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

3093

2013-2014 Regular Sessions

I N A S S E M B L Y

January 23, 2013

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

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

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

Section 1. Section 2601 of the insurance law is amended by adding a new subsection (a-1) to read as follows:

(A-1) (1) NO REPRESENTATIVE OF AN INSURER SHALL TAKE ANY WRITTEN OR RECORDED STATEMENT FROM AN UNREPRESENTED CLAIMANT UNTIL AT LEAST SIXTY DAYS HAVE PASSED SINCE THE DATE OF THE EVENT GIVING RISE TO A CLAIM, EXCEPT IN A CLAIM WHICH IS FOR LOSS OR DAMAGE TO PROPERTY ONLY, OR AS IS PERMITTED BY THE WORKERS' COMPENSATION LAW. IN THE EVENT THAT AN INSURER VIOLATES THIS PARAGRAPH, THE STATEMENT SHALL BE INADMISSIBLE AT TRIAL AND SHALL NOT BE USED DURING ANY COURSE OF THE CAUSE OF ACTION FOR ANY PURPOSE, EXCEPT IF BENEFICIAL TO THE CLAIMANT. IF AN INSURER TAKES A WRITTEN OR RECORDED STATEMENT AFTER THE PROHIBITED TIME PERIOD HAS EXPIRED, IT SHALL ADVISE THE CLAIMANT OF HIS OR HER RIGHT TO REFUSE TO GIVE THE STATEMENT AND THE RIGHT TO SEEK ADVICE FROM COUNSEL REGARDING THE REQUEST FOR SUCH STATEMENT. A COPY OF THE TRANSCRIPT OF ANY RECORDED STATEMENT SHALL BE PROVIDED TO THE CLAIMANT WITHIN THIRTY DAYS OF THE DATE OF THE RECORDING.

FOR THE PURPOSE OF THIS SUBSECTION THE TERM "REPRESENTATIVE" MEANS ANY REPRESENTATIVE WORKING FOR OR ON BEHALF OF A LIABILITY INSURER, SELF-INSURED ENTITY OR THIRD PARTY CLAIMS ADMINISTRATOR INCLUDING, BUT NOT LIMITED TO ALL EMPLOYEES, AGENTS, INDEPENDENT CONTRACTORS AND INVESTIGATORS IN ANY SITUATION REGARDING AN ACCIDENT WHERE THE LAWS OF THE STATE APPLY, EXCEPT THAT REPRESENTATIVES HANDLING CLAIMS PURSUANT TO ARTICLE FIFTY-ONE OR FIFTY-TWO OF THIS CHAPTER ARE EXPRESSLY EXCLUDED FROM THIS SUBSECTION WITH REGARD TO THEIR OWN CLAIMANTS. HOWEVER, SUCH

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

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REPRESENTATIVES ARE REQUIRED TO ADVISE APPLICANTS THAT THEY HAVE THE RIGHT TO SPEAK TO AN ATTORNEY BEFORE GIVING A STATEMENT.

(2) A REPRESENTATIVE SHALL NOT SETTLE A CLAIM WITH AN UNREPRESENTED CLAIMANT UNLESS IT IS FOR THE FULL POLICY LIMITS (INCLUDING ANY EXCESS COVERAGE) UNLESS MORE THAN SIXTY DAYS HAVE PASSED SINCE THE DATE OF THE EVENT GIVING RISE TO THE CLAIM. IF THERE IS SUPPLEMENTAL UNINSURED MOTORIST COVERAGE AVAILABLE TO THE CLAIMANT, THE SETTLING REPRESENTATIVE MUST FIRST OBTAIN THE SUPPLEMENTAL UNINSURED MOTORIST INSURER'S WRITTEN CONSENT TO SETTLE ON BEHALF OF THE CLAIMANT. ANY SETTLEMENTS MADE DURING THE PROHIBITED TIME PERIOD THAT DO NOT MEET THE AFOREMENTIONED CRITERIA ARE VOIDABLE BY THE CLAIMANT AND UNENFORCEABLE BY THE INSURER. AT THE OPTION OF THE CLAIMANT, THE SETTLEMENT SHALL BE VOIDABLE TO THE EXTENT THAT IT PREJUDICES ANY RIGHTS OF THE UNREPRESENTED CLAIMANT AND ALL SUPPLEMENTAL UNINSURED MOTORIST INSURERS COVERING THE CLAIMANT FOR THE SUBJECT EVENT GIVING RISE TO THE CLAIM.

