



Councilmember Mary M. Cheh

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Insurance Claims Consumer Protection Amendment Act of 2018".

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

"Sec. 117a. Actions on insurance policies.

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

"(b) It shall be a violation for purposes of this section for an insurer to commit any of the following acts:

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

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

40 “(c) Any insurance claimant may bring an action for damages in the Superior Court of
41 the District of Columbia for violations to subsection (b) of this section, consistent with
42 subsections (d)-(j) of this section.

43 “(d)(1) Not less than 30 days prior to filing any action based on this section, an insurance
44 claimant shall provide written notice of the basis for the cause of action to the insurer and to the
45 Commissioner. Notice may be provided by hand delivery, electronic mail, fax, first-class mail,
46 registered mail, or certified mail with return receipt requested. Proof of notice by mail shall be
47 made in the same manner as prescribed by court rule or statute for proof of service by mail. The
48 insurer and Commissioner shall be deemed to have received notice 3 business days after the
49 notice is mailed.

50 “(2) If the insurer pays the full contractual claim amount requested by the insured
51 within the 30 days after receipt of the written notice by the insurance claimant, the insurance
52 claimant may not bring an action under subsection (c) of this section.

53 “(3) If the insurer fails to resolve the basis for the action within the 30-day period
54 after receipt of the written notice by the insurance claimant, the insurance claimant may bring the
55 action without any further notice.

56 “(4) Nothing in this subsection shall preclude the insurance claimant from
57 including in an action under subsection (c) of this section additional bases for the cause of action
58 that become known to the insurance claimant after providing notice under paragraph (1) of this
59 subsection, or from seeking relief for injuries or losses that become known to the insurance
60 claimant after providing notice under paragraph (1) of this subsection.

61 “(5) If a written notice is served under paragraph (1) of this subsection within the
62 time prescribed for the filing of an action under this section, any applicable statute of limitations
63 shall be tolled for 30 days from receipt of such written notice. If the last day of the limitations
64 period so tolled is a Saturday, a Sunday, a legal holiday as defined in Rule 6(a) of the Superior
65 Court Rules of Civil Procedure, or a day or any part of a day in which the office of the Clerk of
66 the Superior Court of the District of Columbia is closed, the limitations period shall run until the
67 end of the next day that is not one of the aforementioned days.

68 “(6) Nothing in this section shall preclude the court from excusing the failure to
69 provide written notice within the time prescribed herein or from waiving the notice requirement
70 set forth in paragraph (1) of this subsection if the interests of justice so dictate, unless the insurer
71 can affirmatively show that its defense has been materially prejudiced by the lack of notice.

72 “(e) In an action under subsection (c) of this section, if a jury or the court determines that
73 the insurer has acted in violation of any part of subsection (b) of this section, the court shall:

74 “(1) Award interest on the unpaid claim amount from the date the insurance claim
75 was first made by the insurance claimant until the date of payment by the insurer, in an amount
76 equal to the prevailing prime rate of interest plus 7%, but in no event less than 10% interest
77 compounded monthly;

78 “(2) Award such damages, including damages for economic and noneconomic
79 losses, as were proximately caused by the violation of subsection (b);

80 “(3) Assess against the insurer the insurance claimant’s attorney and expert fees
81 and costs (including any fees and costs deferred and not actually billed to or collected from the
82 insurance claimant, but rather, accruing until such time as such an award is made by the court,
83 and also including the value of fees for any self-representation by the insurance claimant);

84 “(4) In cases where there has been a determination that the insurance claim
85 amount due is reasonable, award an additional penalty of at least the unpaid claim amount but no
86 more than triple the unpaid claim amount (the unpaid claim amount being either all of the claim
87 amount if unpaid in full, or if paid in part, that portion of the claim amount not paid); and

88 “(5) In cases where a jury or the court has determined that the insurer has acted
89 with reckless disregard for the rights of the insurance claimant, or acted maliciously, vexatiously,
90 or with intent to cause financial or personal injury or harm, award additional punitive damages in
91 an amount as determined by a jury or by the court, and any such award by a jury shall receive
92 deference provided it comports with due process of law.

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

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

99 “(h) This section shall not apply to any health insurance policy or plan offered by a
100 health insurer to the extent that insurance claims under the policy or plan are preempted by

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

103 “(i) This section shall apply to any insurer conduct occurring after the effective date of
104 the Insurance Claims Consumer Protection Amendment Act of 2018, as introduced on DATE,
105 2018 (Introduced version of Bill 22-XXX), regardless of the commencement date of the
106 underlying insurance claim made by the insurance claimant.

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

110 Sec. 3. Fiscal impact statement.

111 The Council adopts the fiscal impact statement in the committee report as the fiscal
112 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
113 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

114 Sec. 4. Effective date.

115 This act shall take effect following approval by the Mayor (or in the event of veto by the
116 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
117 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
118 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
119 Columbia Register.