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

4949

2011-2012 Regular Sessions

I N S E N A T E

May 2, 2011

Introduced by Sen. SEWARD -- 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 payment of first party benefits which are overdue; to amend the penal law, in relation to insurance fraud offenses; to amend the executive law, in relation to the use of the motor vehicle theft and insurance fraud prevention fund; and to establish the temporary panel on medical care and treatment under the no-fault system

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

Section 1. Subsection (a) of section 5106 of the insurance law is amended to read as follows:

(a) Payments of first party benefits and additional first party benefits shall be made as the loss is incurred. Such benefits are overdue if not paid within thirty days after the claimant supplies proof of the fact and amount of loss sustained. If proof is not supplied as to the entire claim, the amount which is supported by proof is overdue if not paid within thirty days after such proof is supplied. All overdue payments shall bear interest at the rate of two percent per month. If a valid claim or portion was overdue, the claimant shall also be entitled to recover his attorney's reasonable fee, for services necessarily performed in connection with securing payment of the overdue claim, subject to limitations promulgated by the superintendent in regulations. PAYMENT OF THE INTEREST PENALTY AND REASONABLE ATTORNEYS FEES TO A CLAIMANT WHEN PAYMENT OF A CLAIM IS OVERDUE SHALL BE THE EXCLUSIVE REMEDY WHEN AN INSURER FAILS TO MAKE TIMELY PAYMENT. THE FAILURE OF AN INSURER TO MAKE TIMELY PAYMENT OR ISSUE A DENIAL WITHIN THIRTY DAYS AFTER PROOF OF CLAIM HAS BEEN SUBMITTED TO AN INSURER SHALL NOT PRECLUDE SUCH INSURER FROM ISSUING A DENIAL OR ASSERTING A DEFENSE AFTER THE THIRTY DAY PERIOD HAS ELAPSED.

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

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S 2. Section 176.15 of the penal law, as amended by chapter 515 of the laws of 1986, is amended to read as follows:

S 176.15 Insurance fraud in the fourth degree.

A person is guilty of insurance fraud in the fourth degree when he OR SHE commits a fraudulent insurance act OR ACTS and thereby wrongfully takes, obtains or withholds, or attempts to wrongfully take, obtain or withhold property with [a] AN AGGREGATE value in excess of [one thousand] FIVE HUNDRED dollars.

Insurance fraud in the fourth degree is a class E felony.

S 3. Section 176.20 of the penal law, as amended by chapter 515 of the laws of 1986, is amended to read as follows:

S 176.20 Insurance fraud in the third degree.

A person is guilty of insurance fraud in the third degree when he OR SHE commits a fraudulent insurance act OR ACTS and thereby wrongfully takes, obtains or withholds, or attempts to wrongfully take, obtain or withhold property with [a] AN AGGREGATE value in excess of [three] ONE thousand FIVE HUNDRED dollars.

Insurance fraud in the third degree is a class D felony.

S 4. Section 176.25 of the penal law, as added by chapter 515 of the laws of 1986, is amended to read as follows:

S 176.25 Insurance fraud in the second degree.

A person is guilty of insurance fraud in the second degree when he OR SHE commits a fraudulent insurance act OR ACTS and thereby wrongfully takes, obtains or withholds, or attempts to wrongfully take, obtain or withhold property with [a] AN AGGREGATE value in excess of [fifty] TWENTY-FIVE thousand dollars.

Insurance fraud in the second degree is a class C felony.

S 5. Section 176.30 of the penal law, as added by chapter 515 of the laws of 1986, is amended to read as follows:

S 176.30 Insurance fraud in the first degree.

A person is guilty of insurance fraud in the first degree when he OR SHE commits a fraudulent insurance act OR ACTS and thereby wrongfully takes, obtains or withholds, or attempts to wrongfully take, obtain or withhold property with [a] AN AGGREGATE value in excess of [one million] FIVE HUNDRED THOUSAND dollars.

