

Bill to let Sandy victims sue insurers over claims handling sparks debate

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A piece of legislation that would give Hurricane Sandy victims more power to sue their insurer if they feel their claim was handled badly was tabled last week as lobbyists in Trenton battled over whether such a right would make for good public policy.

The bill, S2460, would let consumers sue their insurer for any violation of New Jersey's unfair claim settlement practices act, such as refusing to pay a claim without a proper investigation or failing to affirm or deny a claim after a reasonable period of time. Presently, the state's Department of Banking and Insurance enforces this law, but only when it finds a pattern of violations that shows the insurer mishandled claims as a general business practice.

Those who support the bill – including plaintiff's attorneys and consumer and small business advocates – say it would give the public a much-needed stick to prod a better settlement from their insurer.

“As things stand now, insurers can underpay and drag out claims with nominal consequences and policyholders often get far less than the full value of the protection they've paid for,” Amy Bach, executive director of United Policyholders, a San Francisco-based consumer group, wrote in a letter to the state Senate commerce committee, which is considering the bill. “The economic consequences to the insured, as we're seeing in Sandy's aftermath ... are dire.”

But opponents – including insurance companies and industry groups representing retailers, medical doctors and grocery stores – are fighting hard to stop the measure in its tracks.

They warn the bill ultimately would drive up the cost of all sorts of coverage, because insurers would be forced to spend significantly more to defend against the flood of lawsuits that inevitably would follow.

Other insurers simply will pull back from the state, they say.

Seeking Support

The legislation, co-sponsored by Sens. Nicholas Scutari D-Middlesex) and Jennifer Beck R-Monmouth), was slated for debate last Monday, but was pulled last minute for amendments. Among other things, Scutari said he will add language to force those found to have filed a frivolous claim to pay their insurer's

legal fees. In an interview, the lawmaker said he hopes such changes will create more bipartisan support for the measure.

But testimony submitted for last week's hearing shows he faces stiff resistance.

Insurers, including Allstate and New Jersey Manufacturers Insurance Co., as well as four lobbies that represent the industry oppose the measure, as do the New Jersey Hospital Association, the state Chamber of Commerce, the New Jersey Retail Merchants Association and the New Jersey Food Council. Critics say the bill essentially gives policyholders more power than the state already has to go after insurers on bad faith claims, in that consumers would be able to sue their insurers on the grounds that they violated just one prong of the unfair claim settlement practices act. That can be as little such as failing to respond to an inquiry in a reasonable time. By doing so, insurers would be exposed to litigation "if any one person makes any one mistake on any one day," according to Patrick Breslin, director of legislative affairs for New Jersey Manufacturers.

Potential penalties also would be stiff. Insurers could be found liable for a policyholder's entire loss, even if it goes beyond the limits of their policy. They also would be on the hook for prejudgment interest, legal fees and, in some instances, punitive damages. The bill covers any insurance claim, from property to medical malpractice, and would be retroactive to cover claims dating from October 2012, the month that Sandy struck.

Scutari, himself an attorney, said large potential penalties are meant to spur insurers to settle claims and that his hope is the law "would cut back on litigation."

Better for attorneys than policyholders?

But to Eric Poe, chief operating officer of Princeton-based auto insurer Cure, the bill's language is a boon to plaintiff's attorneys. That's because the fees and legal expenses they could recover would be limited only to what is "reasonable," and not a percent of the award. As a result, suits would be filed on the smallest claims, he said, and insurers would end up shelling out thousands of dollars on legal fees for claims that recover only a few dollars for the policyholder.

Those supporting the bill include the New Jersey Tenants Association, New Jersey Citizen Action, the Main Street Alliance and the state Association for Justice.

In written testimony, Myles O'Malley, chair of Consumers for Civil Justice, told lawmakers the law is necessary because he could not find any instances where the state insurance department had actually sanctioned a major insurer over bad faith practices. "Maybe it's just me, but an empty pouch doesn't bode well for the consumer generally," he wrote.

Marshall McKnight, a spokesman for the Department of Banking and Insurance, declined to comment on the proposed legislation, but said the department last year handled and closed 240 enforcement

investigations and 6,702 consumer complaints, collected \$6.7 million in fines and returned more than \$9.1 million in restitution to consumers.

Another supporter, Jay Feinman, a professor of insurance at Rutgers Law School in Camden, said the law is needed because current New Jersey case law makes it nearly impossible for consumers to successfully sue their insurer over claims matters. A recent study that found that in the past 20 years, only one bad faith case presented before a jury in the state has succeeded, he said.

“Either New Jersey insurance companies are doing a really good job, or it’s not working,” he said.

Feinman acknowledges that insurance rates have gone up in states that have allowed bad faith suits. But he said consumers may prefer paying more if they get broader rights in return.

“What this does is gives you a warranty for your insurance policy. It gives you a remedy if things don’t work out. That’s worth a little more money,” he said.