S T A T E O F N E W Y O R K

10045

I N A S S E M B L Y

May 2, 2012

Introduced by M. of A. WEINSTEIN -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to establishing a private right of action for unfair claim settlement practices by an insurer

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

Section 1. Section 2601 of the insurance law, paragraphs 4 and 5 of subsection (a) as amended by chapter 547 of the laws of 1997 and paragraph 6 of subsection (a) as amended by chapter 388 of the laws of 2008, is amended to read as follows:

S 2601. Unfair claim settlement practices; penalties. (a) No insurer doing business in this state shall engage in unfair claim settlement practices. Any of the following acts by an insurer, if committed without just cause and performed with such frequency as to indicate a general business practice, shall constitute unfair claim settlement practices:

(1) knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;

(2) failing to acknowledge with reasonable promptness pertinent communications as to claims arising under its policies;

(3) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under its policies;

(4) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear, 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;

(5) compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them; [or]

(6) failing to promptly disclose coverage pursuant to subsection (d) or subparagraph (A) of paragraph two of subsection (f) of section three thousand four hundred twenty of this chapter.

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

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(b) Evidence as to numbers and types of complaints to the department against an insurer and as to the department's complaint experience with other insurers writing similar lines of insurance shall be admissible in evidence in any administrative or judicial proceeding under this section or article twenty-four or seventy-four of this chapter, but no insurer shall be deemed in violation of this section solely by reason of the numbers and types of such complaints.

(c) If it is found, after notice and an opportunity to be heard, that an insurer has violated this section, each instance of noncompliance with subsection (a) [hereof] OF THIS SECTION may be treated as a separate violation of this section for purposes of ordering a monetary penalty pursuant to subsection (b) of section one hundred nine of this chapter. A violation of this section shall not be a misdemeanor.

(D) IN ADDITION TO THE RIGHT OF ACTION GRANTED TO THE DEPARTMENT PURSUANT TO THIS SECTION, ANY PERSON WHO HAS BEEN INJURED BY REASON OF ANY VIOLATION OF THIS SECTION MAY BRING AN ACTION IN HIS OR HER OWN NAME AS A PLAINTIFF TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE AND AN ACTION TO RECOVER HIS OR HER ACTUAL DAMAGES. THE COURT MAY, IN ITS DISCRETION, AWARD PUNITIVE DAMAGES, IF THE COURT FINDS THAT THE DEFENDANT INSURER WILLFULLY OR KNOWINGLY VIOLATED THIS SECTION. THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

S 2. This act shall take effect immediately.