

STATE OF NEW YORK

6813--A

2021-2022 Regular Sessions

IN SENATE

May 18, 2021

Introduced by Sens. RAMOS, GAUGHRAN, KRUEGER, RIVERA, SALAZAR, STAVISKY
-- read twice and ordered printed, and when printed to be committed to
the Committee on Insurance -- recommitted to the Committee on Insur-
ance in accordance with Senate Rule 6, sec. 8 -- 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 settle-
ment practices

The People of the State of New York, represented in Senate and Assem-
bly, 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 or injured person shall have a private right of action
6 against any insurer doing business in this state for damages as provided
7 in this section upon proof by a preponderance of the evidence that such
8 insurer's refusal to pay or unreasonably delay payment to the policy-
9 holder or injured person of amounts claimed to be due under a policy is
10 not reasonably justified. An insurer is not reasonably justified in
11 refusing to pay or is unreasonably delaying payment when the insurer:

12 (1) fails to provide the policyholder with accurate information
13 concerning policy provisions relating to the coverage at issue;

14 (2) fails to effectuate a prompt and fair settlement of a claim or any
15 portion thereof, in that the insurer (i) fails to reasonably accord at
16 least equal or more favorable consideration to its insured's interests
17 as it did to its own interests, and thereby exposes the insured to a
18 judgment in excess of the policy limits, or (ii) refuses to settle in
19 response to a fair and reasonable settlement offer within the policy
20 limits from an injured party;

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

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1 (3) fails to provide a timely written denial of a policyholder's claim
2 with a full and complete explanation of such denial, including refer-
3 ences to specific policy provisions wherever possible;

4 (4) fails to make a final determination and notify the policyholder in
5 writing of its position on both liability for and the insurer's valu-
6 ation of a claim within a reasonable time not to exceed six months of
7 the date on which it received actual or constructive notice of the loss
8 upon which the claim is based;

9 (5) fails to act in good faith by compelling a policyholder to insti-
10 tute suit or compel appraisal to recover amounts due under its policy by
11 offering substantially less than the amounts ultimately recovered in
12 suit or by appraisal;

13 (6) fails to advise a policyholder that a claim may exceed policy
14 limits, that counsel assigned by the insurer may be subject to a
15 conflict of interest, or that the policyholder may retain independent
16 counsel;

17 (7) fails to provide, on request of the policyholder or their repre-
18 sentative, all reports, letters or other documentation arising from the
19 investigation of a claim and evaluating liability for or valuation of
20 such claim;

21 (8) refuses to pay a claim without conducting a reasonable investi-
22 gation;

23 (9) negotiates or settles a claim directly with a policyholder known
24 to be represented by an attorney without the attorney's knowledge or
25 consent. The provisions of this paragraph shall not be deemed to prohib-
26 it routine inquiries to a policyholder to obtain details concerning the
27 claim;

28 (10) negotiates or settles a claim directly with a policyholder known
29 to be represented by a licensed public adjuster;

30 (11) negotiates or settles a claim directly with a contractor or unli-
31 censed public adjuster;

32 (12) requires a policyholder to submit duplicative or repetitive
33 information already submitted by a policyholder or an injured party; or

34 (13) acts in violation of section two thousand six hundred one of this
35 article or any regulation promulgated pursuant thereto.

36 (b) Any policyholder who establishes liability pursuant to subsection
37 (a) of this section shall be entitled to recover, in addition to amounts
38 due under the policy, costs and disbursements, consequential damages,
39 reasonable attorneys' fees incurred by the policyholder, interest from
40 the date of the loss, and punitive damages as determined by the finder
41 of fact.

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

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

55 (e) All amounts recovered from an insurer as damages and reasonable
56 attorneys' fees in any action authorized in this section shall be

1 excluded by the insurer in its determinations of the premiums it will
2 charge all policyholders on all policies issued by it.

