

# STATE OF NEW YORK

6643--A

2017-2018 Regular Sessions

## IN SENATE

June 9, 2017

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to establishing a civil remedy for unfair claim settlement practices

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

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

3 § 2601-a. Unfair claim settlement practices; civil remedy. (a) An  
4 insurer doing business in this state shall be liable to the holder of a  
5 policy issued, issued for delivery in this state, or renewed pursuant to  
6 article thirty-four of this chapter for damages as provided in this  
7 section upon such policy holder proving by a preponderance of the  
8 evidence that such insurer's refusal to pay or an unreasonable delay by  
9 the insurer in payment to the policy holder of amounts claimed to be due  
10 under a provision of such policy providing first party property insur-  
11 ance was not substantially justified. An insurer is not substantially  
12 justified in refusing to pay or in unreasonably delaying payment when  
13 the insurer:

14 (1) intentionally, recklessly or by gross negligence fails to provide  
15 the policy holder with accurate information concerning policy provisions  
16 relating the coverage at issue at any time during the insurer-policy  
17 holder relationship, including but not limited to the period after which  
18 a claim has been made by the policy holder;

19 (2) failed to effectuate in good faith a prompt, fair and equitable  
20 settlement of a claim submitted by such policy holder in which liability  
21 of such insurer to such policy holder was reasonably clear;

22 (3) failed to provide a timely written denial of a policy holder's  
23 claim, in whole or in part, upon a thorough investigation of such claim

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

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1 with a full and complete explanation of such denial or partial denial,  
2 including references to specific policy provisions or findings of fact  
3 as a result of such investigation wherever possible;

4 (4) failed to make a final determination and notify the policy holder  
5 in writing of its position on both liability for, and the insurer's  
6 valuation of, a claim within six months of the date on which it received  
7 actual or constructive notice of the loss upon which the claim is based;

8 (5) failed to act in good faith by compelling the policy holder to  
9 institute suit to recover amounts due under its policy by offering  
10 substantially less than the amounts ultimately recovered in suit brought  
11 by such policy holder; or

12 (6) failed to promptly proceed with the appraisal process once such  
13 has been demanded by a policy holder in any claim where coverage for  
14 apportion of the claim has been accepted by the insurer and a disagree-  
15 ment exists between the insured and the insurer with respect to the  
16 value of covered property or the amount, or extent of the covered loss.

17 (b) Any policy holder may recover damages, as provided in subsection  
18 (e) of this section, from an insurer subject to the provisions of this  
19 section either as part of an action to recover under the terms of an  
20 insurance policy or in a separate action; provided, however, that the  
21 policy holder files with the insurer on a form approved by the super-  
22 intendent and provided upon issuance of a policy and upon notice of a  
23 claim to the policy holder by the insurer notice of an intent to bring  
24 an action pursuant to this section, with a recitation of:

25 (1) the facts and circumstances giving rise to the action;

26 (2) the name or names of any employee, agent or legal representative,  
27 including but not limited to any independent adjuster whose services  
28 have been retained by the insurer for the purposes of adjusting the  
29 subject claim, involved in the claim, to the best knowledge of the poli-  
30 cy holder; and

31 (3) reference to any specific policy provisions or language the policy  
32 holder considers the insurer to be in violation of, to the best know-  
33 ledge of the policy holder.

34 An insurer who is the subject of the civil remedy notice shall have  
35 sixty days from the filing of the required notice to bring the claim to  
36 closure to the satisfaction of the policy holder and within the  
37 provisions of the underlying coverage provisions of the subject insur-  
38 ance policy, and the policy holder shall have no basis for an action  
39 thereon thereafter.

40 (c) The rights enumerated in this section are not the exclusive reme-  
41 diaries available to the policy holder and do not preclude any common law  
42 claims or other statutory claims that may exist or rise.

43 (d) In any trial of a cause of action asserted against an insurer  
44 pursuant to this section, evidence of settlement discussions, offers to  
45 compromise, loss reserves amounts, and any other evidence of the claims  
46 settlement process of the subject claim, whether such evidence is writ-  
47 ten and verbal, shall be admissible.

48 (e) A policy holder may recover:

49 (1) actual damages;

50 (2) consequential damages;

51 (3) reasonable attorney's fees or other fees incurred by the insured  
52 to enforce the claim at any stage thereof; and

53 (4) interest at twice the statutory rate reflected in section five  
54 thousand four of the civil practice law and rules, to be measured from  
55 the date of breach or the date sixty days after the filing with the  
56 insurer of a sworn proof of loss, whichever is earlier.

1 For the purposes of consequential damages, it shall be presumed that  
2 such consequential damages were reasonably within the contemplation of  
3 the parties at the time of contracting.

4 (f) All amounts recovered from an insurer in any action authorized by  
5 this section other than actual damages shall be excluded by the insurer  
6 in any rate filing to be submitted to the superintendent and shall not  
7 constitute any portion of a premium charged to any policy holder.

8 Furthermore, the existence or resolution of a dispute subject to this  
9 section shall not be considered in any decision to issue, issue for  
10 delivery in the state or renew any policy to a policy holder.

11 § 2. This act shall take effect on the one hundred eightieth day after  
12 it shall have become a law, and shall apply to all policies issued,  
13 issued for delivery in the state, or renewed on or after such date, and  
14 provided, further, shall apply to all claims pending or initiated on or  
15 after such date.