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

4288

2011-2012 Regular Sessions

I N A S S E M B L Y

February 2, 2011

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

AN ACT to amend the insurance law, in relation to the terms of motor vehicle liability insurance policies

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

Section 1. Section 5103 of the insurance law is amended by adding a new subsection (i) to read as follows:

(I) EVERY OWNER'S POLICY OF LIABILITY INSURANCE ISSUED ON A MOTOR VEHICLE OR A MOTORCYCLE IN SATISFACTION OF THE REQUIREMENTS OF ARTICLE SIX OR EIGHT OF THE VEHICLE AND TRAFFIC LAW SHALL CONTAIN THE PROVISIONS SPECIFIED IN THIS SUBSECTION IN THE WORDS IN WHICH SUCH PROVISIONS APPEAR, EXCEPT THAT AN INSURER MAY, AT ITS OPTION, SUBSTITUTE FOR ONE OR MORE OF SUCH PROVISIONS CORRESPONDING PROVISIONS OF DIFFERENT WORDING APPROVED BY THE SUPERINTENDENT WHICH ARE NOT LESS FAVORABLE IN ANY RESPECT TO THE INSURED OR ANY COVERED PERSON. EACH PROVISION CONTAINED IN THE POLICY SHALL BE PRECEDED BY THE APPLICABLE CAPTION OR, AT THE INSURER'S OPTION, BY SUCH APPROPRIATE CAPTIONS OR SUBCAPTIONS AS THE SUPERINTENDENT MAY APPROVE.

(1) EACH POLICY SHALL, EXCEPT WITH RESPECT TO DESIGNATION BY NUMBERS OR LETTERS, CONTAIN THE FOLLOWING PROVISIONS:

(A) ACTION AGAINST INSURER. NO ACTION SHALL LIE AGAINST THE INSURER UNLESS, AS A CONDITION PRECEDENT THERETO, THERE SHALL HAVE BEEN FULL COMPLIANCE WITH THE TERMS OF THIS COVERAGE.

(B) NOTICE. IN THE EVENT OF AN ACCIDENT, WRITTEN NOTICE SETTING FORTH DETAILS SUFFICIENT TO IDENTIFY THE ELIGIBLE INJURED PERSON, ALONG WITH REASONABLY OBTAINABLE INFORMATION REGARDING THE TIME, PLACE AND CIRCUMSTANCES OF THE ACCIDENT, SHALL BE GIVEN BY, OR ON BEHALF OF, EACH ELIGIBLE INJURED PERSON, TO THE INSURER, OR ANY OF THE INSURER'S AUTHORIZED AGENTS, AS SOON AS REASONABLY PRACTICABLE, BUT IN NO EVENT MORE THAN SIX MONTHS AFTER THE DATE OF THE ACCIDENT, UNLESS THE ELIGIBLE INJURED

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

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PERSON SUBMITS WRITTEN PROOF PROVIDING A JUSTIFICATION FOR THE FAILURE TO COMPLY WITH SUCH TIME LIMITATION WHICH IS REASONABLE BY A PREPONDERANCE OF EVIDENCE. IF AN ELIGIBLE INJURED PERSON OR THAT PERSON'S LEGAL REPRESENTATIVE INSTITUTES A PROCEEDING TO RECOVER DAMAGES FOR PERSONAL INJURY UNDER SUBSECTION (B) OF SECTION FIVE THOUSAND ONE HUNDRED FOUR OF THIS ARTICLE, A COPY OF THE SUMMONS AND COMPLAINT OR OTHER PROCESS SERVED IN CONNECTION WITH SUCH ACTION SHALL BE FORWARDED WITHIN SIX MONTHS AFTER THE DATE OF THE ACCIDENT TO THE INSURER OR ANY OF THE INSURER'S AUTHORIZED AGENTS BY SUCH ELIGIBLE INJURED PERSON OR THAT PERSON'S LEGAL REPRESENTATIVE. IN ANY INSTANCE IN WHICH AN ELIGIBLE INJURED PERSON IS UNABLE AFTER MAKING A REASONABLE EFFORT TO ASCERTAIN WHETHER THE INSURER IS LIABLE FOR SUCH PERSON'S CLAIM, NOTICE SHALL BE DEEMED TO HAVE BEEN MADE UPON THE APPROPRIATE INSURER, IF SUCH NOTICE SHALL HAVE BEEN SERVED UPON THE STATE INSURANCE FUND. THE ELIGIBLE INJURED PERSON SHALL BE DEEMED TO HAVE MADE A REASONABLE EFFORT TO ASCERTAIN THE APPROPRIATE INSURER, IF HE OR SHE SHALL HAVE DIRECTED CORRESPONDENCE TO THE INSURED BY A MANNER OF SERVICE ENUMERATED IN SECTION THREE HUNDRED EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

