WHEN HE OR SHE COMMITS THE OFFENSE OF INSURANCE FRAUD IN THE FOURTH
49 DEGREE, AND HAS BEEN PREVIOUSLY CONVICTED WITHIN THE PRECEDING FIVE
50 YEARS OF ANY OFFENSE, AN ESSENTIAL ELEMENT OF WHICH IS THE COMMISSION OF
51 A FRAUDULENT INSURANCE ACT.

52 AGGRAVATED INSURANCE FRAUD IN THE SECOND DEGREE IS A CLASS C FELONY.

53 S 176.37 AGGRAVATED INSURANCE FRAUD IN THE FIRST DEGREE.

54 A PERSON IS GUILTY OF AGGRAVATED INSURANCE FRAUD IN THE FIRST DEGREE
55 WHEN HE OR SHE COMMITS THE OFFENSE OF INSURANCE FRAUD IN THE THIRD
56 DEGREE, AND HAS BEEN PREVIOUSLY CONVICTED WITHIN THE PRECEDING FIVE

1 YEARS OF ANY OFFENSE, AN ESSENTIAL ELEMENT OF WHICH IS THE COMMISSION OF
2 A FRAUDULENT INSURANCE ACT.

3 AGGRAVATED INSURANCE FRAUD IN THE FIRST DEGREE IS A CLASS B FELONY.

4 S 8. Paragraph (a) of subdivision 1 of section 460.10 of the penal
5 law, as amended by section 30 of part AAA of chapter 56 of the laws of
6 2009, is amended to read as follows:

7 (a) Any of the felonies set forth in this chapter: sections 120.05,
8 120.10 and 120.11 relating to assault; sections 125.10 to 125.27 relat-
9 ing to homicide; sections 130.25, 130.30 and 130.35 relating to rape;
10 sections 135.20 and 135.25 relating to kidnapping; section 135.35 relat-
11 ing to labor trafficking; section 135.65 relating to coercion; sections
12 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10
13 and 145.12 relating to criminal mischief; article one hundred fifty
14 relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating
15 to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to
16 health care fraud; article one hundred sixty relating to robbery;
17 sections 165.45, 165.50, 165.52 and 165.54 relating to criminal
18 possession of stolen property; sections 165.72 and 165.73 relating to
19 trademark counterfeiting; sections 170.10, 170.15, 170.25, 170.30,
20 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25,
21 175.35, 175.40 and 210.40 relating to false statements; sections 176.15,
22 176.20, 176.25 [and], 176.30, 176.35, 176.36, AND 176.37 relating to
23 insurance fraud; sections 178.20 and 178.25 relating to criminal diver-
24 sion of prescription medications and prescriptions; sections 180.03,
25 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03, 200.04, 200.10,
26 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 215.00, 215.05 and
27 215.19 relating to bribery; sections 187.10, 187.15, 187.20 and 187.25
28 relating to residential mortgage fraud, sections 190.40 and 190.42
29 relating to criminal usury; section 190.65 relating to schemes to
30 defraud; sections 205.60 and 205.65 relating to hindering prosecution;
31 sections 210.10, 210.15, and 215.51 relating to perjury and contempt;
32 section 215.40 relating to tampering with physical evidence; sections
33 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41,
34 220.43, 220.46, 220.55, 220.60 and 220.77 relating to controlled
35 substances; sections 225.10 and 225.20 relating to gambling; sections
36 230.25, 230.30, and 230.32 relating to promoting prostitution; section
37 230.34 relating to sex trafficking; sections 235.06, 235.07, 235.21 and
38 235.22 relating to obscenity; sections 263.10 and 263.15 relating to
39 promoting a sexual performance by a child; sections 265.02, 265.03,
40 265.04, 265.11, 265.12, 265.13 and the provisions of section 265.10
41 which constitute a felony relating to firearms and other dangerous weap-
42 ons; and sections 265.14 and 265.16 relating to criminal sale of a
43 firearm; and section 275.10, 275.20, 275.30, or 275.40 relating to unau-
44 thorized recordings; and sections 470.05, 470.10, 470.15 and 470.20
45 relating to money laundering; or

