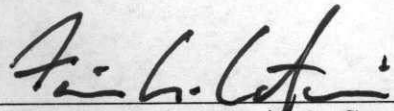
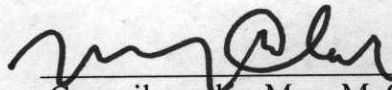


1 
2 Councilmember David A. Catania


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 Second Amendment Act of
26 2013".

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

30 "Sec. 117a. Actions on insurance policies.

31 "(a) For purposes of this section, the term "insurance claimant" means a person asserting
32 a right to payment as an insured under any kind of an insurance policy or insurance contract,
33 including policies of insurance covering homes, apartments, buildings, structures, real property,
34 personal property, automobiles, motorcycles, boats, employee dishonesty, liability, life, health,
35 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)-(j) 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 or jury shall award such damages, including damages for
13 economic and noneconomic losses, as were proximately caused by the violation of subsection
14 (d).

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

21 “(4) In cases where there has been a determination of any violation of subsection
22 (d) of this section and also that the insurance claim amount due is reasonable, the court shall
23 award an additional penalty of at least the unpaid claim amount but no more than triple the

1 unpaid claim amount (the unpaid claim amount being either all of the claim amount if unpaid in
2 full, or if paid in part, that portion of the claim amount not paid).

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

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

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

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

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

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

22 “(g) Notice and opportunity to cure.

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

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

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

14 “(4) Nothing in this subsection shall preclude the insurance claimant from
15 including in an action under subsection (b) of this section additional bases for the cause of action
16 that become known to the insurance claimant after providing notice under paragraph (1) of this
17 subsection, or from seeking relief for injuries or losses that become known to the insurance
18 claimant after providing notice under paragraph (1) of this subsection.

19 “(5) If a written notice is served under paragraph (1) of this subsection within the
20 time prescribed for the filing of an action under this section, any applicable statute of limitations
21 is tolled for 30 days from receipt of such written notice. If the last day of the limitations period
22 so tolled is a Saturday, a Sunday, a legal holiday as defined in Rule 6(a) of the Superior Court
23 Rules of Civil Procedure, or a day or any part of a day in which the office of the Clerk of the

1 Superior Court of the District of Columbia is closed, the limitations period runs until the end of
2 the next day that is not one of the aforementioned days.

3
4 “(6) Nothing in this section shall preclude the court from excusing the failure to
5 provide written notice within the time prescribed herein or from waiving the notice requirement
6 set forth in paragraph (1) of this subsection if the interests of justice so dictate, unless the insurer
7 can affirmatively show that its defense has been materially prejudiced by the lack of notice.

8 “(h) This section does not apply to any health insurance policy or plan offered by a health
9 insurer to the extent that insurance claims under the policy or plan are preempted by federal law,
10 such as the Employee Retirement Income Securities Act of 1974, approved September 2, 1974
11 (88 Stat. 832; 29 U.S.C.S. § 1001 *et seq.*).

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

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

18 Sec. 3. Fiscal impact statement.

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

22 Sec. 4. Effective date.

1 This act shall take effect following approval by the Mayor (or in the event of veto by the
2 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
3 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
4 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
5 Columbia.