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

4548

2011-2012 Regular Sessions

I N A S S E M B L Y

February 4, 2011

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

AN ACT to amend the insurance law, in relation to enacting the "abusive insurance practices remedy act"

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

Section 1. Short title. This act shall be known and may be cited as the "abusive insurance practices remedy act".

S 2. The insurance law is amended by adding a new section 2601-a to read as follows:

S 2601-A. UNFAIR CLAIM SETTLEMENT PRACTICES; CIVIL REMEDY. (A) AN INSURER DOING BUSINESS IN THIS STATE SHALL BE LIABLE TO THE HOLDER OF A POLICY ISSUED OR RENEWED PURSUANT TO ARTICLE THIRTY-FOUR OF THIS CHAPTER FOR DAMAGES AS PROVIDED IN THIS SECTION UPON SUCH POLICY HOLDER PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT SUCH INSURER'S REFUSAL TO PAY OR UNREASONABLE DELAY IN PAYMENT TO THE POLICY HOLDER OF AMOUNTS CLAIMED TO BE DUE UNDER A POLICY WAS NOT SUBSTANTIALLY JUSTIFIED. AN INSURER IS NOT SUBSTANTIALLY JUSTIFIED IN REFUSING TO PAY OR IN UNREASONABLY DELAYING PAYMENT WHEN THE INSURER:

(1) INTENTIONALLY, RECKLESSLY OR BY GROSS NEGLIGENCE FAILED TO PROVIDE THE POLICY HOLDER WITH ACCURATE INFORMATION CONCERNING POLICY PROVISIONS RELATING TO THE COVERAGE AT ISSUE;

(2) FAILED TO EFFECTUATE IN GOOD FAITH A PROMPT, FAIR AND EQUITABLE SETTLEMENT OF A CLAIM SUBMITTED BY SUCH POLICY HOLDER IN WHICH LIABILITY OF SUCH INSURER TO SUCH POLICY HOLDER WAS REASONABLY CLEAR;

(3) FAILED TO PROVIDE A WRITTEN DENIAL OF A POLICY HOLDER'S CLAIM WITH A FULL AND COMPLETE EXPLANATION OF SUCH DENIAL, INCLUDING REFERENCES TO SPECIFIC POLICY PROVISIONS WHEREVER POSSIBLE;

(4) FAILED TO MAKE A FINAL DETERMINATION AND NOTIFY THE POLICY HOLDER IN WRITING OF ITS POSITION ON BOTH LIABILITY FOR, AND THE INSURER'S VALUATION OF, A CLAIM WITHIN SIX MONTHS OF THE DATE ON WHICH IT RECEIVED

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

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ACTUAL OR CONSTRUCTIVE NOTICE OF THE LOSS UPON WHICH THE CLAIM IS BASED; OR

(5) FAILED TO ACT IN GOOD FAITH BY COMPELLING POLICY HOLDER TO INSTITUTE SUIT TO RECOVER AMOUNTS DUE UNDER ITS POLICY BY OFFERING SUBSTANTIALLY LESS THAN THE AMOUNTS ULTIMATELY RECOVERED IN SUIT BROUGHT BY SUCH POLICY HOLDER.

(B) ANY POLICY HOLDER WHO ESTABLISHES LIABILITY PURSUANT TO SUBSECTION (A) OF THIS SECTION AND THAT SUCH LIABILITY AROSE AS A RESULT OF INTENTIONAL, RECKLESS OR GROSSLY NEGLIGENT CONDUCT BY THE INSURER OR AN EXPRESS OR IMPLIED POLICY OF THE INSURER FOR PROCESSING CLAIMS SHALL BE ENTITLED TO RECOVER PUNITIVE DAMAGES IN AN AMOUNT NOT MORE THAN THE TOTAL AMOUNT RECOVERED IN THE ACTION.

(C) ANY POLICY HOLDER WHO ESTABLISHES LIABILITY PURSUANT TO SUBSECTION (A) OF THIS SECTION SHALL BE ENTITLED TO RECOVER, IN ADDITION TO AMOUNTS DUE UNDER THE POLICY, INTEREST, COSTS, AND DISBURSEMENTS, COMPENSATORY DAMAGES AND REASONABLE ATTORNEYS' FEES INCURRED BY THE POLICY HOLDER FROM THE DATE OF THE LOSS, IN RECOVERING MONIES DUE PURSUANT TO THE TERMS OF THE POLICY.

(D) ANY POLICY HOLDER MAY RECOVER DAMAGES FROM AN INSURER DOING BUSINESS IN THIS STATE PURSUANT TO THIS SECTION EITHER AS PART OF AN ACTION TO RECOVER UNDER THE TERMS OF AN INSURANCE POLICY OR IN A SEPARATE ACTION.

(E) IN ANY TRIAL OF A CAUSE OF ACTION ASSERTED AGAINST AN INSURER PURSUANT TO THIS SECTION, EVIDENCE OF SETTLEMENT DISCUSSIONS, WRITTEN AND VERBAL OFFERS TO COMPROMISE AND OTHER EVIDENCE RELATING TO THE CLAIMS PROCESS SHALL BE ADMISSIBLE. IF CAUSES OF ACTION RELATING TO LIABILITY OF THE INSURER UNDER THE POLICY AND UNDER THIS SECTION ARE ALLEGED IN THE SAME ACTION, THE COURT MAY BIFURCATE THE TRIAL OF ISSUES SO AS TO AVOID PREJUDICE TO THE INSURER ON THE ISSUE OF LIABILITY UNDER THE POLICY AND FACILITATE ADMISSIBILITY OF EVIDENCE ON THE CAUSES OF ACTION ASSERTED PURSUANT TO THIS SECTION.

(F) ALL AMOUNTS RECOVERED FROM AN INSURER AS ACTUAL DAMAGES AND REASONABLE ATTORNEYS' FEES IN ANY ACTION AUTHORIZED IN THIS SECTION SHALL BE EXCLUDED BY THE INSURER IN ITS DETERMINATIONS OF THE PREMIUMS IT WILL CHARGE ALL POLICY HOLDERS ON ALL POLICIES ISSUED BY IT.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law, and shall apply to all acts and omissions by insurers occurring on or after such date.