

ASSEMBLY, No. 3710

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JANUARY 28, 2013

Sponsored by:

Assemblywoman LINDA STENDER

District 22 (Middlesex, Somerset and Union)

Assemblyman TIMOTHY J. EUSTACE

District 38 (Bergen and Passaic)

Co-Sponsored by:

Assemblyman C.A.Brown

SYNOPSIS

“Consumer Protection Act of 2012.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/22/2013)

1 AN ACT concerning bad faith in the settlement of insurance claims
2 and supplementing Title 17 of the Revised Statutes.

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

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7 1. This act shall be known and may be cited as the "Consumer
8 Protection Act of 2012."

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10 2. As used in this act:

11 "Claimant" means an individual, corporation, association,
12 partnership or other legal entity asserting a direct or assigned right
13 to payment by an insurer under an insurance policy, arising out of a
14 contingency or loss covered by the policy.

15 "Insurance policy" means any property or casualty insurance
16 policy or contract issued, executed, renewed or delivered in this
17 State including a policy issued pursuant to P.L.1972, c.70
18 (C.39:6A-1 et seq.).

19 "Insurer" means any individual, corporation, association,
20 partnership or other legal entity which issues, executes, renews or
21 delivers an insurance policy in this State, or which is responsible
22 for determining claims made under the policy.

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24 3. In addition to the enforcement authority provided to the
25 Commissioner of Banking and Insurance pursuant to the provisions
26 of P.L.1947, c.379 (C.17:29B-1 et seq.) or any other law, a claimant
27 may, regardless of any action by the commissioner, file a civil
28 action in a court of competent jurisdiction against its insurer for any
29 violation of the provisions of subsection (9) of section 4 of
30 P.L.1947, c.379 (C.17:29B-4), regarding unfair claim settlement
31 practices, notwithstanding that the insurer did not violate any
32 applicable provision with enough frequency as to indicate a general
33 business practice.

34

35 4. Upon establishing that a violation of the provisions of
36 subsection (9) of section 4 of P.L.1947, c.379 (C.17:29B-4) has
37 occurred, pursuant to section 3 of this act, the claimant shall be
38 entitled to:

39 a. the full amount of damages as set forth in the final judgment,
40 regardless of the coverage limits of the policy;

41 b. prejudgment interest, reasonable attorney's fees, and all
42 reasonable litigation expenses from the date of the institution of the
43 action filed pursuant to this act. The prejudgment interest shall be
44 calculated at the rate provided for tort actions, or for non-
45 acceptance of a formal offer for judgment, whichever is higher, as
46 prescribed in the Rules of Court; and

47 c. punitive damages, when the insurer's acts or omissions
48 demonstrate, by clear and convincing evidence, actual malice or

1 wanton and willful disregard of any person who foreseeably might
2 be harmed by the insurer's acts or omissions.

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4 5. This act shall take effect immediately and shall apply to all
5 claims filed by a claimant on or after October 1, 2012.

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STATEMENT

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10 This bill, the "Consumer Protection Act of 2012," establishes a
11 private cause of action for insureds or their assignees regarding
12 unfair practices in the settlement or attempted settlement of
13 insurance claims arising out of property and casualty insurance
14 policies.

15 The bill provides that a claimant may, regardless of any action
16 by the Commissioner of Banking and Insurance, file a civil action
17 in a court of competent jurisdiction against its insurer for any
18 violation of the provisions of subsection (9) of section 4 of
19 P.L.1947, c.379 (C.17:29B-4) regarding unfair claim settlement
20 practices, notwithstanding that the insurer did not violate any
21 applicable provision with enough frequency as to indicate a general
22 business practice.

23 Under the bill, if the claimant can establish such a violation, the
24 claimant is entitled to:

25 (1) the full amount of damages as set forth in the final judgment,
26 regardless of the coverage limits of the policy;

27 (2) prejudgment interest, reasonable attorney's fees, and all
28 reasonable litigation expenses from the date of the institution of the
29 action filed pursuant to the provisions of this bill. The prejudgment
30 interest shall be calculated at the rate provided for tort actions, or
31 for non-acceptance of a formal offer for judgment, whichever is
32 higher, as prescribed in the Rules of Court; and

33 (3) punitive damages, when the insurer's acts or omissions
34 demonstrate, by clear and convincing evidence, actual malice or
35 wanton and willful disregard of any person who foreseeably might
36 be harmed by the insurer's acts or omissions.

37 The provisions of the bill intend to incorporate into statutory law
38 certain aspects of New Jersey's current case law, which recognize
39 private causes of action in first-party and third-party claims
40 regarding the bad faith actions of insurance companies which result
41 in harm to their insureds. See Pickett v. Lloyd's, 131 N.J. 457
42 (1993), Samuel v. Doe, 158 N.J. 134 (1999), Rova Farms Resort,
43 Inc. v. Investors Ins. Co., 65 N.J. 474 (1974). This bill is not in any
44 way intended to narrow or limit the rights of insureds under
45 established case law to assert a private cause of action for the bad
46 faith actions of insurance companies.

47 The bill takes effect immediately upon enactment and applies to
48 all claims filed on or after October 1, 2012.