3 (f) An action may also be maintained by any injured person or repre-
4 sentative thereof including, but not limited to, a guardian, administra-
5 tor, executor, individual with a power of attorney or any other personal
6 representative against an insurer to recover damages including costs and
7 disbursements, consequential damages, reasonable attorney's fees, inter-
8 est from the time of failure to offer a fair and reasonable settlement
9 in accordance with this section, and punitive damages as determined by
10 the finder of fact or court, not limited to the policy limits, where a
11 preponderance of the evidence establishes that the insurer fails to
12 effectuate a prompt and fair settlement of a claim or any portion there-
13 of, in that under the totality of the facts and circumstances related to
14 the claim, the insurer fails to reasonably accord at least equal or more
15 favorable consideration to its insured's interests as it did to its own
16 interests.

17 (g) At least thirty days prior to the filing of any action pursuant to
18 this section, a written demand for relief, identifying the claimant and
19 reasonably describing the unfair claim settlement act or practice and
20 the injury suffered, shall be mailed or delivered to any insurer doing
21 business in this state. Any insurer doing business in this state receiv-
22 ing such a demand for relief who, within thirty days of the mailing or
23 delivery of the demand for relief, makes a written tender of settlement
24 which is rejected by the claimant may, in any subsequent action, file
25 the written tender and an affidavit concerning its rejection and thereby
26 limit any recovery to the relief tendered if the finder of fact finds
27 that the relief tendered was reasonable in relation to the injury actu-
28 ally suffered by the claimant. In all other cases, if the finder of fact
29 finds for the claimant, recovery shall be in the amount of actual
30 damages; or up to three but not less than two times such amount if the
31 finder of fact finds that the unfair claim settlement act or practice
32 was a willful or knowing violation of subsection (a) or (f) of this
33 section or that the refusal to grant relief upon demand was not reason-
34 ably justified with knowledge or reason to know that the act or practice
35 complained of violated subsection (a) or (f) of this section. For the
36 purposes of this chapter, the amount of actual damages to be multiplied
37 by the finder of fact shall be the amount of the damages as determined
38 by the finder of fact on all claims arising out of the same and underly-
39 ing transaction or occurrence, regardless of the existence or nonexist-
40 ence of insurance coverage available in payment of the claim. In addi-
41 tion, the court shall award such other equitable relief, including an
42 injunction, as it deems to be necessary and proper. The demand require-
43 ments of this subsection shall not apply if the claim is asserted by way
44 of counterclaim or cross-claim.

45 (h) The rights enumerated in this section are not the exclusive reme-
46 dies available to the policyholder or injured person or representative
47 thereof including, but not limited to, a guardian, administrator, execu-
48 tor, individual with power of attorney or any other personal represen-
49 tative and do not preclude any common law claims or other statutory
50 claims that may exist or arise.

51 (i) Upon demand of a claimant policyholder or injured person pursuant
52 to this section, an insurer shall make available to the claimant or
53 injured person the entire claim file within thirty days.

54 (j) A policyholder or injured person shall have the right to a trial
55 by jury. No mandatory arbitration agreement within or part of any writ-

1 ten contract for insurance shall prohibit an action pursuant to this
2 section.

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

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

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

11 (4) [~~not attempting in good faith~~] where the insurer fails to effectuate
12 a prompt ~~and~~ fair [~~and equitable settlements~~] settlement of
13 [~~claims submitted in which liability has become reasonably clear~~] a
14 claim or any portion thereof, in that the insurer fails to reasonably
15 accord at least equal or more favorable consideration to its insured's
16 interests as it did to its own interests, and thereby exposes the
17 insured to a judgment in excess of the policy limits, except where there
18 is a reasonable basis supported by specific information available for
19 review by the department that the claimant has caused the loss to occur
20 by arson. After receiving a properly executed proof of loss, the insurer
21 shall advise the claimant of acceptance or denial of the claim within
22 thirty working days;

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