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STATE OF NEW YORK

6306

2007-2008 Regular Sessions

IN SENATE

June 17, 2007

Introduced by Sens. DeFRANCISCO, GOLDEN, MALTESE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the civil practice law and rules, in relation to declaratory judgment action against an insurer; and to amend the insurance law, in relation to the timing for giving notice of a claim under insurance contracts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 3001 of the civil practice law and rules is amended
2 to read as follows:

3 § 3001. Declaratory judgment. The supreme court may render a declara-
4 tory judgment having the effect of a final judgment as to the rights and
5 other legal relations of the parties to a justiciable controversy wheth-
6 er or not further relief is or could be claimed. If the court declines
7 to render such a judgment it shall state its grounds. A party who has
8 interposed a claim against another party may bring a declaratory judg-
9 ment action for a determination of the existence or extent of coverage
10 owed by an insurer subject to the provisions of article thirty-four of
11 the insurance law to the party against whom the original claim is inter-
12 posed.

13 § 2. The insurance law is amended by adding a new section 3451 to read
14 as follows:

15 § 3451. Notice of a claim for insurance coverage. (a) Notwithstanding
16 any inconsistent provision of this chapter or of any other general,
17 special or local law to the contrary, and except as provided in
18 subsection (d) of this section, the provisions of this section shall be
19 applicable to all insurance coverage in the state issued pursuant to
20 this article and to every insurance contract executed, issued, reissued
21 or renewed on or after the effective date of this section by an author-
22 ized insurer subject to the provisions of this article. Any provision

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 contained in an insurance contract that is subject to the provisions of
2 this section that is contrary in purpose with, or in conflict with, the
3 provisions of this section shall be null and void if the effectuation of
4 such provision would result in the derogation of the benefit to an
5 insured intended by the enactment of this section.

6 (b) An insurer subject to the provisions of this article shall not
7 deny coverage for a claim based on the failure of an insured to give
8 timely notice of a claim unless the authorized insurer or other insurer
9 subject to the provisions of this article is able to demonstrate that it
10 has suffered material prejudice as a result of the delayed notice.
11 Evidence that such insurer had knowledge of the accident, loss, injury
12 or death that is the subject of the claim, including any communication
13 from the claimant or the claimant's representative or health care
14 provider, or from any other injured person or injured person's represen-
15 tative or health care provider, or from such insurer to the insured
16 regarding the accident, loss, injury or death, shall create a rebuttable
17 presumption that such insurer has not been prejudiced by delayed notice.
18 Notice given to any licensed agent of such insurer in this state with
19 particulars sufficient to identify the insured shall be deemed notice to
20 such insurer.

21 (c) The provisions of this section shall be liberally construed in
22 order to effectuate the purpose hereof which is to mitigate against the
23 potential for procedural denial of insurance coverage resulting in
24 unreasonable loss of insurance protection for claimants.

25 (d) Nothing contained in this section shall supersede any notice
26 requirements established for claims arising under article fifty-one of
27 this chapter.

28 § 3. Severability clause. If any clause, sentence, paragraph, subdivi-
29 sion, section or part of this act shall be adjudged by any court of
30 competent jurisdiction to be invalid, such judgment shall not affect,
31 impair, or invalidate the remainder thereof, but shall be confined in
32 its operation to the clause, sentence, paragraph, subdivision, section
33 or part thereof directly involved in the controversy in which such judg-
34 ment shall have been rendered. It is hereby declared to be the intent of
35 the legislature that this act would have been enacted even if such
36 invalid provisions had not been included herein.

37 § 4. This act shall take effect immediately, provided that with regard
38 to insurance contracts, the provisions of section 3451 of the insurance
39 law, as added by section two of this act, shall apply to all insurance
40 contracts executed, issued, reissued or renewed on or after such date.