STATE OF NEW YORK

5639

2019-2020 Regular Sessions

IN ASSEMBLY

February 14, 2019

Introduced by M. of A. MALLIOTAKIS -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to unfair claim settlements after a natural disaster

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

Section 1. Section 2601 of the insurance law, paragraph 4 of subsection (a) as amended by chapter 547 of the laws of 1997, paragraph 5 of subsection (a) as amended by section 27 of part H of chapter 60 of the laws of 2014 and paragraphs 6 and 7 as amended and paragraph 8 of subsection (a) as added by chapter 458 of the laws of 2018, is amended to read as follows:

§ 2601. Unfair claim settlement practices; penalties. (a) No insurer doing business in this state shall engage in unfair claim settlement practices. Any of the following acts by an insurer, if committed without just cause and performed with such frequency as to indicate a general business practice, shall constitute unfair claim settlement practices**, provided, however, that in the event the governor has pursuant to section twenty-nine-a of the executive law suspended any statute in this chapter as a result of a state disaster emergency, such act shall constitute an unfair claim settlement practice without respect to whether such act was indicative of a general business practice**:

(1) knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;

(2) failing to acknowledge with reasonable promptness pertinent communications as to claims arising under its policies;

(3) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under its policies;

(4) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear, except where there is a reasonable basis supported by

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

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specific information available for review by the department that the claimant has caused the loss to occur by arson. After receiving a properly executed proof of loss, the insurer shall advise the claimant of acceptance or denial of the claim within thirty working days;

(5) compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them;

(6) failing to promptly disclose coverage pursuant to subsection (d) or subparagraph (A) of paragraph two of subsection (f) of section three thousand four hundred twenty of this chapter;

(7) submitting reasonably rendered claims to the independent dispute resolution process established under article six of the financial services law; or

(8) artificially deflating or otherwise lowering cost data used for adjusted claims, or using cost data that is not appropriate for the region of the state where the loss occurred; this shall include but is not limited to claims adjusted by a person issued a temporary permit pursuant to subsection (n) of section two thousand one hundred eight of this chapter[~~.~~]**; or**

(9) In addition to the foregoing, when the governor has declared a state disaster emergency, the following practices shall be deemed unfair claim settlement practices:

(A) attempting to settle a claim on the basis of a document that was altered without notice to the consumer;

(B) making a material misrepresentation for the purpose of settling a claim on less favorable terms than those provided in the policy;

(C) failing to promptly notify the insured of any additional information necessary for the processing of the claim, as well as the reasons why such information is necessary;

(D) failing to conduct an on-site inspection within seven business days from submission of the claim;

(E) failing to provide the claimant with a copy of the adjuster's report within three business days from the inspection;

(F) failing to provide a determination on the claim within thirty calendar days from furnishing claimant with a copy of the report; and

(G) if damages are determined to be covered under the policy, failing to pay at least twenty percent of the total claim upon such determination and the claim in full within thirty days of determination.

(b) Evidence as to numbers and types of complaints to the department against an insurer and as to the department's complaint experience with other insurers writing similar lines of insurance shall be admissible in evidence in any administrative or judicial proceeding under this section or article twenty-four or seventy-four of this chapter, but no insurer shall be deemed in violation of this section solely by reason of the numbers and types of such complaints.

(c) If it is found, after notice and an opportunity to be heard, that an insurer has violated this section, each instance of noncompliance with subsection (a) [~~hereof~~] **of this section** may be treated as a separate violation of this section for purposes of ordering a monetary penalty pursuant to subsection (b) of section one hundred nine of this chapter. A violation of this section shall not be a misdemeanor.

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

§ 2601-a. Unfair claim settlement practices during state disaster emergency; civil remedy. (a) In the event the governor has pursuant to section twenty-nine-a of the executive law suspended any statute in this

chapter as a result of a state disaster emergency an insurer doing business in this state shall be liable to the holder of a policy issued or renewed pursuant to article thirty-four of this chapter for damages as provided in this section upon such policy holder proving by a preponderance of the evidence that such insurer's refusal to pay or unreasonable delay in payment to the policy holder of amounts claimed to be due a policy was not substantially justified. An insurer is not substantially justified in refusing to pay or in unreasonably delaying payment when the insurer:

(1) intentionally, recklessly or by gross negligence failed to provide the policy holder with accurate information concerning policy provisions relating to the coverage at issue;

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

(3) failed to provide a written denial of a policy holder's claim with a full and complete explanation of such denial, including references to specific policy provisions wherever possible;

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

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

(6) has engaged in any other unfair claim settlement practice as defined in paragraph nine of subsection (a) of section two thousand six hundred one of this article.

(b) Any policy holder who establishes liability pursuant to subsection (a) of this section shall be entitled to recover, in addition to amounts due under the policy, interest, costs, and disbursements, compensatory damages and reasonable attorneys' fees incurred by the policy holder from the date of the loss, in recovering monies due pursuant to the terms of the policy.

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

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

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

§ 3. This act shall take effect immediately.