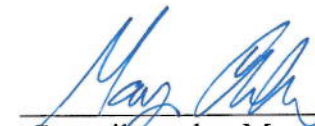


1 

2 Councilmember David A. Catania



Councilmember Mary M. Cheh

3
4
5
6 A BILL
7
8
9 _____

10
11 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
12
13 _____
14

15
16
17 Councilmembers Mary M. Cheh and David A. Catania introduced the following bill, which was
18 referred to the Committee on _____.

19
20 To amend the Insurance Trade and Economic Development Amendment Act of 2000 to establish
21 a cause of action for insured persons to be made whole when insurers fail to pay proper
22 claims.
23

24 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
25 act may be cited as the “Insurance Claims Consumer Protection Amendment Act of 2013”.

26 Sec. 2. The Insurance Trade and Economic Development Amendment Act of 2000,
27 effective April 3, 2001 (D.C. Law 13-265; D.C. Official Code § 31-2231.01 *et seq.*), is amended
28 by adding a new section 117a to read as follows:

29 “Sec. 117a. Actions on insurance policies.

30 “(a) For purposes of this section, the term “insurance claimant” means a person asserting
31 a right to payment as an insured under any kind of an insurance policy or insurance contract,
32 including policies of insurance covering homes, apartments, buildings, structures, real property,
33 personal property, automobiles, motorcycles, boats, employee dishonesty, liability, life, health,
34 disability, injury, and any other policies known or considered to be policies of insurance.

1 “(b) Any insurance claimant may bring an action for damages in the Superior Court of
2 the District of Columbia, consistent with subsections (c)-(i) of this section.

3 “(c) In an action under subsection (b) of this section, if a jury or the court determines that
4 the insurer has acted in violation of any part of subsection (d) of this section, the court shall take
5 all of the following actions:

6 “(1) In all cases where there has been a determination of any violation of
7 subsection (d) of this section, the court shall award interest on the unpaid claim amount from the
8 date the insurance claim was first made by the insurance claimant until the date of payment by
9 the insurer, in an amount equal to the prevailing prime rate of interest plus 7%, but in no event
10 less than 10% interest compounded monthly.

11 “(2) In all cases where there has been a determination of any violation of
12 subsection (d) of this section, the court shall assess against the insurer the insurance claimant’s
13 attorney and expert fees and costs (including any fees and costs deferred and not actually billed
14 to or collected from the insurance claimant, but rather, accruing until such time as such an award
15 is made by the court, and also including the value of fees for any self-representation by the
16 insurance claimant).

17 “(3) In cases where there has been a determination of any violation of subsection
18 (d) of this section and also that the insurance claim amount due is not fairly debatable, the court
19 shall award an additional penalty of at least the unpaid claim amount but no more than triple the
20 unpaid claim amount (the unpaid claim amount being either all of the claim amount if unpaid in
21 full, or if paid in part, that portion of the claim amount not paid).

22 “(4) In cases where a jury or the court has determined that the insurer has acted
23 with reckless disregard for the rights of the insurance claimant; or acted maliciously, vexatiously,

1 or with intent to cause financial or personal injury or harm, the court shall award additional
2 punitive damages in an amount as determined by a jury or by the court, and any such award by a
3 jury shall receive deference provided it comports with due process of law.

4 “(d) It shall be a violation for purposes of this section for an insurer to commit any of the
5 following acts:

6 “(1) Any act set forth in section 117, whether or not the act is a singular act with
7 respect to the insurance claimant making the claim or otherwise a “general business practice” as
8 referred to in section 117; or

9 “(2) To refuse to pay the amount due to the insurance claimant within 30 days of
10 receipt of sufficient documentation of the insurance claimant’s loss, where such refusal to pay is
11 wrong, mistaken, in error, or unreasonable, regardless of any insurer intent.

12 “(e) The damages and penalties set forth in this section are in addition to and shall not
13 supersede any penalties or costs that may be assessed by the Commissioner. Nothing in this
14 section shall be construed as a limitation on the authority or jurisdiction of the Commissioner.

15 “(f) This section shall not limit any other existing causes of action available to insured
16 persons or a court’s existing ability to make any determination or issue any order regarding any
17 insurer action, including any remedy that is available at law or equity.

18 “(g) Notice and opportunity to cure.

19 “(1) Twenty days prior to filing any action based on this section, an insurance
20 claimant shall provide written notice of the basis for the cause of action to the insurer and to the
21 Commissioner. Notice may be provided by first-class mail, registered mail, or certified mail
22 with return receipt requested. Proof of notice by mail shall be made in the same manner as

1 prescribed by court rule or statute for proof of service by mail. The insurer and Commissioner
2 shall be deemed to have received notice 3 business days after the notice is mailed.

3 “(2) If the insurer pays the full contractual claim amount requested by the insured
4 within the 20-day period after receipt of the written notice by the insurance claimant, the
5 insurance claimant may not bring an action under subsection (b) of this section.

6 “(3) If the insurer fails to resolve the basis for the action within the 20-day period
7 after the written notice by the insurance claimant, the insurance claimant may bring the action
8 without any further notice.

9 “(4) If a written notice is served under paragraph (1) of this subsection within the
10 time prescribed for the filing of an action under this section, any applicable statute of limitations
11 is tolled during the 20-day period of time in paragraph (1) of this subsection.

12 “(5) After receipt of the notice set forth in paragraph (1) of this subsection, the
13 Commissioner may exercise its power and authority in an attempt to resolve the matter, and if
14 the insurance claimant commences a cause of action as allowed by this section, the
15 Commissioner may intervene as a party to such action, whether for or against the plaintiff or
16 defendant, or whether to assert its own independent authority pursuant to this or any statute that
17 provides it authority to take action; provided, that the insurance claimant’s ability to proceed
18 with a cause of action as defined in this section shall not be limited due to any action or inaction
19 by the Commissioner, and nothing herein requires that an insurance claimant exhaust any
20 administrative remedies other than the notice requirement provided in paragraph (1) of this
21 subsection.

22 “(h) This section does not apply to any health insurance policy or plan offered by a health
23 insurer to the extent that insurance claims under the policy or plan are preempted by federal law,

1 such as the Employee Retirement Income Securities Act of 1974, approved September 2, 1974
2 (88 Stat. 832; 29 U.S.C.S. § 1001 *et seq.*).

3 “(i) This section shall apply to any insurer conduct occurring after the effective date of
4 this Act, regardless of the commencement date of the underlying insurance claim made by the
5 insurance claimant.

6 “(j) This section shall apply to any adjuster, consultant, engineer, or other person who
7 aids or abets, or provides material support and advice, to an insurer in furtherance of a violation
8 of subsection (d) of this section.”.

9 Sec. 3. Fiscal impact statement.

10 The Council adopts the fiscal impact statement in the committee report as the fiscal
11 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
12 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

13 Sec. 4. Effective date.

14 This act shall take effect following approval by the Mayor (or in the event of veto by the
15 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
16 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
17 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
18 Columbia.