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AIA Hits N.Y. Unfair Claims Settlement Bill

BY STEPHANIE D. ESTERS

The American insurance Association is opposing a New York state bill on unfair that outlines the conditions claim settlement practices under which policyholders can sue their insurers.

The bill makes insurers liable to policyholders who can prove that an insurer's refusal to pay or its taking an "unreasonable delay" in paying a claim is "not substantially justified," according to the bill.

"In our view, it basically encourages additional frivolous lawsuits," said Anne Doherty, public affairs director for Washington-based American Insurance Association.

The bill would make it harder for insurers to deny fraudulent claims and would actually encourage lawsuits against insurers, said the AIA, which calls the measure "anti-consumer."

"While encouraging burgeoning lawsuits against insurers, the bill fails to include any kind of potential penalties against those who would institute frivolous or spurious lawsuits against insurers," Ms. Doherty noted.

The measure, Senate bill 486, was introduced into the Senate by Sen.

John DeFrancisco (R-Syracuse). The bill is supported by Sen. Guy Velella (R-Bronx), chairman of the Senate Insurance Committee. Though the bill

-Assembly Bill 72A- was first introduced in the assembly 13 years ago, this is the first year it was introduced into the Senate, according to Martin Goldstein, a lobbyist for the bill.

According to the bill, an insurer is "not substantially justified" in refusing to pay a claim or in making an unreasonable delay in making a payment when the insurer:

?"intentionally, recklessly or by gross negligence failed to provide the policyholder with accurate information" related to the coverage; or;

?in good faith," failed to promptly, fairly and equitably settle a claim in which the liability is "reasonably clear"; or,

?failed to provide a written, full and complete denial of a claim, referring to specific policy provisions where applicable; or,

?failed to make a decision on a claim and notify the policyholder of the decision, in writing, within six months of the insurer first being notified of the loss; or,

? "failed to act in good faith by compelling" policyholders to sue by offering substantially less than the claimant eventually receives to recover amounts due under the policy.

The bill is redundant, Ms. Doherty said, particularly since New York is considered one of the most "consumer-friendly" states in the country.

"When you look at the bill and who stands to benefit the most --- personal-injury trial attorneys and not consumers --- that should get the ire of consumers everywhere," said Ms. Doherty, who said the cost to insurers would eventually be passed on to all consumers through their premiums. "Under the guise of consumer protection, they're trying to increase their income."

The bill is supported by the Bedford, N.Y.-based Citizens Against Unfair Insurance Practices, of which Martin Goldstein is president and founder.

The bill would allow policyholders to sue for punitive and compensatory damages and the cost of their legal fees, said Mr. Goldstein. He thinks the bill stands a good chance of being passed.

"What it does is even the playing field," said Mr. Goldstein, who threw his support behind the bill after what he described as a frustrating attempt to collect on a \$550,000 homeowners claim from Allstate over a December 1994 fire.

Mr. Goldstein said he is not a lobbyist or otherwise affiliated with the Albany-based New York State Trial Lawyers Association.

"My interest is in protecting the policyholders of New York State," said Mr. Goldstein, who said he is a strategic business plan marketer. The bill is not retroactive, and he would not benefit from it, he noted.

His case is pending in federal court, he said.

Though the New York State Insurance Department does not comment on pending legislation until the governor is set to sign or veto it, the department already allows the actions that the bill proposes, according to department representative John Calagna.

"The claim is being made by people who are pushing this legislation that there is no mechanism for a fine against insurance companies and there is nowhere for you [the consumer] to go," Mr. Calagna said. He said those premises are false because the department already takes punitive action against companies engaging in alleged unfair claims settlements by charging them "significant fines."

The New York Insurance Department handles 40,000 consumer complaints a year; 25 percent of the time, the case is decided in the consumer's favor, he said.

In 1996, for instance, the insurance department fined 52 insurers more than \$9 million for violating various aspects of the insurance law, Mr. Calagna noted.