

5664

2013-2014 Regular Sessions

I N S E N A T E

June 3, 2013

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed 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) THE
4 HOLDER OF A POLICY ISSUED OR RENEWED PURSUANT TO THIS CHAPTER SHALL HAVE
5 A PRIVATE RIGHT OF ACTION AGAINST ANY INSURER DOING BUSINESS IN THIS
6 STATE FOR DAMAGES AS PROVIDED IN THIS SECTION UPON SUCH POLICYHOLDER
7 PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT SUCH INSURER'S REFUSAL
8 TO PAY OR UNREASONABLE DELAY IN PAYMENT TO THE POLICYHOLDER OF AMOUNTS
9 CLAIMED TO BE DUE UNDER A POLICY WAS NOT SUBSTANTIALLY JUSTIFIED. AN
10 INSURER IS NOT SUBSTANTIALLY JUSTIFIED IN REFUSING TO PAY OR IN UNREA-
11 SONABLY DELAYING PAYMENT WHEN THE INSURER:

12 (1) FAILED TO PROVIDE THE POLICYHOLDER WITH ACCURATE INFORMATION
13 CONCERNING POLICY PROVISIONS RELATING TO THE COVERAGE AT ISSUE;

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

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

20 (4) FAILED TO MAKE A FINAL DETERMINATION AND NOTIFY THE POLICYHOLDER
21 IN WRITING OF ITS POSITION ON BOTH LIABILITY FOR AND THE INSURER'S VALU-
22 ATION OF A CLAIM WITHIN SIX MONTHS OF THE DATE ON WHICH IT RECEIVED
23 ACTUAL OR CONSTRUCTIVE NOTICE OF THE LOSS UPON WHICH THE CLAIM IS BASED;

24 (5) FAILED TO ACT IN GOOD FAITH BY COMPELLING A POLICYHOLDER TO INSTI-
25 TUTE SUIT TO RECOVER AMOUNTS DUE UNDER ITS POLICY BY OFFERING SUBSTAN-

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

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1 TIALY LESS THAN THE AMOUNTS ULTIMATELY RECOVERED IN SUIT BROUGHT BY
2 SUCH POLICYHOLDER;

3 (6) FAILED TO ADVISE A POLICYHOLDER THAT A CLAIM MAY EXCEED POLICY
4 LIMITS, THAT COUNSEL ASSIGNED BY THE INSURER MAY BE SUBJECT TO A
5 CONFLICT OF INTEREST, OR THAT THE POLICYHOLDER MAY RETAIN INDEPENDENT
6 COUNSEL;

7 (7) FAILED TO PROVIDE, ON REQUEST OF THE POLICYHOLDER OR THEIR REPRE-
8 SENTATIVE, ALL REPORTS, LETTERS OR OTHER DOCUMENTATION ARISING FROM THE
9 INVESTIGATION OF A CLAIM AND EVALUATING LIABILITY FOR OR VALUATION OF
10 SUCH CLAIM;

11 (8) REFUSED TO PAY A CLAIM WITHOUT CONDUCTING A REASONABLE INVESTI-
12 GATION;

13 (9) NEGOTIATED OR SETTLED A CLAIM DIRECTLY WITH A POLICYHOLDER KNOWN
14 TO BE REPRESENTED BY AN ATTORNEY WITHOUT THE ATTORNEY'S KNOWLEDGE OR
15 CONSENT. THIS SHALL NOT PROHIBIT ROUTINE INQUIRIES TO A POLICYHOLDER TO
16 OBTAIN DETAILS CONCERNING THE CLAIM;

17 (10) FAILED TO PAY ON ONE OR MORE ELEMENTS OF A CLAIM WHERE THERE IS
18 NO DISPUTE AS TO LIABILITY NOTWITHSTANDING THE EXISTENCE OF DISPUTES AS
19 TO OTHER ELEMENTS OF THE CLAIM WHERE SUCH PAYMENT CAN BE MADE WITHOUT
20 PREJUDICE TO EITHER PARTY; OR

21 (11) ACTED IN VIOLATION OF SECTION TWO THOUSAND SIX HUNDRED ONE OF
22 THIS ARTICLE OR ANY REGULATION PROMULGATED PURSUANT THERETO.

23 (B) ANY POLICYHOLDER WHO ESTABLISHES LIABILITY PURSUANT TO SUBSECTION
24 (A) OF THIS SECTION SHALL BE ENTITLED TO RECOVER, IN ADDITION TO AMOUNTS
25 DUE UNDER THE POLICY, INTEREST, COSTS AND DISBURSEMENTS:

26 (1) COMPENSATORY DAMAGES EQUAL TO THREE TIMES THE ACTUAL DAMAGES;

27 (2) SUCH ADDITIONAL PUNITIVE DAMAGES AS THE COURT MAY ALLOW, ON A
28 SHOWING THAT THE ACTS GIVING RISE TO LIABILITY OCCUR WITH SUCH FREQUENCY
29 AS TO INDICATE A GENERAL BUSINESS PRACTICE; AND

30 (3) REASONABLE ATTORNEYS' FEES INCURRED BY THE POLICYHOLDER FROM THE
31 DATE OF THE LOSS, IN RECOVERING MONIES DUE PURSUANT TO THE TERMS OF THE
32 POLICY.

33 (C) ANY POLICYHOLDER MAY RECOVER DAMAGES FROM AN INSURER DOING BUSI-
34 NESS IN THIS STATE PURSUANT TO THIS SECTION EITHER AS PART OF AN ACTION
35 TO RECOVER UNDER THE TERMS OF AN INSURANCE POLICY OR IN A SEPARATE
36 ACTION.

37 (D) IN ANY TRIAL OF A CAUSE OF ACTION ASSERTED AGAINST AN INSURER
38 PURSUANT TO THIS SECTION, EVIDENCE OF SETTLEMENT DISCUSSIONS WRITTEN AND
39 VERBAL OFFERS TO COMPROMISE AND OTHER EVIDENCE RELATING TO THE CLAIMS
40 PROCESS SHALL BE ADMISSIBLE. IF CAUSES OF ACTION RELATING TO LIABILITY
41 OF THE INSURER UNDER THE POLICY AND UNDER THIS SECTION ARE ALLEGED IN
42 THE SAME ACTION, THE COURT MAY BIFURCATE THE TRIAL OF ISSUES SO AS TO
43 AVOID PREJUDICE TO THE INSURER ON THE ISSUE OF LIABILITY UNDER THE POLI-
44 CY AND FACILITATE ADMISSIBILITY OF EVIDENCE ON THE CAUSES OF ACTION
45 ASSERTED PURSUANT TO THIS SECTION.

46 (E) ALL AMOUNTS RECOVERED FROM AN INSURER AS DAMAGES AND REASONABLE
47 ATTORNEYS' FEES IN ANY ACTION AUTHORIZED IN THIS SECTION SHALL BE
48 EXCLUDED BY THE INSURER IN ITS DETERMINATIONS OF THE PREMIUMS IT WILL
49 CHARGE ALL POLICYHOLDERS ON ALL POLICIES ISSUED BY IT.

50 (F) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT A
51 POLICYHOLDER'S RIGHT TO A TRIAL BY JURY FOR ANY CLAIMS ARISING UNDER
52 THIS SECTION.

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