

# STATE OF NEW YORK

3516

2021-2022 Regular Sessions

## IN SENATE

January 30, 2021

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

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

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

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

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

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

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