

# STATE OF NEW YORK

5623--B

2019-2020 Regular Sessions

## IN ASSEMBLY

February 14, 2019

Introduced by M. of A. WEINSTEIN, CUSICK, CYMBROWITZ, JAFFEE, HYNDMAN, PAULIN, COLTON, ABINANTI, SEAWRIGHT, SANTABARBARA, ZEBROWSKI, TAYLOR, CARROLL, DINOWITZ, WEPRIN, JACOBSON, GOTTFRIED, SIMON, GRIFFIN -- read once and referred to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Insurance in accordance with Assembly Rule 3, sec. 2 -- 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:

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) The  
4 holder of a policy issued or renewed pursuant to article thirty-four of  
5 this chapter shall have a private right of action against any insurer  
6 doing business in this state for damages as provided in this section  
7 upon such policyholder proving by a preponderance of the evidence that  
8 such insurer's refusal to pay or unreasonable delay in payment to the  
9 policyholder of amounts claimed to be due under a policy was not reason-  
10 ably justified. An insurer is not reasonably justified in refusing to  
11 pay or in unreasonably delaying payment when the insurer:

12 (1) failed to provide the policyholder with accurate information  
13 concerning policy provisions relating to the coverage at issue;

14 (2) failed to effectuate a prompt and fair settlement of a claim or  
15 any portion thereof, and the insurer failed to reasonably accord at  
16 least equal or more favorable consideration to its insured interest as  
17 it did to its own interests, and thereby exposed the insured to a judg-  
18 ment in excess of the policy limits;

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 policyholder's  
2 claim with a full and complete explanation of such denial, including  
3 references to specific policy provisions wherever possible;

4 (4) failed to make a final determination and notify the policyholder  
5 in writing of its position on both liability for and the insurer's valu-  
6 ation 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 a policyholder to insti-  
9 tute suit to recover amounts due under its policy by offering substan-  
10 tially less than the amounts ultimately recovered in suit brought by  
11 such policyholder;

12 (6) failed to advise a policyholder that a claim may exceed policy  
13 limits, that counsel assigned by the insurer may be subject to a  
14 conflict of interest, or that the policyholder may retain independent  
15 counsel;

16 (7) failed to provide, on request of the policyholder or their repre-  
17 sentative, all reports, letters or other documentation arising from the  
18 investigation of a claim and evaluating liability for or valuation of  
19 such claim;

20 (8) refused to pay a claim without conducting a reasonable investi-  
21 gation;

22 (9) negotiated or settled a claim directly with a policyholder known  
23 to be represented by an attorney without the attorney's knowledge or  
24 consent. The provisions of this paragraph shall not be deemed to prohib-  
25 it routine inquiries to a policyholder to obtain details concerning the  
26 claim;

27 (10) failed to pay on one or more elements of a claim where a prepon-  
28 derance of the evidence establishes the claim as to liability notwith-  
29 standing the existence of disputes as to other elements of the claim  
30 where such payment can be made without prejudice to either party; or

31 (11) acted in violation of section two thousand six hundred one of  
32 this article or any regulation promulgated pursuant thereto.

33 (b) Any policyholder who establishes liability pursuant to subsection  
34 (a) of this section shall be entitled to recover, in addition to amounts  
35 due under the policy, interest, costs and disbursements, compensatory  
36 damages, consequential damages, and reasonable attorneys' fees incurred  
37 by the policyholder from the date of the loss, in recovering monies due  
38 pursuant to the terms of the policy, as well as such additional punitive  
39 damages as the court may allow. For purposes of this section, it shall  
40 be presumed that consequential damages were within the contemplation of  
41 the parties at the time of contracting.

42 (c) Any policyholder may recover damages from an insurer doing busi-  
43 ness in this state pursuant to this section either as part of an action  
44 to recover under the terms of an insurance policy or in a separate  
45 action.

46 (d) In any trial of a cause of action asserted against an insurer  
47 pursuant to this section, evidence of settlement discussions written and  
48 verbal offers to compromise and other evidence relating to the claims  
49 process shall be admissible. If causes of action relating to liability  
50 of the insurer under the policy and under this section are alleged in  
51 the same action, the court may bifurcate the trial of issues so as to  
52 avoid prejudice to the insurer on the issue of liability under the poli-  
53 cy and facilitate admissibility of evidence on the causes of action  
54 asserted pursuant to this section.

55 (e) All amounts recovered from an insurer as damages and reasonable  
56 attorneys' fees in any action authorized in this section shall be

1 excluded by the insurer in its determinations of the premiums it will  
2 charge all policyholders on all policies issued by it.

3 (f) Nothing in this section shall be construed to limit a  
4 policyholder's right to a trial by jury for any claims arising under  
5 this section.

6 (g) An action may also be maintained by the persons identified in  
7 paragraphs one, two and three of subsection (b) of section three thou-  
8 sand four hundred twenty of this chapter against an insurer to recover  
9 damages including compensatory damages, punitive damages as the court  
10 may allow, and interest measured from the time of failure to offer a  
11 fair and reasonable settlement in accordance with this section, from  
12 such insurer to the full extent of the judgment against the insured, not  
13 limited to the policy limits and not subject to the limitations and  
14 conditions of paragraph two of subsection (a) of section three thousand  
15 four hundred twenty of this chapter, where a preponderance of the  
16 evidence establishes that the insurer failed to effectuate a prompt and  
17 fair settlement of a claim or any portion thereof, and where under the  
18 totality of the facts and circumstances related to the claim, the insur-  
19 er failed to reasonably accord at least equal or more favorable consid-  
20 eration to its insured's interests as it did to its own interests, and  
21 thereby exposed the insured to a judgment in excess of the policy  
22 limits.

23 (h) The rights enumerated in this section are not the exclusive reme-  
24 di- es available to the policyholder and do not preclude any common law  
25 claims or other statutory claims that may exist or rise.

26 § 2. Section 3425 of the insurance law is amended by adding a new  
27 subsection (t) to read as follows:

28 (t) No insurer shall refuse to issue or renew a covered policy solely  
29 on the ground that the policyholder has brought an action pursuant to  
30 section two thousand six hundred one-a of this chapter.

31 § 3. Paragraph 4 of subsection (a) of section 2601 of the insurance  
32 law, as amended by chapter 547 of the laws of 1997, is amended to read  
33 as follows:

34 (4) [~~not attempting in good faith~~] where the insurer failed to effec-  
35 tuate a prompt[7] and fair [and equitable settlements] settlement of  
36 [claims submitted in which liability has become reasonably clear] a  
37 claim or any portion thereof, and the insurer failed to reasonably  
38 accord at least equal or more favorable consideration to its insured's  
39 interests as it did to it own interests, and thereby exposed the insured  
40 to a judgment in excess of the policy limits, except where there is a  
41 reasonable basis supported by specific information available for review  
42 by the department that the claimant has caused the loss to occur by  
43 arson. After receiving a properly executed proof of loss, the insurer  
44 shall advise the claimant of acceptance or denial of the claim within  
45 thirty working days;

46 § 4. 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.