

# STATE OF NEW YORK

2832--A

2017-2018 Regular Sessions

## IN ASSEMBLY

January 23, 2017

Introduced by M. of A. WEINSTEIN, CUSICK, TITUS, CYMBROWITZ, JAFFEE, HYNDMAN, JENNE, SKOUFIS, PAULIN, COLTON, ABINANTI, SEAWRIGHT, SEPULVEDA, SANTABARBARA, ZEBROWSKI -- Multi-Sponsored by -- M. of A. KEARNS, McDONOUGH, RAIA -- read once and referred to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

§ 2601-a. Unfair claim settlement practices; civil remedy. (a) Any person may bring a civil action against an insurer if such person suffers damages as provided in this section with regard to a policy issued or renewed pursuant to this chapter against any insurer doing business in this state upon such claimant proving by a preponderance of the evidence that such insurer's refusal to pay or unreasonable delay in payment 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 claimant 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 or portion of a claim and where the insurer failed to reasonably accord at least equal or more favorable consideration to its insured's interests as it did to its own interests, and thereby exposed the insured to a judgment in excess of the policy limits or caused other damage to a claimant;

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

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1 (3) failed to provide a timely written denial of a claimant's claim,  
2 or portion thereof, with a full and complete explanation of such denial,  
3 including references to specific policy provisions wherever possible;

4 (4) failed to act in good faith by compelling such claimant to insti-  
5 tute suit to recover amounts due under its policy by offering substan-  
6 tially less than the amounts ultimately recovered in such suit;

7 (5) failed to timely provide, on request of the policyholder or the  
8 policyholder's representative, all reports, letters or other documenta-  
9 tion arising from the investigation of a claim and evaluating liability  
10 for or valuation of such claim; or

11 (6) refused to pay a claim without conducting a reasonable investi-  
12 gation prior to such refusal.

13 (b) Any claimant who establishes liability pursuant to subsection (a)  
14 of this section shall be entitled to recover, in addition to amounts due  
15 under the policy, interest, costs and disbursements, compensatory  
16 damages, and reasonable attorneys' fees incurred by the claimant from  
17 the date of the loss, in recovering monies due pursuant to the terms of  
18 the policy, as well as such additional punitive damages as the court may  
19 allow.

20 (c) Any claimant may recover damages from an insurer doing business in  
21 this state pursuant to this section either as part of an action to  
22 recover under the terms of an insurance policy or in a separate action.

23 (d) In any trial of a cause of action asserted against an insurer  
24 pursuant to this section, evidence of settlement discussions written and  
25 verbal offers to compromise and other evidence relating to the claims  
26 process shall be admissible. If causes of action relating to liability  
27 of the insurer under the policy and under this section are alleged in  
28 the same action, the court may bifurcate the trial of issues so as to  
29 avoid prejudice to the insurer on the issue of liability under the poli-  
30 cy and facilitate admissibility of evidence on the causes of action  
31 asserted pursuant to this section.

32 (e) All amounts recovered from an insurer as compensatory damages,  
33 interest, costs and disbursements, and reasonable attorneys' fees in any  
34 action authorized in this section shall be excluded by the insurer in  
35 its determinations of the premiums it will charge all policyholders on  
36 all policies issued by it.

37 (f) Nothing in this section shall be construed to limit a claimant's  
38 right to a trial by jury for any claims arising under this section and  
39 the rights enumerated in this section do not preclude any common law  
40 claims or other statutory claims that may exist.

41 (g) Notwithstanding any provision of any other law, regulation or rule  
42 to the contrary, the cause of action established in this section shall  
43 be heard in a court of competent jurisdiction, and no contract for an  
44 insurance policy shall contain a clause requiring arbitration or forbid-  
45 ding the bringing of a joint action or class action.

46 § 2. This act shall take effect on the first of January next succeed-  
47 ing the date on which it shall have become a law, and shall apply to all  
48 acts and omissions by insurers occurring on or after such effective  
49 date.