

BILL TEXT:

STATE OF NEW YORK

8363--A

Cal. No. 743

2007-2008 Regular Sessions

IN ASSEMBLY

May 14, 2007

Introduced by M. of A. WEINSTEIN, COOK -- Multi-Sponsored by -- M. of A. BOYLAND, BRADLEY, FIELDS, D. GORDON, JOHN, LAFAYETTE, MARKEY, WRIGHT -- read once and referred to the Committee on Judiciary -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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

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

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1 or renewed on or after the effective date of this section by an author-
2 ized insurer subject to the provisions of this article. Any provision
3 contained in an insurance contract that is subject to the provisions of
4 this section that is contrary in purpose with, or in conflict with, the
5 provisions of this section shall be null and void if the effectuation of
6 such provision would result in the derogation of the benefit to an
7 insured intended by the enactment of this section.

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

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

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

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

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

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A8363A

Rev 7/9/07

SPONSOR: Weinstein (MS)

TITLE OF BILL: 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

PURPOSE OF BILL: Where a party is being sued, and there is a question as to whether their insurance will cover the action, the bill permits commencement of an action to determine the question of insurance coverage. In addition, the bill prevents a property/casualty insurer from denying coverage on the basis of late notice of claim, unless such insurer can demonstrate they were "materially" prejudiced by such late notice.

SUMMARY OF PROVISIONS OF BILL: Section 1 amends section 3001 of the CPLR to permit a party bringing an action against another to also commence an action to determine questions of coverage.

Section 2 adds a new section 3451 to the Insurance Law, prohibiting an insurer from denying coverage solely on the basis of late notice, unless the insurer can show "material prejudice" due to the delay in notification.

Section 3 is the severability clause. Section 4 is the effective date.

EXISTING LAW: Current law permits a declaratory judgment action on the question of insurance coverage only after a verdict has been reached; current law permits an insurer to deny coverage based on late notice of claim.

JUSTIFICATION: Under current law, the question of whether an insurance policy covers a particular claim may not be determined until after a verdict has been rendered. This causes substantial delay, is an inefficient use of judicial resources, and only adds to the burden of an injured party who is waiting whatever monetary award a jury or judge had determined is appropriate due to their injury. This bill would correct this circumstance, permitting the question of insurance coverage to be determined at the onset of a lawsuit, thus providing for a more streamlined litigation process, along with certainty and prompt payment for a plaintiff.

With respect to the "material prejudice" standard proposed in the bill, it is inherently unfair for an insurance company to deny a claim based on late notice, where in fact the such late notice has no negative effect on the insurer's ability to respond to the claim. Such denials amount to a windfall to the insurer based upon a technicality.

LEGISLATIVE HISTORY:

2007; A8363-A/S6306- Passed Assembly/Passed Senate

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS: None.

EFFECTIVE DATE: Immediately, provided that with regard to insurance contracts, the provisions of section 3451 of the insurance law, as added by section two of this act, shall apply to all insurance contracts executed, issued, reissued or renewed on or after such date.