

4089

2015-2016 Regular Sessions

I N A S S E M B L Y

January 29, 2015

Introduced by M. of A. MALLIOTAKIS, BORELLI, BROOK-KRASNY, CURRAN, GRAF, McKEVITT, RAIA, SALADINO, TENNEY -- Multi-Sponsored by -- M. of A. McDONOUGH -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to unfair claim settlements after a natural disaster

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

1 Section 1. Section 2601 of the insurance law, paragraph 4 of
2 subsection (a) as amended by chapter 547 of the laws of 1997, paragraphs
3 5 and 6 of subsection (a) as amended and paragraph 7 of subsection (a)
4 as added by section 27 of part H of chapter 60 of the laws of 2014, is
5 amended to read as follows:
6 S 2601. Unfair claim settlement practices; penalties. (a) No insurer
7 doing business in this state shall engage in unfair claim settlement
8 practices. Any of the following acts by an insurer, if committed without
9 just cause and performed with such frequency as to indicate a general
10 business practice, shall constitute unfair claim settlement practices,
11 PROVIDED, HOWEVER, THAT IN THE EVENT THE GOVERNOR HAS PURSUANT TO
12 SECTION TWENTY-NINE-A OF THE EXECUTIVE LAW SUSPENDED ANY STATUTE IN THIS
13 CHAPTER AS A RESULT OF A STATE DISASTER EMERGENCY, SUCH ACT SHALL
14 CONSTITUTE AN UNFAIR CLAIM SETTLEMENT PRACTICE WITHOUT RESPECT TO WHETH-
15 ER SUCH ACT WAS INDICATIVE OF A GENERAL BUSINESS PRACTICE:
16 (1) knowingly misrepresenting to claimants pertinent facts or policy
17 provisions relating to coverages at issue;
18 (2) failing to acknowledge with reasonable promptness pertinent commu-
19 nications as to claims arising under its policies;
20 (3) failing to adopt and implement reasonable standards for the prompt
21 investigation of claims arising under its policies;
22 (4) not attempting in good faith to effectuate prompt, fair and equi-
23 table settlements of claims submitted in which liability has become
24 reasonably clear, except where there is a reasonable basis supported by

