

ASSEMBLY, No. 2052

STATE OF NEW JERSEY

INTRODUCED MAY 30, 1996

By Assemblymen DiGAETANO and DORIA

1 AN ACT concerning unfair practices in the settlement of certain
2 insurance claims, amending P.L.1960, c.39 and supplementing
3 P.L.1947, c.379 (C.17:29B-1 et seq.) and chapter 30 of Title 17B
4 of the New Jersey Statutes.

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6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

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9 1. (New section) The Legislature finds and declares that it is in the
10 best interests of the citizens of this State to be assured prompt and
11 equitable resolution of individual insurance claims. To that end, every
12 insurer shall be under an affirmative obligation to attempt, in good
13 faith, to effectuate prompt, fair and equitable settlement of insurance
14 claims.

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16 2. (New Section) a. As used in this section:

17 "Claimant" means an individual, corporation, association,
18 partnership or other legal entity asserting a right to payment under or
19 arising from an insurance policy.

20 "Commissioner" means the Commissioner of Insurance.

21 "Insurance policy" means an insurance policy or contract issued,
22 executed, renewed, maintained or delivered in this State.

23 "Insurer" means an individual, corporation, association, partnership
24 or other legal entity which issues, executes, renews, maintains or
25 delivers any insurance policy in this State or which is responsible for
26 determining claims made under a policy.

27 b. A claimant may file a civil action in a court of competent
28 jurisdiction regarding the settlement of a claim against an insurer
29 which is subject to the provisions of P.L.1947, c.379 (C.17:29B-1 et
30 seq.), for the violation of any claim settlement practices standard
31 provided in section 4 of P.L.1947, c.379 (C.17:29B-4), or by rule or
32 regulation of the commissioner, whether or not the insurer has violated
33 the standard with such frequency as to indicate a general business
34 practice.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 c. Damages recoverable shall include benefits properly due the
2 claimant under or arising from the insurance policy at issue plus
3 interest, as prescribed in the Rules Governing the Courts of the State
4 of New Jersey for judgements, awards and orders for the payment of
5 money, from the time payments should, in good faith, have been
6 tendered, and shall include court costs and reasonable attorneys' fees
7 and other damages determined by the trier of fact to be appropriate
8 under the circumstances of the individual case, including damages for
9 consequential loss and punitive damages.

10 d. In addition to any other penalty provided by law, a violation of
11 any claim settlement practice pursuant to the provisions of P.L.1947,
12 c.379 (C.17:29B-1 et seq.) shall be an unlawful practice pursuant to
13 P.L.1960, c.39 (C.56:8-1 et seq.).

14
15 3. (New section) a. As used in this section:

16 "Claimant" means an individual, corporation, association,
17 partnership or other legal entity asserting a right to payment under or
18 arising from an insurance policy.

19 "Commissioner" means the Commissioner of Insurance.

20 "Insurance policy" means an insurance policy or contract issued,
21 executed, renewed, maintained or delivered in this State.

22 "Insurer" means an individual, corporation, association, partnership
23 or other legal entity which issues, executes, renews, maintains or
24 delivers any insurance policy in this State or which is responsible for
25 determining claims made under a policy.

26 b. A claimant may file a civil action in a court of competent
27 jurisdiction regarding the settlement of a claim against an insurer
28 which is subject to the provisions of chapter 30 of Title 17B of the
29 New Jersey Statutes for the violation of any claim settlement practices
30 standard provided in section 1 of P.L.1975, c.101 (C.17B:30-13.1), or
31 by rule or regulation of the commissioner, whether or not the insurer
32 has violated the standard with such frequency as to indicate a general
33 business practice.

34 c. Damages recoverable shall include benefits properly due the
35 claimant under or arising from the insurance policy at issue plus
36 interest, as prescribed in the Rules Governing the Courts of the State
37 of New Jersey for judgements, awards and orders for the payment of
38 money, from the time payments should, in good faith, have been
39 tendered, and shall include court costs and reasonable attorneys' fees
40 and other damages determined by the trier of fact to be appropriate
41 under the circumstances of the individual case, including damages for
42 consequential loss and punitive damages.

