

5780

2013-2014 Regular Sessions

I N   A S S E M B L Y

March 6, 2013

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

AN ACT to amend the insurance law, in relation to establishing a private  
right of action for unfair claim settlement practices by an insurer

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

1     Section 1. Section 2601 of the insurance law, paragraphs 4 and 5 of  
2     subsection (a) as amended by chapter 547 of the laws of 1997 and para-  
3     graph 6 of subsection (a) as amended by chapter 388 of the laws of 2008,  
4     is amended to read as follows:  
5     S 2601. Unfair claim settlement practices; penalties. (a) No insurer  
6     doing business in this state shall engage in unfair claim settlement  
7     practices. Any of the following acts by an insurer, if committed without  
8     just cause and performed with such frequency as to indicate a general  
9     business practice, shall constitute unfair claim settlement practices:  
10    (1) knowingly misrepresenting to claimants pertinent facts or policy  
11    provisions relating to coverages at issue;  
12    (2) failing to acknowledge with reasonable promptness pertinent commu-  
13    nications as to claims arising under its policies;  
14    (3) failing to adopt and implement reasonable standards for the prompt  
15    investigation of claims arising under its policies;  
16    (4) not attempting in good faith to effectuate prompt, fair and equi-  
17    table settlements of claims submitted in which liability has become  
18    reasonably clear, except where there is a reasonable basis supported by  
19    specific information available for review by the department that the  
20    claimant has caused the loss to occur by arson. After receiving a prop-  
21    erly executed proof of loss, the insurer shall advise the claimant of  
22    acceptance or denial of the claim within thirty working days;  
23    (5) compelling policyholders to institute suits to recover amounts due  
24    under its policies by offering substantially less than the amounts ulti-  
25    mately recovered in suits brought by them; [or]

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

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1 (6) failing to promptly disclose coverage pursuant to subsection (d)  
2 or subparagraph (A) of paragraph two of subsection (f) of section three  
3 thousand four hundred twenty of this chapter.

4 (b) Evidence as to numbers and types of complaints to the department  
5 against an insurer and as to the department's complaint experience with  
6 other insurers writing similar lines of insurance shall be admissible in  
7 evidence in any administrative or judicial proceeding under this section  
8 or article twenty-four or seventy-four of this chapter, but no insurer  
9 shall be deemed in violation of this section solely by reason of the  
10 numbers and types of such complaints.

11 (c) If it is found, after notice and an opportunity to be heard, that  
12 an insurer has violated this section, each instance of noncompliance  
13 with subsection (a) [hereof] OF THIS SECTION may be treated as a sepa-  
14 rate violation of this section for purposes of ordering a monetary  
15 penalty pursuant to subsection (b) of section one hundred nine of this  
16 chapter. A violation of this section shall not be a misdemeanor.

17 (D) WHERE THE GOVERNOR HAS DECLARED A DISASTER EMERGENCY PURSUANT TO  
18 SECTION TWENTY-EIGHT OF THE EXECUTIVE LAW, IN ADDITION TO THE RIGHT OF  
19 ACTION GRANTED TO THE DEPARTMENT PURSUANT TO THIS SECTION, ANY PERSON  
20 WHO HAS SUFFERED LOSS OR INJURY BY REASON OF ANY VIOLATION OF THIS  
21 SECTION RELATING TO AN INSURANCE CLAIM FOR PROPERTY DAMAGE IN AN  
22 AFFECTED AREA ENCOMPASSED BY THE EXECUTIVE ORDER DECLARING THE DISASTER  
23 EMERGENCY MAY BRING AN ACTION IN HIS OR HER OWN NAME AS A PLAINTIFF TO  
24 ENJOIN SUCH UNLAWFUL ACT OR PRACTICE AND AN ACTION TO RECOVER HIS OR HER  
25 ACTUAL DAMAGES. THE COURT MAY, IN ITS DISCRETION, AWARD PUNITIVE  
26 DAMAGES, IF THE COURT FINDS THAT THE DEFENDANT INSURER WILLFULLY OR  
27 KNOWINGLY VIOLATED THIS SECTION. THE COURT MAY AWARD REASONABLE ATTOR-  
28 NEY'S FEES TO A PREVAILING PLAINTIFF.

29 S 2. This act shall take effect immediately.