

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

6421--A

2015-2016 Regular Sessions

I N A S S E M B L Y

March 24, 2015

Introduced by M. of A. JOYNER, BRINDISI, GOTTFRIED, LINARES, OTIS, PICHARDO, ROBINSON, ENGLEBRIGHT, BRONSON, WEPRIN, STIRPE, SKOUFIS, DINOWITZ, BRAUNSTEIN, AUBRY, MILLER, LIFTON, BROOK-KRASNY, RUSSELL, BARRON, COLTON -- Multi-Sponsored by -- M. of A. BLAKE, BUCHWALD, CLARK, COOK, FARRELL, HEVESI, LUPINACCI, MOSLEY, RAIA, TITONE -- read once and referred to the Committee on Insurance -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to verification of claims made under the comprehensive motor vehicle insurance reparations act

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

1 Section 1. Section 5106 of the insurance law, subsection (b) as
2 amended and subsection (d) as added by chapter 452 of the laws of 2005,
3 is amended to read as follows:
4 S 5106. Fair claims settlement. (a) Payments of first party benefits
5 and additional first party benefits shall be made as the loss is
6 incurred. Such benefits are overdue if not paid within thirty days
7 after the claimant supplies proof of the fact and amount of loss
8 sustained. If proof is not supplied as to the entire claim, the amount
9 which is supported by proof is overdue if not paid within thirty days
10 after such proof is supplied. All overdue payments shall bear interest
11 at the rate of two percent per month. If a valid claim or portion was
12 overdue, the claimant shall also be entitled to recover his attorney's
13 reasonable fee, for services necessarily performed in connection with
14 securing payment of the overdue claim, subject to limitations promulgat-
15 ed by the superintendent in regulations.
16 (b) THE INSURER IS ENTITLED TO RECEIVE ALL ITEMS NECESSARY TO VERIFY
17 THE CLAIM, INCLUDING MEDICAL EXAMINATION AND EXAMINATION UNDER OATH OF
18 THE INJURED PARTY OR ANY ADDITIONAL VERIFICATION REQUIRED BY THE INSURER

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

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1 TO ESTABLISH PROOF OF CLAIM. THE FAILURE OF THE INJURED PARTY TO APPEAR
2 FOR A SCHEDULED MEDICAL EXAMINATION OR EXAMINATION UNDER OATH OR TO
3 PROVIDE ANY OTHER ADDITIONAL VERIFICATION SHALL NEITHER BE A POLICY
4 VIOLATION NOR BE UTILIZED AS THE BASIS FOR THE DENIAL OF A CLAIM OR
5 DISCLAIMER, PROVIDED THE INJURED PARTY SUBMITS TO THE INSURER WRITTEN
6 PROOF OFFERING EITHER (1) REASONABLE JUSTIFICATION FOR THE FAILURE TO
7 COMPLY; OR (2) A DEMONSTRABLE WILLINGNESS TO COMPLY WITHIN THIRTY CALEN-
8 DAR DAYS FROM THE DATE OF THE INJURED PARTY'S FAILURE TO APPEAR OR OTHER
9 VERIFICATION BECOMES OVERDUE. IF SUCH WRITTEN PROOF IS NOT PROVIDED
10 WITHIN A REASONABLE TIME PERIOD, THE INSURER MAY ONLY DENY THAT PORTION
11 OF THE CLAIM FOR WHICH THE REQUESTED MEDICAL EXAMINATION, EXAMINATION
12 UNDER OATH OR ADDITIONAL VERIFICATION WAS REQUIRED AS PROOF OF THE FACT
13 AND AMOUNT OF LOSS SUSTAINED. IN NO EVENT SHALL THE FAILURE OF THE
14 INJURED PARTY TO APPEAR FOR A SCHEDULED MEDICAL EXAMINATION OR EXAMINA-
15 TION UNDER OATH OR TO PROVIDE ANY OTHER ADDITIONAL VERIFICATION SERVE AS
16 THE BASIS FOR THE DENIAL OF THAT PORTION OF A CLAIM RELATING TO EMERGEN-
17 CY MEDICAL CARE PROVIDED WITHIN FORTY-EIGHT HOURS OF AN ACCIDENT.

18 (C) Every insurer shall provide a claimant with the option of submit-
19 ting any dispute involving the insurer's liability to pay first party
20 benefits, or additional first party benefits, the amount thereof or any
21 other matter which may arise pursuant to subsection (a) of this section
22 to arbitration pursuant to simplified procedures to be promulgated or
23 approved by the superintendent. Such simplified procedures shall include
24 an expedited eligibility hearing option, when required, to designate the
25 insurer for first party benefits pursuant to subsection [(d)] (E) of
26 this section. The expedited eligibility hearing option shall be a forum
27 for eligibility disputes only, and shall not include the submission of
28 any particular bill, payment or claim for any specific benefit for adju-
29 dication, nor shall it consider any other defense to payment.

30 [(c)] (D) An award by an arbitrator shall be binding except where
31 vacated or modified by a master arbitrator in accordance with simplified
32 procedures to be promulgated or approved by the superintendent. The
33 grounds for vacating or modifying an arbitrator's award by a master
34 arbitrator shall not be limited to those grounds for review set forth in
35 article seventy-five of the civil practice law and rules. The award of a
36 master arbitrator shall be binding except for the grounds for review set
37 forth in article seventy-five of the civil practice law and rules, and
38 provided further that where the amount of such master arbitrator's award
39 is five thousand dollars or greater, exclusive of interest and attor-
40 ney's fees, the insurer or the claimant may institute a court action to
41 adjudicate the dispute de novo.

42 [(d)] (E) Where there is reasonable belief more than one insurer would
43 be the source of first party benefits, the insurers may agree among
44 themselves, if there is a valid basis therefor, that one of them will
45 accept and pay the claim initially. If there is no such agreement, then
46 the first insurer to whom notice of claim is given shall be responsible
47 for payment. Any such dispute shall be resolved in accordance with the
48 arbitration procedures established pursuant to section five thousand one
49 hundred five of this article and regulation as promulgated by the super-
50 intendent, and any insurer paying first-party benefits shall be reim-
51 bursed by other insurers for their proportionate share of the costs of
52 the claim and the allocated expenses of processing the claim, in accord-
53 ance with the provisions entitled "other coverage" contained in regu-
54 lation and the provisions entitled "other sources of first-party bene-
55 fits" contained in regulation. If there is no such insurer and the motor
56 vehicle accident occurs in this state, then an applicant who is a quali-

1 fied person as defined in article fifty-two of this chapter shall insti-
2 tute the claim against motor vehicle accident indemnification corpo-
3 ration.
4 S 2. This act shall take effect immediately.