

1183

2011-2012 Regular Sessions

I N S E N A T E

January 5, 2011

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed 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
21 (C) BARGAINING IN BAD FAITH OR ENGAGING IN ANY OF THE ACTS DESCRIBED
22 IN THE PARAGRAPHS OF SUBSECTION (A) OF SECTION TWO THOUSAND SIX HUNDRED
23 ONE OF THE INSURANCE LAW, RELATING TO UNFAIR CLAIM SETTLEMENT PRACTICES.

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

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1 2. ANY PARTY TO THE CONTRACT OR CONTRACT BENEFICIARY INJURED BY AN
2 ACTION OR FAILURE TO ACT IN VIOLATION OF SUBDIVISION ONE OF THIS SECTION
3 MAY MAINTAIN AN ACTION TO RECOVER AND, UPON PROOF OF SUCH INJURY DUE TO
4 VIOLATION OF SUBDIVISION ONE OF THIS SECTION BY A PREPONDERANCE OF THE
5 EVIDENCE, SHALL RECOVER ACTUAL DAMAGES, INCLUDING ANY INTEREST AND
6 PENALTIES INCURRED DUE TO THE VIOLATION OF SUBDIVISION ONE OF THIS
7 SECTION, AND REASONABLE COSTS AND ATTORNEY'S FEES. THE COURT MAY IN ITS
8 DISCRETION AWARD EXEMPLARY DAMAGES.

9 S 2. This act shall take effect immediately.