

[Second Reprint]
ASSEMBLY, No. 2052

STATE OF NEW JERSEY

INTRODUCED MAY 30, 1996

By Assemblymen DiGAETANO, DORIA, Assemblywoman Heck, Assemblymen Roma, Blee, Dalton, LeFevre and Felice

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.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
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.

15
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 ¹Banking and¹
21 Insurance.

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

24 "Insurer" means an individual, corporation, association, partnership
25 or other legal entity which issues, executes, renews, maintains or
26 delivers any insurance policy in this State or which is responsible for
27 determining claims made under a policy ¹, but does not mean any
28 entity, or servicing carrier thereof, established to operate pursuant to
29 P.L.1983, c.65 (C.17:30E-1 et seq.) or section 88 of P.L.1990, c.8
30 (C.17:33B-11)^{1 2}, nor any insurance producer as defined in section 2

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ACP committee amendments adopted September 19, 1996.

² Assembly floor amendments adopted June 23, 1997.

1 of P.L.1987, c. 293 (C. 17:22A-2) who is not responsible for
2 determining the validity of a claim or the amount of payment made on
3 a claim under a policy².

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

12 c. ²No later than 30 days after the date of completion of discovery
13 in a civil action pursuant to subsection b. of this section, the claimant
14 shall file a motion with the court. The claimant shall have the burden
15 of demonstrating that there are sufficient facts to support a prima facie
16 case against the insurer. If the court finds that there are insufficient
17 facts to support a prima facie case, the court shall dismiss the claim.

18 The insurer shall be permitted to file a response to the motion.
19 Except for the burden of proof required by the claimant on the motion,
20 the court and the parties shall, in all other respects, follow the Rules
21 Governing the Courts in the State of New Jersey applicable to motions
22 for summary judgment.

23 d.² Damages recoverable shall include benefits properly due the
24 claimant under or arising from the insurance policy at issue plus
25 interest, as prescribed in the Rules Governing the Courts of the State
26 of New Jersey for judgements, awards and orders for the payment of
27 money, from the time payments should, in good faith, have been
28 tendered, and shall include court costs and reasonable attorneys' fees
29 and other damages determined by the trier of fact to be appropriate
30 under the circumstances of the individual case, including damages for
31 consequential loss and punitive damages.

32 ²[d.] e.² In addition to any other penalty provided by law, a
33 violation of any claim settlement practice pursuant to the provisions
34 of P.L.1947, c.379 (C.17:29B-1 et seq.) shall be an unlawful practice
35 pursuant to P.L.1960, c.39 (C.56:8-1 et seq.).

36

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

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

41 "Commissioner" means the Commissioner of ¹Banking and¹
42 Insurance.

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

45 "Insurer" means an individual, corporation, association, partnership
46 or other legal entity which issues, executes, renews, maintains or

1 delivers any insurance policy in this State or which is responsible for
2 determining claims made under a policy², but does not include any
3 insurance producer as defined in section 2 of P.L.1987, c.298 (C.
4 17:22A-2) who is not responsible for determining the validity of a
5 claim or the amount of payment made on a claim under a policy².

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

14 c. ²No later than 30 days after the date of completion of discovery
15 in a civil action pursuant to subsection b. of this section, the claimant
16 shall file a motion with the court. The claimant shall have the burden
17 of demonstrating that there are sufficient facts to support a prima facie
18 case against the insurer. If the court finds that there are insufficient
19 facts to support a prima facie case, the court shall dismiss the claim.

20 The insurer shall be permitted to file a response to the motion.
21 Except for the burden of proof required by the claimant on the motion,
22 the court and the parties shall, in all other respects, follow the Rules
23 Governing the Courts of the State of New Jersey applicable to motions
24 for summary judgment.

25 d.² Damages recoverable shall include benefits properly due the
26 claimant under or arising from the insurance policy at issue plus
27 interest, as prescribed in the Rules Governing the Courts of the State
28 of New Jersey for judgements, awards and orders for the payment of
29 money, from the time payments should, in good faith, have been
30 tendered, and shall include court costs and reasonable attorneys' fees
31 and other damages determined by the trier of fact to be appropriate
32 under the circumstances of the individual case, including damages for
33 consequential loss and punitive damages.

34 ²[d.] e.² In addition to any other penalty provided by law, a
35 violation of any claim settlement practice pursuant to the provisions
36 of P.L.1975, c.101 (C.17B:30-13.1 et seq.) shall be an unlawful
37 practice pursuant to P.L.1960, c.39 (C.56:8-1 et seq.).

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

41 1. (a) The term "advertisement" shall include the attempt directly
42 or indirectly by publication, dissemination, solicitation, indorsement or
43 circulation or in any other way to induce directly or indirectly any
44 person to enter or not enter into any obligation or acquire any title or
45 interest in any merchandise or to increase the consumption thereof or
46 to make any loan;

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

3 (c) The term "merchandise" shall include any objects, wares,
4 goods, commodities, services ², a claim under ² an insurance contract
5 or policy or anything offered, directly or indirectly to the public for
6 sale;

7 (d) The term "person" as used in this act shall include any natural
8 person or his legal representative, partnership, corporation, company,
9 trust, business entity or association, and any agent, employee,
10 salesman, partner, officer, director, member, stockholder, associate,
11 trustee or cestuis que trustent thereof ², but shall not include an
12 insurance producer as defined in section 2 of P.L.1987, c.293
13 (C.17:22A-2)²;

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

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

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

21 2. The act, use or employment by any person of any
22 unconscionable commercial practice, deception, fraud, false pretense,
23 false promise, misrepresentation, or the knowing[.] concealment,
24 suppression, or omission of any material fact with intent that others
25 rely upon such concealment, suppression or omission, in connection
26 with the sale or advertisement of any merchandise or real estate or any
27 matter involving a claim under an insurance contract or policy which
28 is subject to the provisions of P.L.1947, c.379 (C.17:29B-1 et seq.)
29 for the violation of any claim settlement practice standard provided in
30 section 4 of P.L.1947, c.379 (C.17:29B-4) or to the provisions of
31 chapter 30 of Title 17B of the New Jersey Statutes for the violation of
32 any claim settlement practice standard provided in section 1 of
33 P.L.1975, c.101 (C.17B:30-13.1), or by rule or regulation of the
34 Commissioner of ¹Banking and ¹Insurance, whether or not the insurer
35 has violated the standard with such frequency as to indicate a general
36 business practice, or with the subsequent performance of such person
37 as aforesaid, whether or not any person has in fact been misled,
38 deceived or damaged thereby, is declared to be an unlawful practice;
39 provided, however, that nothing herein contained shall apply to the
40 owner or publisher of newspapers, magazines, publications or printed
41 matter wherein such advertisement appears, or to the owner or
42 operator of a radio or television station which disseminates such
43 advertisement when the owner, publisher, or operator has no
44 knowledge of the intent, design or purpose of the advertiser.

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

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

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7 Provides individual cause of action for unfair practices in the
8 settlement of insurance claims and makes unfair practices subject to
9 consumer fraud law.