(3) DURING ALL COMMUNICATIONS WITH UNREPRESENTED CLAIMANTS, BEFORE ASKING ANY CLAIMANT ANY QUESTIONS AT ALL, THE REPRESENTATIVE SHALL READ THE CLAIMANT A STATEMENT ADVISING HIM OR HER OF THE RIGHT TO REFUSE TO SPEAK WITH THE INSURER AND ADVISING HIM OR HER OF THE RIGHT TO CONSULT AN ATTORNEY. THE FOLLOWING STATEMENT SHALL BE READ EACH AND EVERY TIME THE CLAIMANT IS CONTACTED. "YOU HAVE THE RIGHT TO CONSULT WITH AN ATTORNEY BEFORE SPEAKING TO ME OR PROVIDING ME WITH ANY INFORMATION, DOCUMENTS, PHOTOGRAPHS, WRITTEN STATEMENTS, RECORDED STATEMENTS OR OTHER EVIDENCE. THE PAYMENT OF YOUR MEDICAL BILLS OR THE AVAILABILITY OF LIABILITY COVERAGE IS NOT CONTINGENT UPON SPEAKING WITH ME."

(4) IN THE EVENT THAT ANY SETTLEMENT IS MADE WITH AN UNREPRESENTED CLAIMANT AFTER THE PROHIBITED TIME PERIOD HAS PASSED, THE CLAIMANT MAY RESCIND THE SETTLEMENT AGREEMENT OR RELEASE BY NOTIFYING THE INSURER WITHIN THIRTY DAYS OF THE DATE OF THE RELEASE OR SETTLEMENT AGREEMENT. IN ORDER TO RESCIND THE AGREEMENT OR RELEASE, THE CLAIMANT MUST SEND A LETTER VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO THE REPRESENTATIVE.

(5) ANY OFFER TO SETTLE A CLAIM WITH, OR A RELEASE GIVEN TO AN UNREPRESENTED CLAIMANT MUST CONTAIN THE FOLLOWING LANGUAGE IN BOLD AND LARGE TYPE SET ADVISING CLAIMANT OF THE RIGHT TO RESCIND AND THE RIGHT TO CONSULT WITH AN ATTORNEY BEFORE SIGNING THE RELEASE. IF IT DOES NOT, IT IS VOID AND UNENFORCEABLE. "YOU HAVE THE RIGHT TO REFUSE TO SETTLE YOUR CLAIM AND DESPITE SUCH REFUSAL TO SETTLE, YOUR MEDICAL BILLS WILL STILL BE PAID AND LIABILITY COVERAGE WILL STILL BE AVAILABLE. YOU HAVE THE RIGHT TO CONSULT WITH AN ATTORNEY BEFORE NEGOTIATING WITH US AND THE RIGHT TO DO SO BEFORE GIVING ANY WRITTEN OR RECORDED STATEMENTS, PHOTOGRAPHS, DOCUMENTS OR ANY OTHER EVIDENCE TO US." ALL RELEASES SHALL CONTAIN THE FOLLOWING IN BOLD TYPE, WITH A SEPARATE SIGNATURE LINE FOR THE CLAIMANT: "THE SETTLEMENT OF THIS CLAIM FOREVER BARS THE CLAIMANT FROM ANY FUTURE RECOVERIES RELATED TO THIS INCIDENT."

(6) IF AN UNREPRESENTED CLAIMANT DOES NOT READ OR SPEAK ENGLISH, THE REPRESENTATIVE SHALL NOT ENGAGE IN ANY COMMUNICATIONS WITH THE CLAIMANT UNLESS IT ENGAGES A CERTIFIED INTERPRETER TO COMMUNICATE WITH THE CLAIMANT. THE REPRESENTATIVE SHALL ALSO ADVISE THE CLAIMANT OF HIS OR HER RIGHTS AS OUTLINED IN THIS SUBSECTION, AND EXPLAIN THE CONDITION OF ANY SETTLEMENTS TO THE CLAIMANT. THE INTERPRETER SHALL SIGN AN AFFIDAVIT, WHICH IS NOTARIZED, REGARDING THE ACCURACY OF THE TRANSLATION, AND THE ORIGINAL THEREOF SHALL BE KEPT ON FILE FOR AT LEAST SEVEN YEARS, ALONG WITH THE LAST KNOWN CONTACT INFORMATION FOR THE INTERPRETER.

S 2. This act shall take effect immediately and shall apply to claims that are settled on or after such date.