

SENATE, No. 132

STATE OF NEW JERSEY

213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Co-Sponsored by:

Senator Van Drew

SYNOPSIS

Provides private cause of action for first-party insureds regarding unfair claims settlement practices.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 6/13/2008)

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

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

7
8 1. a. As used in this section:

9 "First-party claimant" means an individual, corporation,
10 association, partnership or other legal entity asserting a direct right
11 to payment by an insurer under an insurance policy, arising out of
12 the occurrence of a contingency or loss covered by the policy.

13 "Insurance policy" means any insurance policy or contract
14 issued, executed, renewed or delivered in this State pursuant to the
15 provisions of Title 17 of the Revised Statutes.

16 "Insurer" means "person" as defined by subsection (a) of section
17 2 of P.L.1947, c.379 (C.17:29B-2), and includes any individual,
18 corporation, association, partnership or other legal entity which
19 issues, executes, renews or delivers an insurance policy in this
20 State, or which is responsible for determining claims made under
21 the policy.

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

32 c. The damages recoverable by the first-party claimant for a
33 violation:

34 (1) shall include the benefits properly due under the first-party
35 claimant's insurance policy with interest, as prescribed in the Rules
36 of Court adopted by the Supreme Court of New Jersey, plus
37 incidental and consequential damages, court costs and reasonable
38 attorneys' fees; and

39 (2) may include punitive damages when the violation
40 demonstrates, by clear and convincing evidence, actual malice or
41 wanton and willful disregard of persons who foreseeably might be
42 harmed by the insurer's acts or omissions.

43
44 2. a. As used in this section:

45 "First-party claimant" means an individual, corporation,
46 association, partnership or other legal entity asserting a direct right
47 to payment by an insurer under an insurance policy, arising out of
48 the occurrence of a contingency or loss covered by the policy.

1 "Insurance policy" means any insurance policy or contract
2 issued, executed, renewed or delivered in this State pursuant to the
3 provisions of Title 17B of the New Jersey Statutes.

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

8 b. In addition to the enforcement authority provided to the
9 commissioner pursuant to the provisions of N.J.S.17B:30-1 et seq.,
10 a first-party claimant may, regardless of any action by the
11 commissioner, file a civil action in a court of competent jurisdiction
12 against its insurer for any violation of the provisions of section 1 of
13 P.L.1975, c.101 (C.17B:30-13.1), regarding unfair claim settlement
14 practices, notwithstanding that the insurer did not violate any
15 applicable provision with enough frequency as to indicate a general
16 business practice.

17 c. The damages recoverable by the first-party claimant for a
18 violation:

19 (1) shall include the benefits properly due under the first-party
20 claimant's insurance policy with interest, as prescribed in the Rules
21 of Court adopted by the Supreme Court of New Jersey, plus
22 incidental and consequential damages, court costs and reasonable
23 attorneys' fees; and

24 (2) may include punitive damages when the violation
25 demonstrates, by clear and convincing evidence, actual malice or
26 wanton and willful disregard of persons who foreseeably might be
27 harmed by the insurer's acts or omissions.

28
29 3. This act shall take effect immediately and shall apply to all
30 claims filed on or after the effective date.

31 32 33 STATEMENT 34

35 This bill establishes a private cause of action for insureds
36 regarding unfair claims settlement practices in the settlement or
37 attempted settlement of claims involving their insurance coverage,
38 including first-party claims. Such first-party claims include those
39 in which an insured driver sues his automobile insurance company
40 for benefits when the insured is injured by an
41 uninsured/underinsured driver, or an unidentified driver, as in the
42 case of a hit-and-run accident, and the insurance company is
43 obligated to provide indemnity for that uninsured, underinsured or
44 unidentified driver.

45 Damages recoverable by a first-party claimant: (1) shall
46 include the benefits properly due under the claimant's insurance
47 policy with interest, as prescribed in the Rules of Court adopted by
48 the Supreme Court of New Jersey, plus incidental and consequential

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1 damages, court costs and reasonable attorneys' fees; and (2) may
2 include punitive damages when the violation demonstrates, by clear
3 and convincing evidence, actual malice or wanton and willful
4 disregard of persons who foreseeably might be harmed by the
5 insurer's acts or omissions.

6 The provisions of the bill intend to incorporate into statutory
7 law New Jersey's current case law, which recognizes private causes
8 of action in first-party and third-party claims arising out of the bad
9 faith actions of insurance companies which result in harm to their
10 insureds. See Pickett v. Lloyd's, 131 N.J. 457 (1993), Samuel v.
11 Doe, 158 N.J. 134 (1999), Rova Farms Resort, Inc. v. Investors Ins.
12 Co., 65 N.J.474 (1974).