

SENATE, No. 1296

STATE OF NEW JERSEY

INTRODUCED JUNE 6, 1996

By Senators CARDINALE and Kyrillos

1 AN ACT establishing the Office of the Insurance Claims Ombudsman.

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3 BE IT ENACTED by the Senate and General Assembly of the State
4 of New Jersey:

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6 1. The Legislature hereby finds and declares that:

7 a. There is presently no effective mechanism in the State for the
8 thorough investigation of the complaints of insureds regarding the
9 disposition of property and casualty insurance claims in the State; and

10 b. Insurance contracts governing property and casualty insurance
11 are often complex, rendering insureds at a disadvantage with respect
12 to their rights and understanding of obligations of insurers under an
13 insurance contract; and

14 c. Many insurance contracts, particularly those governing
15 commercial lines of insurance covering specialized risks, contain
16 endorsements which modify the language of the standard contract in
17 ways which make the coverage subject to interpretation and subjective
18 judgments; and

19 d. It is not uncommon for insureds to be faced with situations in
20 which there are multiple contracts in force which result in a dispute
21 between insurers as to which contract is the appropriate contract to
22 respond to a specific claim, which leaves the insured in a position of
23 having to attempt to negotiate between them, often with no recourse
24 except costly litigation; and

25 e. Because the State is charged with the approval of contract
26 provisions, it is essential that the State play a role in determining the
27 right of an insured to fair compensation under an insurance contract,
28 providing a means whereby the insured has a right to appeal an
29 insurer's disposition of a claim.

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31 2. For the purposes of this act:

32 "Commissioner" means the Commissioner of Insurance;

33 "Claim" means any claim filed under a policy of insurance;

34 "Insurance" means any contract of property-casualty insurance
35 written pursuant to R.S.17:17-1;

36 "Ombudsman" means the Insurance Claims Ombudsman appointed
37 pursuant to section 3 of this act.

1 3. There is created within the Department of Insurance the Office
2 of the Insurance Claims Ombudsman. The ombudsman shall be
3 appointed by the Governor with the advice and consent of the Senate
4 and shall serve at the pleasure of the Governor during the Governor's
5 term of office. The ombudsman shall devote his entire time to the
6 duties of his office. Any vacancy occurring in the position of
7 ombudsman shall be filled in the same manner as the original
8 appointment. If the ombudsman shall be unable for any reason to serve
9 his full term of office, the Governor may designate an acting
10 ombudsman until a successor is appointed and qualified. The
11 ombudsman shall have at least a baccalaureate degree and at least seven
12 years' experience in property and casualty insurance.

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14 4. The ombudsman shall have the following duties:

15 a. Administer and organize the work of the office and hire such
16 persons as shall be deemed necessary to effectuate the carrying out of
17 his duties, subject to Title 11A (Civil Service) of the New Jersey
18 Statutes, and within the limits of funds made available by the
19 Department of Insurance;

20 b. Appoint and employ any consultants, independent adjusters,
21 claims specialists, attorneys or others for the purpose of providing
22 legal and professional advice as the ombudsman may from time to time
23 require, within the limits of the funds provided therefor;

24 c. Promulgate such rules and regulations as shall be necessary to
25 effectuate the purposes of this act;

26 d. Perform such other functions as may be prescribed by this or by
27 any other law or regulation.

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29 5. Any person who: a. has reasonable cause to believe that any
30 insurer has failed or refuses to settle a claim in accordance with the
31 provisions of the insurance contract; and b. has previously filed an
32 appeal with the insurer's internal appeals procedure established
33 pursuant to section 9 of this act, may file an application with the
34 ombudsman for a review of the claims settlement.

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36 6. In any investigation the ombudsman may:

37 a. Investigate whether the claims settlement was appropriate and
38 in accordance with the contract;

39 b. Make the necessary inquiries and obtain such information as he
40 deems necessary;

41 c. Hold a hearing on the disputed claim;

42 d. Inspect any books or records which are relevant to the claim;

43 e. Compel any person to produce at a specific time and place, by
44 subpoena, any documents, books, records, papers, objects or other
45 evidence which he believes may relate to a claim under investigation.

1 7. The ombudsman need not investigate any complaint where he
2 determines that:

3 a. The complaint is trivial, frivolous, vexatious or not made in
4 good faith;

5 b. The complaint has been too long delayed to justify present
6 investigation;

7 c. The resources available, considering the established priorities,
8 are insufficient for an adequate investigation; or

9 d. The matter complained of is not within the investigatory
10 authority of the office.

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12 8. The ombudsman shall maintain a central registry of all claims
13 investigations which have been disposed of and closed, the nature of
14 the investigation, findings, and recommended actions. No information
15 so compiled shall be construed to be a public record. In addition, the
16 ombudsman shall:

17 a. Report to the commissioner any evidence that an insurer has
18 established a pattern of settlement practices which would constitute an
19 unfair claims settlement practice within the meaning of P.L.1947,
20 c.379 (C.17:29B-1 et seq.);

21 b. Report to the commissioner any contract provision, including
22 any endorsements, which are unfairly discriminatory, misleading or
23 contrary to public policy, along with a recommendation as to whether
24 the policy form be modified or withdrawn;

25 c. Report to the commissioner any conduct on the part of an
26 insurer which constitutes an unfair claims settlement practice within
27 the meaning of P.L.1947, c.379 (C.17:29B-1 et seq.).

