

# STATE OF NEW YORK

5623

2019-2020 Regular Sessions

## IN ASSEMBLY

February 14, 2019

Introduced by M. of A. WEINSTEIN, CUSICK, TITUS, CYMBROWITZ, JAFFEE, HYNDMAN, PAULIN, COLTON, ABINANTI, SEAWRIGHT, SANTABARBARA, ZEBROWSKI, TAYLOR -- read once and referred 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:

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) Any  
4 person may bring a civil action against an insurer if such person  
5 suffers damages as provided in this section with regard to a policy  
6 issued or renewed pursuant to this chapter against any insurer doing  
7 business in this state upon such claimant proving by a preponderance of  
8 the evidence that such insurer's refusal to pay or unreasonable delay in  
9 payment of amounts claimed to be due under a policy was not substantial-  
10 ly justified. An insurer is not substantially justified in refusing to  
11 pay or in unreasonably delaying payment when the insurer:

12 (1) failed to provide the claimant with accurate information concern-  
13 ing policy provisions relating to the coverage at issue;

14 (2) failed to effectuate in good faith a prompt, fair and equitable  
15 settlement of a claim or portion of a claim and where the insurer failed  
16 to reasonably accord at least equal or more favorable consideration to  
17 its insured's interests as it did to its own interests, and thereby  
18 exposed the insured to a judgment in excess of the policy limits or  
19 caused other damage to a claimant;

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

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

LBD00885-01-9

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

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

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

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

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

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

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

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

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

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