

ASSEMBLY, No. 231

STATE OF NEW JERSEY

216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Assemblyman REED GUSCIORA

District 15 (Hunterdon and Mercer)

Assemblyman TIMOTHY J. EUSTACE

District 38 (Bergen and Passaic)

Assemblywoman MARLENE CARIDE

District 36 (Bergen and Passaic)

Co-Sponsored by:

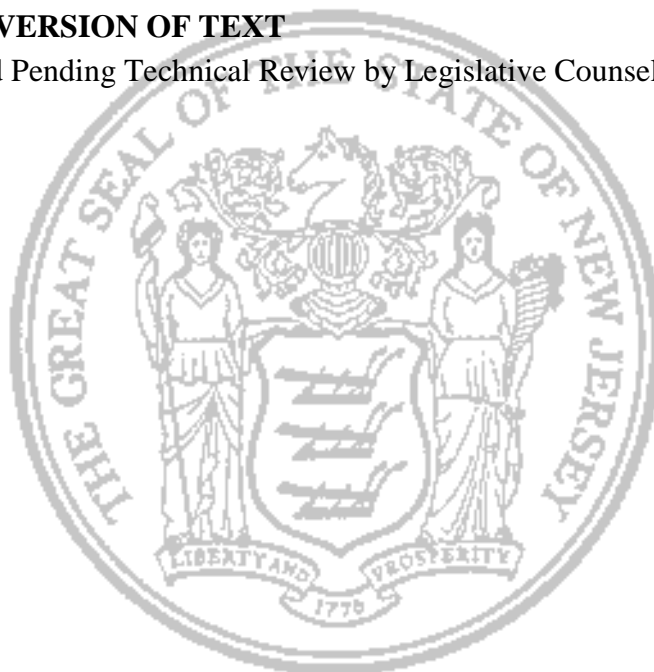
**Assemblyman C.A.Brown, Assemblywoman Oliver, Assemblymen Giblin
and Green**

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 10/17/2014)

A231 GUSCIORA, EUSTACE

2

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

3

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

6

7 1. As used in this act:

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

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

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

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

24

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

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

39

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

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

46 b. prejudgment interest, reasonable attorney's fees, and all
47 reasonable litigation expenses from the date of the institution of the

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

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

9
10 4. This act shall take effect immediately and shall apply to all
11 claims filed by a claimant on or after October 1, 2012.

12

13

14

STATEMENT

15

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

23 The bill provides that for claims arising out of a declared
24 disaster, a claimant may, regardless of any action by the
25 Commissioner of Banking and Insurance, file a civil action in a
26 court of competent jurisdiction against its insurer for any violation
27 of the 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 Violations under subsection (9) of section 4 of P.L.1947, c.379
33 (C.17:29B-4) include, but are not limited to, actions such as:

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

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

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

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

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

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

A231 GUSCIORA, EUSTACE

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

3 (2) prejudgment interest, reasonable attorney's fees, and all
4 reasonable litigation expenses from the date of the institution of the
5 action filed pursuant to the provisions of the bill. The prejudgment
6 interest shall be calculated at the rate provided for tort actions, or
7 for non-acceptance of a formal offer for judgment, whichever is
8 higher, as prescribed in the Rules of Court; and

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

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

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