

# STATE OF NEW YORK

6643

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

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 policy was not substantially justified. An insurer is not  
11 substantially justified in refusing to pay or in unreasonably delaying  
12 payment when the insurer:

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

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

21 (3) failed to provide a timely written denial of a policy holder's  
22 claim, in whole or in part, upon a thorough investigation of such claim  
23 with a full and complete explanation of such denial or partial denial,  
24 including references to specific policy provisions or findings of fact  
25 as a result of such investigation wherever possible;

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

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

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

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

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

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

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

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

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

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

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

45 (e) A policy holder may recover:

46 (1) actual damages;

47 (2) consequential damages;

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

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

54 For the purposes of consequential damages, it shall be presumed that  
55 such consequential damages were reasonably within the contemplation of  
56 the parties at the time of contracting.

1 (f) All amounts recovered from an insurer in any action authorized by  
2 this section other than actual damages shall be excluded by the insurer  
3 in any rate filing to be submitted to the superintendent and shall not  
4 constitute any portion of a premium charged to any policy holder.  
5 Furthermore, the existence or resolution of a dispute subject to this  
6 section shall not be considered in any decision to issue, issue for  
7 delivery in the state or renew any policy to a policy holder.

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