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

4049

2015-2016 Regular Sessions

I N   S E N A T E

February 26, 2015

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:

Section 1. The insurance law is amended by adding a new section 2601-a to read as follows:

S 2601-A. UNFAIR CLAIM SETTLEMENT PRACTICES; CIVIL REMEDY. (A) THE HOLDER OF A POLICY ISSUED OR RENEWED PURSUANT TO THIS CHAPTER SHALL HAVE A PRIVATE RIGHT OF ACTION AGAINST ANY INSURER DOING BUSINESS IN THIS STATE FOR DAMAGES AS PROVIDED IN THIS SECTION UPON SUCH POLICYHOLDER PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT SUCH INSURER'S REFUSAL TO PAY OR UNREASONABLE DELAY IN PAYMENT TO THE POLICYHOLDER OF AMOUNTS CLAIMED TO BE DUE UNDER 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) FAILED TO PROVIDE THE POLICYHOLDER 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 POLICYHOLDER IN WHICH LIABILITY OF SUCH INSURER TO SUCH POLICYHOLDER WAS REASONABLY CLEAR;

(3) FAILED TO PROVIDE A WRITTEN DENIAL OF A POLICYHOLDER'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 POLICYHOLDER IN WRITING OF ITS POSITION ON BOTH LIABILITY FOR AND THE INSURER'S VALUATION OF A CLAIM WITHIN SIX MONTHS 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 A POLICYHOLDER TO INSTITUTE SUIT TO RECOVER AMOUNTS DUE UNDER ITS POLICY BY OFFERING SUBSTANTIALLY LESS THAN THE AMOUNTS ULTIMATELY RECOVERED IN SUIT BROUGHT BY SUCH POLICYHOLDER;

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

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

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

(8) REFUSED TO PAY A CLAIM WITHOUT CONDUCTING A REASONABLE INVESTIGATION;

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

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

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

(B) ANY POLICYHOLDER 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:

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

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

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

(C) ANY POLICYHOLDER 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 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 POLICYHOLDERS ON ALL POLICIES ISSUED BY IT.

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

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