



General Assembly
January Session, 2009

Raised Bill No. 763

LCO No. 2556

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Referred to Committee on Insurance and Real Estate

Introduced by:

(INS)

AN ACT CONCERNING THE CONNECTICUT UNFAIR INSURANCE PRACTICES ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subdivision (6) of section 38a-816 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(6) Unfair claim settlement practices. Committing or performing [**with such frequency as to indicate a general business practice**] any of the following: [(a)] (A) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue; [(b)] (B) failing to acknowledge and act with reasonable promptness upon communications with respect to claims arising under insurance policies; [(c)] (C) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; [(d)] (D) refusing to pay claims without conducting a reasonable investigation based upon all available information; [(e)] (E) failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed; [(f)] (F) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear; [(g)] (G) compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds; [(h)] (H) attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application; [(i)] (I) attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured; [(j)] (J) making claims payments to insureds or beneficiaries not accompanied by statements setting forth the coverage under which the payments are being made; [(k)] (K) making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration; [(l)] (L) delaying the investigation or payment of claims by requiring an insured,

claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information; ~~[(m)]~~ ~~(M)~~ failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; ~~[(n)]~~ ~~(N)~~ failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; ~~[(o)]~~ ~~(O)~~ using as a basis for cash settlement with a first party automobile insurance claimant an amount which is less than the amount which the insurer would pay if repairs were made unless such amount is agreed to by the insured or provided for by the insurance policy.

Sec. 2. Section 38a-817 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) Whenever the commissioner has reason to believe that any such person has been engaged or is engaging in violation of sections 38a-815 to 38a-819, inclusive, as amended by this act, in any unfair method of competition or any unfair or deceptive act or practice defined in section 38a-816 as amended by this act, and that a proceeding by the commissioner in respect thereto would be in the interest of the public, the commissioner shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than thirty days after the date of the service thereof. At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the commissioner requiring such person to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the commissioner shall permit any person to intervene, appear and be heard at such hearing by counsel or in person. The commissioner, upon such hearing, may administer oaths, examine and cross-examine witnesses and receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance and require the production of books, papers, records, correspondence or other documents that the commissioner deems relevant to the inquiry. If any person refuses to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which the person may be lawfully interrogated, the superior court for the judicial district of New Britain or the superior court for the judicial district where such person resides may, on application of the commissioner, issue an order requiring such person to comply with such subpoena and to testify. Any failure to obey any such order of the court may be punished by the court as a contempt thereof. Statements of charges, notices, orders and other processes of the commissioner under sections 38a-815 to 38a-819, inclusive, as amended by this act, may be served in the manner provided by law for service of process in civil actions.

(b) If, after such hearing, the commissioner determines that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall reduce the findings to writing and shall issue and cause to be served upon the person charged with the violation a copy of such findings and an order requiring such person to cease and desist from engaging in such method of competition, act or practice and if the act or practice is a violation of section 38a-816, as amended by this act, the commissioner may order

any of the following: (1) Payment of a monetary penalty of not more than five thousand dollars for each act or violation but not to exceed an aggregate penalty of fifty thousand dollars unless the person knew or reasonably should have known that the person was in violation of sections 38a-815 and 38a-816, as amended by this act, this subsection and subsection (e) of this section, in which case the penalty shall be not more than twenty-five thousand dollars for each act or violation but not to exceed an aggregate penalty of two hundred fifty thousand dollars in any six-month period; (2) suspension or revocation of the person's license if the person knew or reasonably should have known the person was in violation of said sections and subsections; or (3) restitution of any sums shown to have been obtained in violation of any of the provisions of said sections or any regulation implementing the provisions of said sections.

(c) Any person aggrieved by any such order of the commissioner may appeal therefrom in accordance with the provisions of section 4-183, except venue for such appeal shall be in the judicial district of New Britain.

(d) No order of the commissioner under sections 38a-815 to 38a-819, inclusive, as amended by this act, shall relieve or absolve any person affected by such order from any liability under any other laws of this state.

(e) Any person who violates a cease and desist order of the commissioner made pursuant to this section and while such order is in effect shall, after notice and hearing and upon order of the commissioner, be subject to any of the following: (1) A monetary penalty of not more than fifty thousand dollars for each act or violation; or (2) suspension or revocation of such person's license.

(f) Notwithstanding subsections (a) to (c), inclusive, of this section, any person who suffers any ascertainable loss of money or property, real or personal, as a result of an alleged violation of subdivision (6) of section 38a-816, as amended by this act, may bring an action in the judicial district in which the plaintiff or defendant resides or has his principal place of business or is doing business, to recover actual damages. Proof of public interest or public injury shall not be required in any action brought under this subsection. The court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	38a-816(6)
Sec. 2	<i>October 1, 2009</i>	38a-817

Statement of Purpose:

To allow a private cause of action for unfair claim settlement practices without the necessity of showing a general business practice on the part of an insurer.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that

when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]