

A-41382

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

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

1. As used in this act:

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

"Declared disaster" means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by the Governor or the President of the United States.

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

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

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

b. This section shall not be construed to narrow or limit the rights of claimants otherwise established under case law to assert a private cause of action against an insurer.

3. Upon establishing that a violation of the provisions of subsection (9) of section 4 of P.L.1947, c.379 (C.17:29B-4) has occurred, pursuant to section 2 of this act, the claimant shall be entitled to:

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

b. prejudgment interest, reasonable attorney's fees, and all reasonable litigation expenses from the date of the institution of the action filed pursuant to this act. The prejudgment interest shall be calculated at the rate provided for tort actions, or for non-

acceptance of a formal offer for judgment, whichever is higher, as prescribed in the Rules of Court; and

c. punitive damages, when the insurer's acts or omissions demonstrate, by clear and convincing evidence, actual malice or wanton and willful disregard of any person who foreseeably might be harmed by the insurer's acts or omissions.

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

STATEMENT

This bill establishes a private cause of action for insureds or their assignees regarding unfair practices in the settlement or attempted settlement of insurance claims arising out of a declared disaster. A declared disaster means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by the Governor or the President of the United States.

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

Violations under subsection (9) of section 4 of P.L.1947, c.379 (C.17:29B-4) include, but are not limited to, actions such as:

(1) misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(2) failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(3) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(4) refusing to pay claims without conducting a reasonable investigation based upon all available information; and

(5) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear.

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

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

(2) prejudgment interest, reasonable attorney's fees, and all reasonable litigation expenses from the date of the institution of the

action filed pursuant to the provisions of the bill. The prejudgment interest shall be calculated at the rate provided for tort actions, or for non-acceptance of a formal offer for judgment, whichever is higher, as prescribed in the Rules of Court; and

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

The bill clarifies that the bill is not intended to narrow or limit the rights of insureds under established case law to assert a private cause of action for the bad faith actions of insurance companies.

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

Provides for private cause of action for bad faith in settlement of certain insurance claims.