43 d. In addition to any other penalty provided by law, a violation of
44 any claim settlement practice pursuant to the provisions of P.L.1975,
45 c.101 (C.17B:30-13.1 et seq.) shall be an unlawful practice pursuant
46 to P.L.1960, c.39 (C.56:8-1 et seq.).

1 4. Section 1 of P.L.1960, c.39 (C.56:8-1) is amended to read as
2 follows:

3 1. (a) The term "advertisement" shall include the attempt directly
4 or indirectly by publication, dissemination, solicitation, indorsement or
5 circulation or in any other way to induce directly or indirectly any
6 person to enter or not enter into any obligation or acquire any title or
7 interest in any merchandise or to increase the consumption thereof or
8 to make any loan;

9 (b) The term "Attorney General" shall mean the Attorney General
10 of the State of New Jersey or any person acting on his behalf;

11 (c) The term "merchandise" shall include any objects, wares,
12 goods, commodities, services, an insurance contract or policy or
13 anything offered, directly or indirectly to the public for sale;

14 (d) The term "person" as used in this act shall include any natural
15 person or his legal representative, partnership, corporation, company,
16 trust, business entity or association, and any agent, employee,
17 salesman, partner, officer, director, member, stockholder, associate,
18 trustee or cestuis que trustent thereof;

19 (e) The term "sale" shall include any sale, rental or distribution,
20 offer for sale, rental or distribution or attempt directly or indirectly to
21 sell, rent or distribute.

22 (cf: P.L.1967, c.301, s.1)

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24 5. Section 2 of P.L.1960, c.39 (C.56:8-2) is amended to read as
25 follows:

26 2. The act, use or employment by any person of any
27 unconscionable commercial practice, deception, fraud, false pretense,
28 false promise, misrepresentation, or the knowing[.] concealment,
29 suppression, or omission of any material fact with intent that others
30 rely upon such concealment, suppression or omission, in connection
31 with the sale or advertisement of any merchandise or real estate or any
32 matter involving a claim under an insurance contract or policy which
33 is subject to the provisions of P.L.1947, c.379 (C.17:29B-1 et seq.)
34 for the violation of any claim settlement practice standard provided in
35 section 4 of P.L.1947, c.379 (C.17:29B-4) or to the provisions of
36 chapter 30 of Title 17B of the New Jersey Statutes for the violation of
37 any claim settlement practice standard provided in section 1 of
38 P.L.1975, c.101 (C.17B:30-13.1), or by rule or regulation of the
39 Commissioner of Insurance, whether or not the insurer has violated the
40 standard with such frequency as to indicate a general business practice,
41 or with the subsequent performance of such person as aforesaid,
42 whether or not any person has in fact been misled, deceived or
43 damaged thereby, is declared to be an unlawful practice; provided,
44 however, that nothing herein contained shall apply to the owner or
45 publisher of newspapers, magazines, publications or printed matter
46 wherein such advertisement appears, or to the owner or operator of a

1 radio or television station which disseminates such advertisement when
2 the owner, publisher, or operator has no knowledge of the intent,
3 design or purpose of the advertiser.

4 (cf: P.L.1975, c.294, s.1)

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6 6. This act shall take effect immediately and shall apply to all
7 claims filed or pending on or after the effective date.

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10 STATEMENT

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12 This bill permits persons with claims against property-casualty and
13 life and health insurance companies to file civil suits when an insurer,
14 despite a contractual obligation to do so, refuses to pay a claim. This
15 bill recognizes that the settlement of any claims against an insurer
16 should be subject, in conformance with longstanding public policy to
17 ensure the prompt payment of insurance claims, to the law governing
18 trade practices and unfair settlement practices.

19 The bill further provides that a violation of any claim settlement
20 practice is a violation of the consumer fraud law, P.L.1960, c.39
21 (C.56:8-1 et seq.).

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26 Provides individual cause of action for unfair practices in the
27 settlement of insurance claims and makes unfair practices subject to
28 consumer fraud law.