(C) PROOF OF CLAIM; MEDICAL, WORK LOSS AND OTHER NECESSARY EXPENSES. IN THE CASE OF A CLAIM FOR HEALTH SERVICE EXPENSES, THE ELIGIBLE INJURED PERSON OR THAT PERSON'S ASSIGNEE OR LEGAL REPRESENTATIVE SHALL SUBMIT WRITTEN PROOF OF CLAIM TO THE INSURER, INCLUDING FULL PARTICULARS OF THE NATURE AND EXTENT OF THE INJURIES AND TREATMENT RECEIVED AND CONTEMPLATED, AS SOON AS REASONABLY PRACTICABLE BUT, IN NO EVENT LATER THAN SIX MONTHS AFTER THE DATE SERVICES ARE INITIALLY RENDERED. THE ELIGIBLE INJURED PERSON OR THAT PERSON'S LEGAL REPRESENTATIVE SHALL SUBMIT WRITTEN PROOF OF CLAIM FOR WORK LOSS BENEFITS AND FOR OTHER NECESSARY EXPENSES TO THE INSURER WITHIN SIX MONTHS AFTER THE ACCIDENT. THE FOREGOING TIME LIMITATIONS FOR THE SUBMISSION OF PROOF OF CLAIM SHALL APPLY UNLESS THE ELIGIBLE INJURED PERSON OR THAT PERSON'S LEGAL REPRESENTATIVE SUBMITS WRITTEN PROOF PROVIDING JUSTIFICATION FOR THE FAILURE TO COMPLY WITH SUCH TIME LIMITATION WHICH IS REASONABLE BY A PREPONDERANCE OF EVIDENCE. UPON REQUEST BY THE INSURER, THE ELIGIBLE INJURED PERSON OR THAT PERSON'S ASSIGNEE OR REPRESENTATIVE SHALL:

(A) EXECUTE A WRITTEN PROOF OF CLAIM UNDER OATH;

(B) AS MAY REASONABLY BE REQUIRED SUBMIT TO EXAMINATIONS UNDER OATH BY ANY PERSON NAMED BY THE INSURER AND SUBSCRIBE THE SAME;

(C) PROVIDE AUTHORIZATION THAT WILL ENABLE THE INSURER TO OBTAIN MEDICAL RECORDS; AND

(D) PROVIDE ANY OTHER PERTINENT INFORMATION THAT MAY ASSIST THE INSURER IN DETERMINING THE AMOUNT DUE AND PAYABLE.

THE ELIGIBLE INJURED PERSON SHALL SUBMIT TO MEDICAL EXAMINATION BY PHYSICIANS SELECTED BY, OR ACCEPTABLE TO, THE INSURER, WHEN, AND AS OFTEN AS, THE INSURER MAY REASONABLY REQUIRE.

(2) THE DEPARTMENT SHALL PROMULGATE SUCH RULES AND REGULATIONS AS ARE NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SUBSECTION; PROVIDED, HOWEVER, THAT SUCH RULES AND REGULATIONS SHALL NOT BE LESS FAVORABLE IN ANY RESPECT TO ANY COVERED PERSONS, NOR SHALL ANY ADDITIONAL CONDITION PRECEDENT FOR COVERAGE OR FILING A CLAIM BE ESTABLISHED THEREBY.

S 2. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided that any rules and regulations necessary to implement the provisions of this act on its effective date are authorized and directed to be promulgated and shall become effective on such date.