

# STATE OF NEW YORK

7285

2021-2022 Regular Sessions

## IN ASSEMBLY

May 3, 2021

Introduced by M. of A. WEINSTEIN, CUSICK, CYMBROWITZ, HYNDMAN, PAULIN, COLTON, ABINANTI, SEAWRIGHT, SANTABARBARA, ZEBROWSKI, TAYLOR, CARROLL, DINOWITZ, WEPRIN, JACOBSON, GOTTFRIED, SIMON, GRIFFIN -- read once and referred 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 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 was  
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) 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, in that the insurer failed 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 exposed the insured to a  
18 judgment 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-

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

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1 ation of a claim within six months of the date on which it received  
2 actual or constructive notice of the loss upon which the claim is based;

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

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

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

15 (8) refused to pay a claim without conducting a reasonable investi-  
16 gation;

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

22 (10) acted in violation of section two thousand six hundred one of  
23 this article or any regulation promulgated pursuant thereto.

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

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

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

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

47 (f) An action may also be maintained by any injured person or repre-  
48 sentative thereof including, but not limited to, a guardian, administra-  
49 tor, executor, individual with a power of attorney or any other personal  
50 representative against an insurer to recover damages including costs and  
51 disbursements, consequential damages, reasonable attorney's fees, inter-  
52 est from the time of failure to offer a fair and reasonable settlement  
53 in accordance with this section, and punitive damages as determined by  
54 the finder of fact or court, not limited to the policy limits, where a  
55 preponderance of the evidence establishes that the insurer failed to  
56 effectuate a prompt and fair settlement of a claim or any portion there-

1 of, in that under the totality of the facts and circumstances related to  
2 the claim, the insurer failed to reasonably accord at least equal or  
3 more favorable consideration to its insured's interests as it did to its  
4 own interests.

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

33 (h) The rights enumerated in this section are not the exclusive reme-  
34 di- es available to the policyholder or injured person or representative  
35 thereof including, but not limited to, a guardian, administrator, execu-  
36 tor, individual with power of attorney or any other personal represen-  
37 tative and do not preclude any common law claims or other statutory  
38 claims that may exist or arise.

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

42 (j) A policyholder or injured person shall have the right to a trial  
43 by jury. No mandatory arbitration agreement within or part of any writ-  
44 ten contract for insurance shall prohibit an action pursuant to this  
45 section.

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

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

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

54 (4) [~~not attempting in good faith~~] where the insurer failed to effec-  
55 tuate a prompt[7] and fair [and equitable settlements] settlement of  
56 [~~claims submitted in which liability has become reasonably clear~~] a

1 claim or any portion thereof, in that the insurer failed to reasonably  
2 accord at least equal or more favorable consideration to its insured's  
3 interests as it did to its own interests, and thereby exposed the  
4 insured to a judgment in excess of the policy limits, except where there  
5 is a reasonable basis supported by specific information available for  
6 review by the department that the claimant has caused the loss to occur  
7 by arson. After receiving a properly executed proof of loss, the insurer  
8 shall advise the claimant of acceptance or denial of the claim within  
9 thirty working days;

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