

5780

2013-2014 Regular Sessions

I N A S S E M B L Y

March 6, 2013

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.