

# STATE OF NEW YORK

3003

2019-2020 Regular Sessions

## IN SENATE

January 31, 2019

Introduced by Sens. FUNKE, GALLIVAN -- read twice and ordered printed,  
and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to verification of claims  
made under the comprehensive motor vehicle insurance reparations act

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

1 Section 1. Section 5106 of the insurance law, subsection (b) as  
2 amended by chapter 452 of the laws of 2005 and subsection (d) as amended  
3 by section 8 of part AAA of chapter 59 of the laws of 2017, is amended  
4 to read as follows:

5 § 5106. Fair claims settlement. (a) Payments of first party benefits  
6 and additional first party benefits shall be made as the loss is  
7 incurred. Such benefits are overdue if not paid within thirty days  
8 after the claimant supplies proof of the fact and amount of loss  
9 sustained. If proof is not supplied as to the entire claim, the amount  
10 which is supported by proof is overdue if not paid within thirty days  
11 after such proof is supplied. All overdue payments shall bear interest  
12 at the rate of two percent per month. If a valid claim or portion was  
13 overdue, the claimant shall also be entitled to recover his attorney's  
14 reasonable fee, for services necessarily performed in connection with  
15 securing payment of the overdue claim, subject to limitations promulgat-  
16 ed by the superintendent in regulations.

17 (b) The insurer is entitled to receive all items necessary to verify  
18 the claim, including medical examination and examination under oath of  
19 the injured party or any additional verification required by the insurer  
20 to establish proof of claim. The failure of the injured party to appear  
21 for a scheduled medical examination or examination under oath or to  
22 provide any other additional verification shall neither be a policy  
23 violation nor be utilized as the basis for the denial of a claim or  
24 disclaimer, provided the injured party submits to the insurer written  
25 proof offering either (1) reasonable justification for the failure to

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

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1 comply; or (2) a demonstrable willingness to comply within thirty calen-  
2 dar days from the date of the injured party's failure to appear or other  
3 verification becomes overdue. If such written proof is not provided  
4 within a reasonable time period, the insurer may only deny that portion  
5 of the claim for which the requested medical examination, examination  
6 under oath or additional verification was required as proof of the fact  
7 and amount of loss sustained. In no event shall the failure of the  
8 injured party to appear for a scheduled medical examination or examina-  
9 tion under oath or to provide any other additional verification serve as  
10 the basis for the denial of that portion of a claim relating to emergen-  
11 cy medical care provided within forty-eight hours of an accident.

12 (c) Every insurer shall provide a claimant with the option of submit-  
13 ting any dispute involving the insurer's liability to pay first party  
14 benefits, or additional first party benefits, the amount thereof or any  
15 other matter which may arise pursuant to subsection (a) of this section  
16 to arbitration pursuant to simplified procedures to be promulgated or  
17 approved by the superintendent. Such simplified procedures shall include  
18 an expedited eligibility hearing option, when required, to designate the  
19 insurer for first party benefits pursuant to subsection ~~(d)~~ (e) of  
20 this section. The expedited eligibility hearing option shall be a forum  
21 for eligibility disputes only, and shall not include the submission of  
22 any particular bill, payment or claim for any specific benefit for adju-  
23 dication, nor shall it consider any other defense to payment.

24 ~~(d)~~ (d) An award by an arbitrator shall be binding except where  
25 vacated or modified by a master arbitrator in accordance with simplified  
26 procedures to be promulgated or approved by the superintendent. The  
27 grounds for vacating or modifying an arbitrator's award by a master  
28 arbitrator shall not be limited to those grounds for review set forth in  
29 article seventy-five of the civil practice law and rules. The award of a  
30 master arbitrator shall be binding except for the grounds for review set  
31 forth in article seventy-five of the civil practice law and rules, and  
32 provided further that where the amount of such master arbitrator's award  
33 is five thousand dollars or greater, exclusive of interest and attor-  
34 ney's fees, the insurer or the claimant may institute a court action to  
35 adjudicate the dispute de novo.

36 ~~(d)~~ (e) (1) Except as provided in paragraph two of this subsection,  
37 where there is reasonable belief more than one insurer would be the  
38 source of first party benefits, the insurers may agree among themselves,  
39 if there is a valid basis therefor, that one of them will accept and pay  
40 the claim initially. If there is no such agreement, then the first  
41 insurer to whom notice of claim is given shall be responsible for  
42 payment. Any such dispute shall be resolved in accordance with the arbi-  
43 tration procedures established pursuant to section five thousand one  
44 hundred five of this article and regulations as promulgated by the  
45 superintendent, and any insurer paying first-party benefits shall be  
46 reimbursed by other insurers for their proportionate share of the costs  
47 of the claim and the allocated expenses of processing the claim, in  
48 accordance with the provisions entitled "other coverage" contained in  
49 regulation and the provisions entitled "other sources of first-party  
50 benefits" contained in regulation. If there is no such insurer and the  
51 motor vehicle accident occurs in this state, then an applicant who is a  
52 qualified person as defined in article fifty-two of this chapter shall  
53 institute the claim against the motor vehicle accident indemnification  
54 corporation.

55 (2) A group policy issued pursuant to section three thousand four  
56 hundred fifty-five of this chapter shall provide first party benefits

1 when a dispute exists as to whether a driver was using or operating a  
2 motor vehicle in connection with a transportation network company when  
3 loss, damage, injury, or death occurs. A transportation network company  
4 shall notify the insurer that issued the owner's policy of liability  
5 insurance of the dispute within ten business days of becoming aware that  
6 the dispute exists. When there is a dispute, the group insurer liable  
7 for the payment of first party benefits under a group policy shall have  
8 the right to recover the amount paid from the driver's insurer to the  
9 extent that the driver would have been liable to pay damages in an  
10 action at law.

11 § 2. This act shall take effect immediately.