Insurance fraud in the first degree is a class B felony.

S 6. Section 176.35 of the penal law, as added by chapter 635 of the laws of 1996, is amended to read as follows:

S 176.35 Aggravated insurance fraud IN THE THIRD DEGREE.

A person is guilty of aggravated insurance fraud in the [fourth] THIRD degree when he OR SHE commits [a fraudulent insurance act] THE OFFENSE OF INSURANCE FRAUD IN THE FIFTH DEGREE, and has been previously convicted within the preceding five years of any offense, an essential element of which is the commission of a fraudulent insurance act.

Aggravated insurance fraud in the [fourth] THIRD degree is a class D felony.

S 7. The penal law is amended by adding two new sections 176.36 and 176.37 to read as follows:

S 176.36 AGGRAVATED INSURANCE FRAUD IN THE SECOND DEGREE.

A PERSON IS GUILTY OF AGGRAVATED INSURANCE FRAUD IN THE SECOND DEGREE WHEN HE OR SHE COMMITS THE OFFENSE OF INSURANCE FRAUD IN THE FOURTH DEGREE, AND HAS BEEN PREVIOUSLY CONVICTED WITHIN THE PRECEDING FIVE YEARS OF ANY OFFENSE, AN ESSENTIAL ELEMENT OF WHICH IS THE COMMISSION OF A FRAUDULENT INSURANCE ACT.

AGGRAVATED INSURANCE FRAUD IN THE SECOND DEGREE IS A CLASS C FELONY.

S 176.37 AGGRAVATED INSURANCE FRAUD IN THE FIRST DEGREE.

A PERSON IS GUILTY OF AGGRAVATED INSURANCE FRAUD IN THE FIRST DEGREE WHEN HE OR SHE COMMITS THE OFFENSE OF INSURANCE FRAUD IN THE THIRD DEGREE, AND HAS BEEN PREVIOUSLY CONVICTED WITHIN THE PRECEDING FIVE YEARS OF ANY OFFENSE, AN ESSENTIAL ELEMENT OF WHICH IS THE COMMISSION OF A FRAUDULENT INSURANCE ACT.

AGGRAVATED INSURANCE FRAUD IN THE FIRST DEGREE IS A CLASS B FELONY.

S 8. Paragraph (a) of subdivision 1 of section 460.10 of the penal law, as amended by chapter 405 of the laws of 2010, is amended to read as follows:

(a) Any of the felonies set forth in this chapter: sections 120.05, 120.10 and 120.11 relating to assault; sections 121.12 and 121.13 relating to strangulation; sections 125.10 to 125.27 relating to homicide; sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and 135.25 relating to kidnapping; section 135.35 relating to labor trafficking; section 135.65 relating to coercion; sections 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12 relating to criminal mischief; article one hundred fifty relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health care fraud; article one hundred sixty relating to robbery; sections 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of stolen property; sections 165.72 and 165.73 relating to trademark counterfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and 210.40 relating to false statements; sections 176.15, 176.20, 176.25 [and], 176.30, 176.35, 176.36 AND 176.37 relating to insurance fraud; sections 178.20 and 178.25 relating to criminal diversion of prescription medications and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery; sections 187.10, 187.15, 187.20 and 187.25 relating to residential mortgage fraud, sections 190.40 and 190.42 relating to criminal usury; section 190.65 relating to schemes to defraud; sections 205.60 and 205.65 relating to hindering prosecution; sections 210.10, 210.15, and 215.51 relating to perjury and contempt; section 215.40 relating to tampering with physical evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55, 220.60 and 220.77 relating to controlled substances; sections 225.10 and 225.20 relating to gambling; sections 230.25, 230.30, and 230.32 relating to promoting prostitution; section 230.34 relating to sex trafficking; sections 235.06, 235.07, 235.21 and 235.22 relating to obscenity; sections 263.10 and 263.15 relating to promoting a sexual performance by a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the provisions of section 265.10 which constitute a felony relating to firearms and other dangerous weapons; and sections 265.14 and 265.16 relating to criminal sale of a firearm; and section 275.10, 275.20, 275.30, or 275.40 relating to unauthorized recordings; and sections 470.05, 470.10, 470.15 and 470.20 relating to money laundering; or