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

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1 specific information available for review by the department that the
2 claimant has caused the loss to occur by arson. After receiving a prop-
3 erly executed proof of loss, the insurer shall advise the claimant of
4 acceptance or denial of the claim within thirty working days;
5 (5) compelling policyholders to institute suits to recover amounts due
6 under its policies by offering substantially less than the amounts ulti-
7 mately recovered in suits brought by them;
8 (6) failing to promptly disclose coverage pursuant to subsection (d)
9 or subparagraph (A) of paragraph two of subsection (f) of section three
10 thousand four hundred twenty of this chapter; [or]
11 (7) submitting reasonably rendered claims to the independent dispute
12 resolution process established under article six of the financial
13 services law[.]; OR
14 (8) IN ADDITION TO THE FOREGOING, WHEN THE GOVERNOR HAS DECLARED A
15 STATE DISASTER EMERGENCY, THE FOLLOWING PRACTICES SHALL BE DEEMED UNFAIR
16 CLAIM SETTLEMENT PRACTICES:
17 (A) ATTEMPTING TO SETTLE A CLAIM ON THE BASIS OF A DOCUMENT THAT WAS
18 ALTERED WITHOUT NOTICE TO THE CONSUMER;
19 (B) MAKING A MATERIAL MISREPRESENTATION FOR THE PURPOSE OF SETTLING A
20 CLAIM ON LESS FAVORABLE TERMS THAN THOSE PROVIDED IN THE POLICY;
21 (C) FAILING TO PROMPTLY NOTIFY THE INSURED OF ANY ADDITIONAL INFORMA-
22 TION NECESSARY FOR THE PROCESSING OF THE CLAIM, AS WELL AS THE REASONS
23 WHY SUCH INFORMATION IS NECESSARY;
24 (D) FAILING TO CONDUCT AN ON-SITE INSPECTION WITHIN SEVEN BUSINESS
25 DAYS FROM SUBMISSION OF THE CLAIM;
26 (E) FAILING TO PROVIDE THE CLAIMANT WITH A COPY OF THE ADJUSTER'S
27 REPORT WITHIN THREE BUSINESS DAYS FROM THE INSPECTION;
28 (F) FAILING TO PROVIDE A DETERMINATION ON THE CLAIM WITHIN THIRTY
29 CALENDAR DAYS FROM FURNISHING CLAIMANT WITH A COPY OF THE REPORT; AND
30 (G) IF DAMAGES ARE DETERMINED TO BE COVERED UNDER THE POLICY, FAILING
31 TO PAY AT LEAST TWENTY PERCENT OF THE TOTAL CLAIM UPON SUCH DETERMI-
32 NATION AND THE CLAIM IN FULL WITHIN THIRTY DAYS OF DETERMINATION.
33 (b) Evidence as to numbers and types of complaints to the department
34 against an insurer and as to the department's complaint experience with
35 other insurers writing similar lines of insurance shall be admissible in
36 evidence in any administrative or judicial proceeding under this section
37 or article twenty-four or seventy-four of this chapter, but no insurer
38 shall be deemed in violation of this section solely by reason of the
39 numbers and types of such complaints.
40 (c) If it is found, after notice and an opportunity to be heard, that
41 an insurer has violated this section, each instance of noncompliance
42 with subsection (a) [hereof] OF THIS SECTION may be treated as a sepa-
43 rate violation of this section for purposes of ordering a monetary
44 penalty pursuant to subsection (b) of section one hundred nine of this
45 chapter. A violation of this section shall not be a misdemeanor.
46 S 2. The insurance law is amended by adding a new section 2601-a to
47 read as follows:
48 S 2601-A. UNFAIR CLAIM SETTLEMENT PRACTICES DURING STATE DISASTER
49 EMERGENCY; CIVIL REMEDY. (A) IN THE EVENT THE GOVERNOR HAS PURSUANT TO
50 SECTION TWENTY-NINE-A OF THE EXECUTIVE LAW SUSPENDED ANY STATUTE IN THIS
51 CHAPTER AS A RESULT OF A STATE DISASTER EMERGENCY AN INSURER DOING BUSI-
52 NESS IN THIS STATE SHALL BE LIABLE TO THE HOLDER OF A POLICY ISSUED OR
53 RENEWED PURSUANT TO ARTICLE THIRTY-FOUR OF THIS CHAPTER FOR DAMAGES AS
54 PROVIDED IN THIS SECTION UPON SUCH POLICY HOLDER PROVING BY A PREPONDER-
55 ANCE OF THE EVIDENCE THAT SUCH INSURER'S REFUSAL TO PAY OR UNREASONABLE
56 DELAY IN PAYMENT TO THE POLICY HOLDER OF AMOUNTS CLAIMED TO BE DUE A

POLICY WAS NOT SUBSTANTIALLY JUSTIFIED. AN INSURER IS NOT SUBSTANTIALLY JUSTIFIED IN REFUSING TO PAY OR IN UNREASONABLY DELAYING PAYMENT WHEN THE INSURER:

(1) INTENTIONALLY, RECKLESSLY OR BY GROSS NEGLIGENCE FAILED TO PROVIDE THE POLICY HOLDER WITH ACCURATE INFORMATION CONCERNING POLICY PROVISIONS RELATING TO THE COVERAGE AT ISSUE;

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

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

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

(5) FAILED TO ACT IN GOOD FAITH BY COMPELLING POLICY HOLDER TO INSTITUTE SUIT TO RECOVER AMOUNTS DUE UNDER ITS POLICY BY OFFERING SUBSTANTIALLY LESS THAN THE AMOUNTS ULTIMATELY RECOVERED IN SUIT BROUGHT BY SUCH POLICY HOLDER; OR

(6) HAS ENGAGED IN ANY OTHER UNFAIR CLAIM SETTLEMENT PRACTICE AS DEFINED IN PARAGRAPH EIGHT OF SUBSECTION (A) OF SECTION TWO THOUSAND SIX HUNDRED ONE OF THIS ARTICLE.

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

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

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

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

S 3. This act shall take effect immediately; provided, however, that the amendments to paragraphs 5, 6, and 7 of paragraph (a) of section 2601 of the insurance law made by section one of this act shall take effect on the same date and in the same manner as section 27 of part H of chapter 60 of the laws of 2014, takes effect.