

SENATE, No. 1612

STATE OF NEW JERSEY

INTRODUCED OCTOBER 24, 1996

By Senator MARTIN

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
10 the 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 Banking and
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, but does not mean any entity,
28 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).

31 b. A claimant may file a civil action in a court of competent
32 jurisdiction regarding the settlement of a claim against an insurer
33 which is subject to the provisions of P.L.1947, c.379 (C.17:29B-1 et
34 seq.), for the violation of any claim settlement practices standard

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 provided in section 4 of P.L.1947, c.379 (C.17:29B-4), or by rule or
2 regulation of the commissioner, whether or not the insurer has violated
3 the standard with such frequency as to indicate a general business
4 practice.

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

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

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

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

23 "Commissioner" means the Commissioner of Banking and
24 Insurance.

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

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

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

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

1 consequential loss and punitive damages.

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

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

9 1. (a) The term "advertisement" shall include the attempt directly
10 or indirectly by publication, dissemination, solicitation, indorsement or
11 circulation or in any other way to induce directly or indirectly any
12 person to enter or not enter into any obligation or acquire any title or
13 interest in any merchandise or to increase the consumption thereof or
14 to make any loan;

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

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

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

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

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

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

32 2. The act, use or employment by any person of any unconscionable
33 commercial practice, deception, fraud, false pretense, false promise,
34 misrepresentation, or the knowing [,] concealment, suppression, or
35 omission of any material fact with intent that others rely upon such
36 concealment, suppression or omission, in connection with the sale or
37 advertisement of any merchandise or real estate or any matter
38 involving a claim under an insurance contract or policy which is
39 subject to the provisions of P.L.1947, c.379 (C.17:29B-1 et seq.) for
40 the violation of any claim settlement practice standard provided in
41 section 4 of P.L.1947, c.379 (C.17:29B-4) or to the provisions of
42 chapter 30 of Title 17B of the New Jersey Statutes for the violation of
43 any claim settlement practice standard provided in section 1 of
44 P.L.1975, c.101 (C.17B:30-13.1), or by rule or regulation of the
45 Commissioner of Banking and Insurance, whether or not the insurer
46 has violated the standard with such frequency as to indicate a general

1 business practice, or with the subsequent performance of such person
2 as aforesaid, whether or not any person has in fact been misled,
3 deceived or damaged thereby, is declared to be an unlawful practice;
4 provided, however, that nothing herein contained shall apply to the
5 owner or publisher of newspapers, magazines, publications or printed
6 matter wherein such advertisement appears, or to the owner or
7 operator of a radio or television station which disseminates such
8 advertisement when the owner, publisher, or operator has no
9 knowledge of the intent, design or purpose of the advertiser.

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

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

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STATEMENT

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18 This bill permits persons with claims against property-casualty and
19 life and health insurance companies to file civil suits when an insurer
20 violates any claim settlement practices standard established by law.
21 The bill supplements the law governing trade practices and unfair
22 settlement practices for property-casualty and life and health insurance
23 companies. The bill also provides that a violation of any claim
24 settlement practice is a violation of the consumer fraud law, P.L.1960,
25 c.39 (C.56:8-1 et seq.).

26 The provisions of the bill do not apply to any claims under
27 automobile insurance policies that were issued by the New Jersey
28 Automobile Full Insurance Underwriting Association (JUA), or the
29 Market Transition Facility (MTF), or their servicing carriers.

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34 Provides individual cause of action for unfair practices in the
35 settlement of insurance claims and makes unfair practices subject to
36 consumer fraud law.