S 9. Paragraph (a) of subdivision 2 of section 846-m of the executive law, as amended by section 6 of part T of chapter 57 of the laws of 2000, is amended to read as follows:

(a) The moneys received by the fund shall be expended in a manner that is consistent with the plan of operation, pursuant to appropriation, only to reimburse costs incurred by provider agencies for pilot program activities relating to the detection, prevention or reduction of motor vehicle theft and motor vehicle insurance fraud; PROVIDED, HOWEVER, THAT COMMENCING ON JANUARY FIRST, TWO THOUSAND TWELVE, AT LEAST ONE-HALF OF THE MONEYS RECEIVED BY THE FUND SHALL BE USED EXCLUSIVELY TO SUPPORT EFFORTS UNDERTAKEN BY DISTRICT ATTORNEYS TO DETECT, IDENTIFY AND PROSECUTE FRAUD PERTAINING TO ARTICLE FIFTY-ONE OF THE INSURANCE LAW.

S 10. Temporary panel on medical care and treatment under the no-fault system. (a) The superintendent of insurance, in consultation with the commissioner of health, is hereby directed to convene a special advisory panel on medical care and treatment provided pursuant to article 51 of the insurance law to examine and assess ways to further improve the no-fault system. Such panel shall study and report on the following issues within one year of the effective date of this section:

1. an evaluation of whether the treatment for neck and back injuries covered under the no-fault system varies in terms of treatment, overall cost and medical effectiveness when compared to such treatment under workers' compensation or other health care delivery plans;

2. a comparison between the average cost of treatment of neck and back injuries under New York's no-fault system and the no-fault systems of other states;

3. whether the development of no-fault treatment guidelines for neck and back injuries would benefit the consumer;

4. an evaluation of alternatives with respect to the utilization of the medical fee schedules established by the chairman of the workers' compensation board for the payment of benefits under the no-fault system; and

5. any other pertinent issues related to medical care and treatment under the no-fault system as determined by the superintendent of insurance or the commissioner of health.

(b) 1. The temporary panel on medical care and treatment under the no-fault system shall be composed of 14 members. The superintendent of insurance and commissioner of health shall be members and shall act as co-chairs of such panel. The remaining 12 members shall be appointed as follows:

a. 8 members shall be appointed by the governor, of which

(i) 2 shall be representatives of producers placing automobile insurance,

(ii) 2 shall be representatives of insurance companies, with experience in the no-fault system,

(iii) 2 shall be representatives of the medical profession with experience in the no-fault system, and

(iv) 2 shall be representatives of the legal profession with experience in the no-fault system;

b. 2 shall be appointed by the temporary president of the senate, both of whom shall be members of the public; and

c. 2 shall be appointed by the speaker of the assembly, both of whom shall be members of the public.

2. Vacancies in the membership of such panel shall be appointed in the same manner as original appointments. All such appointments shall be made within one month of the effective date of this act and the panel shall commence its consideration of the issues provided for in this section not later than one month following the effective date of this act regardless of whether all such appointments have been made.

(c) The panel shall make a report to the governor and the legislature of its findings, conclusions and recommendations within the time period provided for in subdivision (a) of this section.

S 11. The superintendent of insurance shall consider the impact of the provisions of this act and any changes to regulations promulgated pursuant to article 51 of the insurance law when considering filings for rate changes for noncommercial private passenger automobile insurance policies and shall require that such filings reflect any cost savings resulting from the provisions of this act or changes to regulations promulgated pursuant to article 51 of the insurance law to the extent quantifiable and actuarially appropriate.

S 12. This act shall take effect immediately.