

5589

2011-2012 Regular Sessions

I N A S S E M B L Y

February 23, 2011

Introduced by M. of A. BRENNAN, COOK, SCHROEDER, LANCMAN, ZEBROWSKI, ROSENTHAL, JAFFEE, KELLNER, GUNTHER, ROBINSON, KAVANAGH, HOOPER, REILLY, COLTON, SCARBOROUGH, STEVENSON, BARRON -- Multi-Sponsored by -- M. of A. BOYLAND, BROOK-KRASNY, CAHILL, CUSICK, CYMBROWITZ, GOTTFRIED, MAISEL, MILLMAN, PHEFFER, SWEENEY, TITONE, TOWNS, WEISENBERG -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to unfair claim settlement practices

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

1 Section 1. The insurance law is amended by adding a new section 2601-a
2 to read as follows:
3 S 2601-A. UNFAIR CLAIM SETTLEMENT PRACTICES; CIVIL REMEDY. (A) AN
4 INSURER DOING BUSINESS IN THIS STATE SHALL BE LIABLE TO THE HOLDER OF A
5 POLICY ISSUED OR RENEWED PURSUANT TO ARTICLE THIRTY-FOUR OF THIS CHAPTER
6 FOR DAMAGES AS PROVIDED IN THIS SECTION UPON SUCH POLICY HOLDER PROVING
7 BY A PREPONDERANCE OF THE EVIDENCE THAT SUCH INSURER'S REFUSAL TO PAY OR
8 UNREASONABLE DELAY IN PAYMENT TO THE POLICY HOLDER OF AMOUNTS CLAIMED TO
9 BE DUE UNDER A POLICY WAS NOT SUBSTANTIALLY JUSTIFIED. AN INSURER IS
10 NOT SUBSTANTIALLY JUSTIFIED IN REFUSING TO PAY OR IN UNREASONABLY DELAY-
11 ING PAYMENT WHEN THE INSURER:
12 (1) INTENTIONALLY, RECKLESSLY OR BY GROSS NEGLIGENCE FAILED TO PROVIDE
13 THE POLICY HOLDER WITH ACCURATE INFORMATION CONCERNING POLICY PROVISIONS
14 RELATING TO THE COVERAGE AT ISSUE;
15 (2) FAILED TO EFFECTUATE IN GOOD FAITH A PROMPT, FAIR AND EQUITABLE
16 SETTLEMENT OF A CLAIM SUBMITTED BY SUCH POLICY HOLDER IN WHICH LIABILITY
17 OF SUCH INSURER TO SUCH POLICY HOLDER WAS REASONABLY CLEAR;
18 (3) FAILED TO PROVIDE A WRITTEN DENIAL OF A POLICY HOLDER'S CLAIM WITH
19 A FULL AND COMPLETE EXPLANATION OF SUCH DENIAL, INCLUDING REFERENCES TO
20 SPECIFIC POLICY PROVISIONS WHEREVER POSSIBLE;

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

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1 (4) FAILED TO MAKE A FINAL DETERMINATION AND NOTIFY THE POLICY HOLDER
2 IN WRITING OF ITS POSITION ON BOTH LIABILITY FOR, AND THE INSURER'S
3 VALUATION OF, A CLAIM WITHIN SIX MONTHS OF THE DATE ON WHICH IT RECEIVED
4 ACTUAL OR CONSTRUCTIVE NOTICE OF THE LOSS UPON WHICH THE CLAIM IS BASED;
5 OR

6 (5) FAILED TO ACT IN GOOD FAITH BY COMPELLING POLICY HOLDER TO INSTI-
7 TUTE SUIT TO RECOVER AMOUNTS DUE UNDER ITS POLICY BY OFFERING SUBSTAN-
8 TIALY LESS THAN THE AMOUNTS ULTIMATELY RECOVERED IN SUIT BROUGHT BY
9 SUCH POLICY HOLDER.

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

16 (C) ANY POLICY HOLDER MAY RECOVER DAMAGES FROM AN INSURER DOING BUSI-
17 NESS IN THIS STATE PURSUANT TO THIS SECTION EITHER AS PART OF AN ACTION
18 TO RECOVER UNDER THE TERMS OF AN INSURANCE POLICY OR IN A SEPARATE
19 ACTION.

20 (D) IN ANY TRIAL OF A CAUSE OF ACTION ASSERTED AGAINST AN INSURER
21 PURSUANT TO THIS SECTION, EVIDENCE OF SETTLEMENT DISCUSSIONS WRITTEN AND
22 VERBAL OFFERS TO COMPROMISE AND OTHER EVIDENCE RELATING TO THE CLAIMS
23 PROCESS SHALL BE ADMISSIBLE. IF CAUSES OF ACTION RELATING TO LIABILITY
24 OF THE INSURER UNDER THE POLICY AND UNDER THIS SECTION ARE ALLEGED IN
25 THE SAME ACTION, THE COURT MAY BIFURCATE THE TRIAL OF ISSUES SO AS TO
26 AVOID PREJUDICE TO THE INSURER ON THE ISSUE OF LIABILITY UNDER THE POLI-
27 CY AND FACILITATE ADMISSIBILITY OF EVIDENCE ON THE CAUSES OF ACTION
28 ASSERTED PURSUANT TO THIS SECTION.

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

33 S 2. This act shall take effect on the first of January next succeed-
34 ing the date on which it shall have become a law, and shall apply to all
35 acts and omissions by insurers occurring on or after such effective
36 date.