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Assembly Passes Bill To Give Policyholders Direct Suit Access For Claims Handling Abuses By Insurers

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ALBANY, N.Y. - Insurance policy-holders in New York State would be able to recover damages when an insurance company unjustifiably refuses to pay a claim, according to a bill which has passed the New York State Assembly and has seemingly stagnated in the Senate Insurance Committee.

Under the provisions of the bill, the policyholder would have to prove that the insurer:

1. **intentionally, recklessly or by gross negligence failed to provide the policyholder with accurate information concerning policy provisions relating to coverage at issue;**
2. **failed to effectuate, in good faith, a prompt, fair and equitable settlement of a claim submitted by such policyholder in which liability of such insurer to such policyholder was reasonably clear;**
3. **failed to provide a written denial of a policyholder's claim with a full and complete explanation of such denial, including references to specific policy provisions wherever possible;**
4. **failed to make a final determination and notify the policyholder in writing of its position on both the liability for, and the insurer's valuation of, a claim within six months of the date on which it received actual or constructive notice of the loss upon which the claim is based; or**
5. **failed to act in good faith in refusing to pay the claim, thereby making it necessary for the policyholder to commence an action to establish liability under the policy and recover the amount due thereon, which action results in a verdict for the policyholder in an amount at least as much as the policyholder's claim.**

Bigger Recovery

A policyholder who establishes liability would be entitled to recover, in addition to amounts due under the policy, interest, costs, and disbursements, compensatory damages and reasonable attorneys fees. There is also a provision for punitive damages if the insurer's unjustified position was the result of intentional, reckless,

grossly negligent conduct or an express or implied company procedure for processing claims. There are procedural rules established to ensure that the insurer receives a fair trial on the issue of liability under the terms of the policy before the issue of substantial justification is considered.

"Existing law provides a code of conduct For insurers in this state," said Senator John

DeFrancisco (R-Onondaga), co-sponsor of the bill with Assemblyman Daniel L. Feldman (D-Kings). "Insurance Law Section 2601 now provides that no insurer in this state shall engage in five enumerated unfair claims settlement practices. Yet, only the Superintendent of Insurance can enforce these provisions against the company. The holders of property and casualty insurance policies who have incurred substantial costs in obtaining reimbursement under the policy terms have no remedy."

"Citizens of this state who pay insurance premiums should expect insurers to live up to their policy obligations," Feldman added. "Under existing statutes and case law, an insurer can simply refuse to pay a claim or offer an amount well below the value of the loss with impunity. Even if the policyholder sues and wins the full amount of the claim, he or she loses because of the costs and counsel fees associated with bringing the successful action. This fact gives insurers a terribly unfair advantage in negotiating a settlement of any claim because of the ability of the insurer to financially bear the burden of litigation which the ordinary citizen cannot afford to do."

'Emotional/Financial Havoc'

"Every policyholder in New York State faces potential emotional and financial havoc because insurance companies in New York State can practice unfair settlement claims with impunity," charged Martin Goldstein, President of Citizens Against Unfair Insurance Practices, and a victim of just the type of abuse that this bill seeks to prevent.

Goldstein and his family lost their home to a fire in 1994, yet felt reassured by the fact that there was a homeowner's policy with Allstate Insurance Co. valued at $331,000 for the home and $166,000 for its contents. Allstate, however claimed that the fire was intentionally set, and refused to pay the claim. Goldstein is in the process of suing Allstate for the money he is owed,

"The New York State Insurance Department permits insurance companies to practice unfair claim settlement practices against 9.9 percent of its customers before any penalty may he imposed," Goldstein said. "If the New York State Insurance Department believes that an insurance company is in violation of the Fair Claims Settlement Practice regulation, the Insurance Department conducts a market conduct survey. However, the survey must establish that the insurance company

violated the specific regulation at least 10 percent of the time before a civil penalty is imposed, and the fine is only up to $500 per incident. An individual case has no significance regardless of how egregious the insurance company was in mishandling that individual case."

"There is absolutely nothing to slop an insurance company from practicing unfair claims settlement practices with impunity," Goldstein added. "How many policyholders are defeated at the outset by bad faith insurance practices because it would cost more in legal fees than the amount of the denied claim?"

Ron Kermani, Director of Communications for the New York State Trial Lawyers Association (NYSTLA), noted that the bill would protect insurance customers from involvement in unnecessary and costly litigation proceedings. He pointed out that the insurance industry, with its expert attorneys, has the advantage of having claims decided in its favor because of its familiarity with legal strategies in such court proceedings. Also, the time and expense for insurance companies to handle such matters is accounted for within their respective budgets, which of course are underwritten by the premiums paid by policyholders.

"If a consumer believes that an insurance claim has been unjustifiably denied, the right to have that claim heard by a court of law should be guaranteed." asserted Kermani. "There is no reason for a policyholder to shy away from recovering what is rightfully owed because of the potential expense incurred when seeking legal action."

"These cases are not isolated by any means," said DeFrancisco. "There is no incentive for insurance companies to pay what the claimant is entitled to. "

"Under New York State Law, the message to the insurance company is stonewall every case you can," Feldman agreed. "Every case that drops out -- you get away with it. The worst that can happen is you pay what you should have in the first place."

"We're very much opposed to that kind of legislation," said Michael Barrett, legislative Representative for Independent Insurance Agents Association of New York. "There are currently in the Insurance law some pretty stringent rules dealing with claims settlement practices. We think consumers are protected very well under current law. We'd be very much against it."

The Senate has not acted on the legislation nor has comment been forthcoming. Telephone calls to Senator Guy J. Velella (R.C.-Bronx/Westchester), chairman of the Senate Insurance Committee made by the Insurance Advocate Albany Bureau, were not returned.