

STATE OF NEW YORK

6216

2019-2020 Regular Sessions

IN SENATE

May 23, 2019

Introduced by Sen. BAILEY -- 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 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;

22 (4) failed to make a final determination and notify the policyholder
23 in writing of its position on both liability for and the insurer's valu-
24 ation of a claim within six months of the date on which it received
25 actual or constructive notice of the loss upon which the claim is based;

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

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

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

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

13 (8) refused to pay a claim without conducting a reasonable investi-
14 gation;

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

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

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

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

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

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

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

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

55 (g) An action may also be maintained by the persons identified in
56 paragraphs one, two and three of subsection (b) of section three thou-

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

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

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

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

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

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

38 § 4. This act shall take effect on the first of January next succeed-
39 ing the date on which it shall have become a law, and shall apply to all
40 acts and omissions by insurers occurring on or after such effective
41 date.