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

4714

2011-2012 Regular Sessions

I N S E N A T E

April 15, 2011

Introduced by Sen. DeFRANCISCO -- 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 timing for giving notice of a loss under insurance contracts

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

Section 1. Section 3407 of the insurance law is amended by adding a new subsection (c) to read as follows:

(C) (1) ANY PROVISION CONTAINED IN AN INSURANCE CONTRACT ISSUED OR DELIVERED IN THIS STATE OR COVERING A PROPERTY IN THIS STATE THAT IS CONTRARY IN PURPOSE WITH, OR IN CONFLICT WITH THE PROVISIONS OF THIS SECTION SHALL BE NULL AND VOID IF THE EFFECTUATION OF SUCH PROVISION WOULD RESULT IN THE DEROGATION OF THE BENEFIT TO AN INSURED INTENDED BY THE ENACTMENT OF THIS SECTION.

(2) AN INSURER SHALL NOT DENY COVERAGE FOR A CLAIM BASED ON THE FAILURE OF AN INSURED TO GIVE TIMELY NOTICE OF A CLAIM UNLESS THE AUTHORIZED INSURER OR OTHER INSURER CAN DEMONSTRATE THAT IT HAS SUFFERED SUBSTANTIAL PREJUDICE AS A RESULT OF THE DELAYED NOTICE. EVIDENCE THAT THE INSURER HAD KNOWLEDGE OF THE LOSS THAT IS THE SUBJECT OF THE CLAIM SHALL CREATE A REBUTTABLE PRESUMPTION THAT THE INSURER HAS NOT BEEN PREJUDICED BY DELAYED NOTICE. NOTICE GIVEN TO ANY LICENSED AGENT OF THE INSURER IN THIS STATE WITH PARTICULARS SUFFICIENT TO IDENTIFY THE INSURED SHALL BE DEEMED NOTICE TO THE INSURER.

(3) THE PROVISIONS OF THIS SECTION SHALL BE LIBERALLY CONSTRUED IN ORDER TO EFFECTUATE THE PURPOSE HEREOF WHICH IS TO MITIGATE AGAINST THE POTENTIAL FOR PROCEDURAL DENIAL OF INSURANCE COVERAGE RESULTING IN UNREASONABLE LOSS OF INSURANCE PROTECTION FOR INSUREDS.

S 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its

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

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operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 3. This act shall take effect immediately, and shall apply to all insurance contracts, executed, issued, reissued or renewed on or after such date.