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29 9. Every insurer writing property and casualty insurance in this
30 State shall establish an internal appeals procedure for the adjudication
31 of disputed claims, in accordance with terms set forth by the
32 commissioner by rule and regulation. The adjudication shall be
33 conducted by a panel of the insurer's employees, who shall be
34 personnel other than those responsible for claims payment on a day-to-
35 day basis and shall be conducted within 10 business days.

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37 10. The office of the ombudsman shall acknowledge the receipt of
38 complaints, and advise the applicants of any action taken or opinions
39 and recommendations which may have been made by it to the insurer.
40 The ombudsman shall make recommendations to the commissioner as
41 he deems necessary, including, but not limited to:

42 a. A recommendation that a policy form or endorsement thereon
43 which he finds unfairly discriminatory, misleading or contrary to public
44 policy be modified;

45 b. A recommendation that specific rules and regulations
46 promulgated by the commissioner, including rules concerning trade

1 practices and claims settlement practices, be modified or repealed;

2 c. A recommendation that the claims settlement practices of a
3 specific insurer or insurers be further investigated by the
4 commissioner;

5 d. A recommendation that the commissioner impose penalties or
6 other sanctions against an insurer or insurers as a result of the insurer's
7 claims settlement practices.

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9 11. Every buyer's guide which is required by law to be provided to
10 insureds for any line of property-casualty insurance shall contain a
11 notice describing the functions of the ombudsman, the mailing address
12 of the ombudsman, and a toll-free information telephone number. The
13 ombudsman may publicize his existence, function and activities to the
14 public at large.

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16 12. a. Any correspondence or written communication from any
17 applicant and any written material submitted by an insurer shall remain
18 confidential and shall not be part of any public record, unless the
19 parties authorize, in writing, the release of the information, except for
20 such disclosures as may be necessary to enable the ombudsman to
21 perform his duties and to support any opinions or recommendations.

22 b. Any person conducting or participating in any investigation of
23 a complaint who discloses to any person, other than the office of the
24 ombudsman, or those authorized by the ombudsman to receive it, any
25 information collected during the investigation, is a disorderly person.

26 c. Any statement or communication made by the office of the
27 ombudsman relevant to a complaint received by the ombudsman, to
28 proceedings conducted by the ombudsman, or relating to an
29 investigation conducted by the ombudsman, which is provided to the
30 office in good faith, shall be absolutely privileged.

31 d. The ombudsman shall not be required to testify in court with
32 respect to matters held to be confidential except as the court may
33 deem necessary to enforce the provisions of this act.

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35 13. Upon making his determination as to the appropriate
36 disposition of the claim, the ombudsman shall notify the insurer and
37 the claimant of his decision. The decision shall be admissible in any
38 court action or any other proceeding which is instituted to determine
39 final disposition of the claim. The ombudsman may file a brief with the
40 court in connection with an action relating to the disposition of claim.

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42 14. Any person who willfully hinders the lawful actions of the
43 ombudsman or willfully refuses to comply with his lawful demands,
44 including the demand for the inspection of records, shall be subject to
45 a penalty of not more than \$5,000. The penalty shall be collected and
46 enforced by summary proceedings pursuant to "the penalty

1 enforcement law," N.J.S.2A:58-1 et seq. Each violation of this act
2 shall constitute a separate offense.

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4 15. The ombudsman may bring suit in any court of competent
5 jurisdiction to enforce any of the powers enumerated in this act.

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7 16. The ombudsman shall report to the Governor and the
8 Legislature on or before September 30 of each year, summarizing his
9 activities for the preceding year, documenting any significant insurance
10 industry problems with regard to claims settlement practices in any line
11 of insurance, and setting forth any recommendations for statutory or
12 regulatory change which will further the State's capacity to resolve
13 claims disputes.

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15 17. This act shall take effect immediately.

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STATEMENT

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20 This bill establishes the Office of the Insurance Claims Ombudsman
21 within the Department of Insurance. The ombudsman would be
22 appointed by the Governor with the advice and consent of the Senate
23 and serve at the pleasure of the Governor during the Governor's term
24 of office. The ombudsman must have a least a baccalaureate degree
25 and at least seven years' of experience in property and casualty
26 insurance.

27 Any person may file an application with the ombudsman for a
28 review of a claims settlement if that person has a reasonable cause to
29 believe that an insurer has failed or refuses to settle a claim in
30 accordance with the provisions of the insurance contract and has
31 previously filed with the insurer's internal adjudication procedure
32 established pursuant to section 9 of the bill. After investigating the
33 claims settlement and making his determination as to the appropriate
34 disposition of the claim, the ombudsman shall notify the insurer and
35 the claimant of his decision.

36 Any person who willfully hinders the lawful actions of the
37 ombudsman or willfully refuses to comply with its lawful demands
38 would be subject to a penalty of not more than \$5,000.

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43 Establishes the Office of the Insurance Claims Ombudsman.