

# 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 Insurance 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 settlement practices

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

Section 1. The insurance law is amended by adding a new section 2601-a to read as follows:

§ 2601-a. Unfair claim settlement practices; civil remedy. (a) The holder of a policy issued or renewed pursuant to article thirty-four of this chapter or injured person shall have a private right of action against any insurer doing business in this state for damages as provided in this section upon proof by a preponderance of the evidence that such insurer's refusal to pay or unreasonably delay payment to the policyholder or injured person of amounts claimed to be due under a policy is not reasonably justified. An insurer is not reasonably justified in refusing to pay or is unreasonably delaying payment when the insurer:

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

(2) fails to effectuate a prompt and fair settlement of a claim or any portion thereof, in that the insurer (i) fails to reasonably accord at least equal or more favorable consideration to its insured's interests as it did to its own interests, and thereby exposes the insured to a judgment in excess of the policy limits, or (ii) refuses to settle in response to a fair and reasonable settlement offer within the policy 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 [7] 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.