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

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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:

Section 1. The general obligations law is amended by adding a new section 5-336 to read as follows:

S 5-336. PERFORMANCE OF WRITTEN CONTRACTS FOR BENEFITS IN THE EVENT OF DISABILITY. 1. NO PERSON, FIRM, ASSOCIATION, CORPORATION OR OTHER ENTITY, WHETHER SUCH PERSON OR ENTITY BE AN EMPLOYER OR OTHERWISE, EXCLUDING WORKERS' COMPENSATION OR NEW YORK STATE DISABILITY INSURANCE, WHO ENTERS INTO A WRITTEN CONTRACT PROVIDING FOR PAYMENT OF BENEFITS OR THE WAIVER OF OBLIGATIONS OR BOTH IN THE EVENT OF THE DISABILITY OF A NAMED INDIVIDUAL SHALL, BY CONTRACT OR OTHERWISE, IMPOSE ON A DISABLED PERSON ONEROUS OR UNREASONABLE CONDITIONS FOR THE PAYMENT OR CONTINUED PAYMENT OF CONTRACTUAL BENEFITS OR THE WAIVER OR CONTINUED WAIVER OF OBLIGATIONS. CONDITIONS ARE "ONEROUS OR UNREASONABLE" IF BY THEIR CONTINUOUS OR REPETITIOUS NATURE THEY REQUIRE THE DISABLED BENEFICIARY TO PERFORM UNNECESSARY OR DUPLICATIVE ACTS IN ORDER TO OBTAIN OR COLLECT THE BENEFITS TO WHICH HE OR SHE IS OTHERWISE ENTITLED UNDER THE CONTRACT AND INCLUDE BUT ARE NOT LIMITED TO:

(A) REQUIRING THE DISABLED PERSON TO UNDERGO UNREASONABLY REPETITIVE MEDICAL EXAMINATIONS; OR

(B) REQUIRING THE DISABLED PERSON TO PROVIDE FINELY-DETAILED OR REPETITIOUS MEDICAL DOCUMENTATION OF A DISABLING CONDITION; OR

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

LBD02160-01-1

(C) BARGAINING IN BAD FAITH OR ENGAGING IN ANY OF THE ACTS DESCRIBED IN THE PARAGRAPHS OF SUBSECTION (A) OF SECTION TWO THOUSAND SIX HUNDRED ONE OF THE INSURANCE LAW, RELATING TO UNFAIR CLAIM SETTLEMENT PRACTICES.

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

S 2. This act shall take effect immediately.