

# STATE OF NEW YORK

5623--A

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 -- 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;

19 (3) failed to provide a timely written denial of a policyholder's  
20 claim with a full and complete explanation of such denial, including  
21 references to specific policy provisions 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 policyholder  
2 in writing of its position on both liability for and the insurer's valu-  
3 ation 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 a policyholder to insti-  
6 tute suit to recover amounts due under its policy by offering substan-  
7 tially less than the amounts ultimately recovered in suit brought by  
8 such policyholder;

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

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

17 (8) refused to pay a claim without conducting a reasonable investi-  
18 gation;

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

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

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

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

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

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

52 (e) All amounts recovered from an insurer as damages and reasonable  
53 attorneys' fees in any action authorized in this section shall be  
54 excluded by the insurer in its determinations of the premiums it will  
55 charge all policyholders on all policies issued by it.

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

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

20 (h) The rights enumerated in this section are not the exclusive reme-  
21 dies available to the policyholder and do not preclude any common law  
22 claims or other statutory claims that may exist or rise.

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

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

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

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

43 § 4. 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.