46 S 9. Paragraph (a) of subdivision 2 of section 846-m of the executive
47 law, as amended by section 6 of part T of chapter 57 of the laws of
48 2000, is amended to read as follows:

49 (a) The moneys received by the fund shall be expended in a manner that
50 is consistent with the plan of operation, pursuant to appropriation,
51 only to reimburse costs incurred by provider agencies for pilot program
52 activities relating to the detection, prevention or reduction of motor
53 vehicle theft and motor vehicle insurance fraud; PROVIDED, HOWEVER, THAT
54 COMMENCING ON JANUARY FIRST, TWO THOUSAND ELEVEN, AT LEAST ONE-HALF OF
55 THE MONEYS RECEIVED BY THE FUND SHALL BE USED EXCLUSIVELY TO SUPPORT

1 EFFORTS UNDERTAKEN BY DISTRICT ATTORNEYS TO DETECT, IDENTIFY AND PROSE-
2 CUTE FRAUD PERTAINING TO ARTICLE FIFTY-ONE OF THE INSURANCE LAW.

3 S 10. Temporary panel on medical care and treatment under the no-fault
4 system. (a) The superintendent of insurance, in consultation with the
5 commissioner of health, is hereby directed to convene a special advisory
6 panel on medical care and treatment provided pursuant to article 51 of
7 the insurance law to examine and assess ways to further improve the
8 no-fault system. Such panel shall study and report on the following
9 issues within one year of the effective date of this section:

10 1. an evaluation of whether the treatment for neck and back injuries
11 covered under the no-fault system varies in terms of treatment, overall
12 cost and medical effectiveness when compared to such treatment under
13 workers' compensation or other health care delivery plans;

14 2. a comparison between the average cost of treatment of neck and back
15 injuries under New York's no-fault system and the no-fault systems of
16 other states;

17 3. whether the development of no-fault treatment guidelines for neck
18 and back injuries would benefit the consumer;

19 4. an evaluation of alternatives with respect to the utilization of
20 the medical fee schedules established by the chairman of the workers'
21 compensation board for the payment of benefits under the no-fault
22 system; and

23 5. any other pertinent issues related to medical care and treatment
24 under the no-fault system as determined by the superintendent of insur-
25 ance or the commissioner of health.

26 (b) 1. The temporary panel on medical care and treatment under the
27 no-fault system shall be composed of 14 members. The superintendent of
28 insurance and commissioner of health shall be members and shall act as
29 co-chairs of such panel. The remaining 12 members shall be appointed as
30 follows:

31 a. 8 members shall be appointed by the governor, of which

32 (i) 2 shall be representatives of producers placing automobile insur-
33 ance,

34 (ii) 2 shall be representatives of insurance companies, with experi-
35 ence in the no-fault system,

36 (iii) 2 shall be representatives of the medical profession with experi-
37 ence in the no-fault system, and

38 (iv) 2 shall be representatives of the legal profession with experi-
39 ence in the no-fault system;

40 b. 2 shall be appointed by the temporary president of the senate, both
41 of whom shall be members of the public; and

42 c. 2 shall be appointed by the speaker of the assembly, both of whom
43 shall be members of the public.

44 2. Vacancies in the membership of such panel shall be appointed in the
45 same manner as original appointments. All such appointments shall be
46 made within one month of the effective date of this act and the panel
47 shall commence its consideration of the issues provided for in this
48 section not later than one month following the effective date of this
49 act regardless of whether all such appointments have been made.

50 (c) The panel shall make a report to the governor and the legislature
51 of its findings, conclusions and recommendations within the time period
52 provided for in subdivision (a) of this section.

53 S 11. The superintendent of insurance shall consider the impact of the
54 provisions of this act and any changes to regulations promulgated pursu-
55 ant to article 51 of the insurance law when considering filings for rate
56 changes for noncommercial private passenger automobile insurance poli-

1 cies and shall require that such filings reflect any cost savings
2 resulting from the provisions of this act or changes to regulations
3 promulgated pursuant to article 51 of the insurance law to the extent
4 quantifiable and actuarially appropriate.

5 S 12. This act shall take effect immediately.