

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. DINOWITZ, KAVANAGH -- Multi-Sponsored by -- M. of A. BRENNAN, CUSICK -- read once and referred to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to onerous or unreasonable conditions in the performance of disability related contracts

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

1 Section 1. The general obligations law is amended by adding a new  
2 section 5-336 to read as follows:  
3 S 5-336. PERFORMANCE OF WRITTEN CONTRACTS FOR BENEFITS IN THE EVENT OF  
4 DISABILITY. 1. NO PERSON, FIRM, ASSOCIATION, CORPORATION OR OTHER ENTI-  
5 TY, WHETHER SUCH PERSON OR ENTITY BE AN EMPLOYER OR OTHERWISE, EXCLUDING  
6 WORKERS' COMPENSATION OR NEW YORK STATE DISABILITY INSURANCE, WHO ENTERS  
7 INTO A WRITTEN CONTRACT PROVIDING FOR PAYMENT OF BENEFITS OR THE WAIVER  
8 OF OBLIGATIONS OR BOTH IN THE EVENT OF THE DISABILITY OF A NAMED INDI-  
9 VIDUAL SHALL, BY CONTRACT OR OTHERWISE, IMPOSE ON A DISABLED PERSON  
10 ONEROUS OR UNREASONABLE CONDITIONS FOR THE PAYMENT OR CONTINUED PAYMENT  
11 OF CONTRACTUAL BENEFITS OR THE WAIVER OR CONTINUED WAIVER OF OBLI-  
12 GATIONS. CONDITIONS ARE "ONEROUS OR UNREASONABLE" IF BY THEIR CONTIN-  
13 UOUS OR REPETITIOUS NATURE THEY REQUIRE THE DISABLED BENEFICIARY TO  
14 PERFORM UNNECESSARY OR DUPLICATIVE ACTS IN ORDER TO OBTAIN OR COLLECT  
15 THE BENEFITS TO WHICH HE OR SHE IS OTHERWISE ENTITLED UNDER THE CONTRACT  
16 AND INCLUDE BUT ARE NOT LIMITED TO:  
17 (A) REQUIRING THE DISABLED PERSON TO UNDERGO UNREASONABLY REPETITIVE  
18 MEDICAL EXAMINATIONS; OR  
19 (B) REQUIRING THE DISABLED PERSON TO PROVIDE FINELY-DETAILED OR REPE-  
20 TITIOUS MEDICAL DOCUMENTATION OF A DISABLING CONDITION; OR

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

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1 (C) BARGAINING IN BAD FAITH OR ENGAGING IN ANY OF THE ACTS DESCRIBED  
2 IN THE PARAGRAPHS OF SUBSECTION (A) OF SECTION TWO THOUSAND SIX HUNDRED  
3 ONE OF THE INSURANCE LAW, RELATING TO UNFAIR CLAIM SETTLEMENT PRACTICES.  
4 2. ANY PARTY TO THE CONTRACT OR CONTRACT BENEFICIARY INJURED BY AN  
5 ACTION OR FAILURE TO ACT IN VIOLATION OF SUBDIVISION ONE OF THIS SECTION  
6 MAY MAINTAIN AN ACTION TO RECOVER AND, UPON PROOF OF SUCH INJURY DUE TO  
7 VIOLATION OF SUBDIVISION ONE OF THIS SECTION BY A PREPONDERANCE OF THE  
8 EVIDENCE, SHALL RECOVER ACTUAL DAMAGES, INCLUDING ANY INTEREST AND  
9 PENALTIES INCURRED DUE TO THE VIOLATION OF SUBDIVISION ONE OF THIS  
10 SECTION, AND REASONABLE COSTS AND ATTORNEY'S FEES. THE COURT MAY IN ITS  
11 DISCRETION AWARD EXEMPLARY DAMAGES.  
12 S 2. This act shall take effect immediately.