## **HOUSE BILL 990**

D3, C4 6lr2884 CF 6lr3280

By: Delegate Morhaim

Introduced and read first time: February 10, 2016

Assigned to: Judiciary

## A BILL ENTITLED

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ı	AN	ACT	concerning
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## Civil Actions - Liability of Disability Insurer - Failure to Act in Good Faith

- 3 FOR the purpose of authorizing the recovery of actual damages, expenses, litigation costs, and interest in first-party claims against disability insurers in certain civil actions 4 5 that allege that the insurer failed to act in good faith under certain circumstances; 6 requiring the Maryland Insurance Administration to include in a certain annual 7 report to the General Assembly certain information on certain complaints regarding 8 first-party insurance claims under disability insurance policies; providing for the 9 application of this Act; and generally relating to liability of disability insurers for failure to act in good faith in settling first-party claims. 10
- 11 BY repealing and reenacting, with amendments,
- 12 Article Courts and Judicial Proceedings
- 13 Section 3–1701
- 14 Annotated Code of Maryland
- 15 (2013 Replacement Volume and 2015 Supplement)
- 16 BY repealing and reenacting, with amendments,
- 17 Article Insurance
- 18 Section 27–1001
- 19 Annotated Code of Maryland
- 20 (2011 Replacement Volume and 2015 Supplement)
- 21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
- 22 That the Laws of Maryland read as follows:

## Article - Courts and Judicial Proceedings

24 3–1701.

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25 (a) (1) In this subtitle the following words have the meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

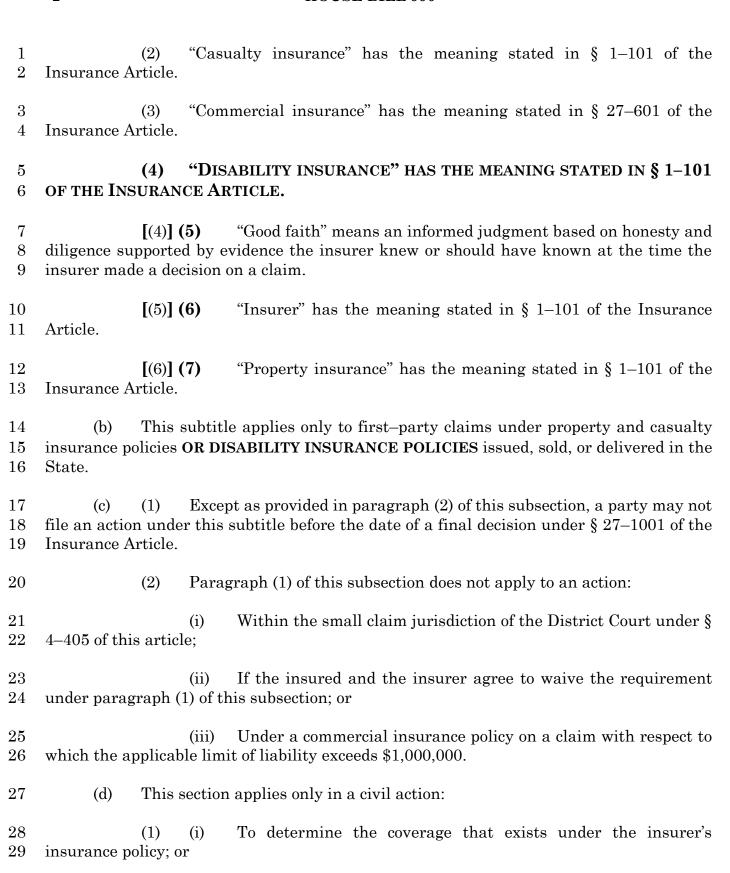


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(ii)

receive payment from the insurer for a covered loss:



To determine the extent to which the insured is entitled to

1	(2) That alleges that the insurer failed to act in good faith; and		
2 3 4	(3) That seeks, in addition to the actual damages under the policy, to recover expenses and litigation costs, and interest on those expenses or costs, under subsection (e) of this section.		
5 6 7	(e) Notwithstanding any other provision of law, if the trier of fact in an action under this section finds in favor of the insured and finds that the insurer failed to act in good faith, the insured may recover from the insurer:		
8 9	(1) Actual damages, which actual damages may not exceed the limits of the applicable policy;		
10 11 12	(2) Expenses and litigation costs incurred by the insured in an action under this section or under § 27–1001 of the Insurance Article or both, including reasonable attorney's fees; and		
13 14	(3) Interest on all actual damages, expenses, and litigation costs incurred by the insured, computed:		
15	(i) At the rate allowed under § 11–107(a) of this article; and		
16 17	(ii) From the date on which the insured's claim would have been paid if the insurer acted in good faith.		
18 19 20 21	(f) An insurer may not be found to have failed to act in good faith under this section solely on the basis of delay in determining coverage or the extent of payment to which the insured is entitled if the insurer acted within the time period specified by statute or regulation for investigation of a claim by an insurer.		
22 23	(g) The amount of attorney's fees recovered from an insurer under subsection (e) of this section may not exceed one—third of the actual damages recovered.		
24 25	(h) The clerk of the court shall file a copy of the verdict or any other final disposition of an action under this section with the Maryland Insurance Administration.		
26 27	(i) This section does not limit the right of any person to maintain a civil action for damages or other remedies otherwise available under any other provision of law.		
28 29	(j) If a party to the proceeding elects to have the case tried by a jury in accordance with the Maryland Rules, the case shall be tried by a jury.		

Article – Insurance

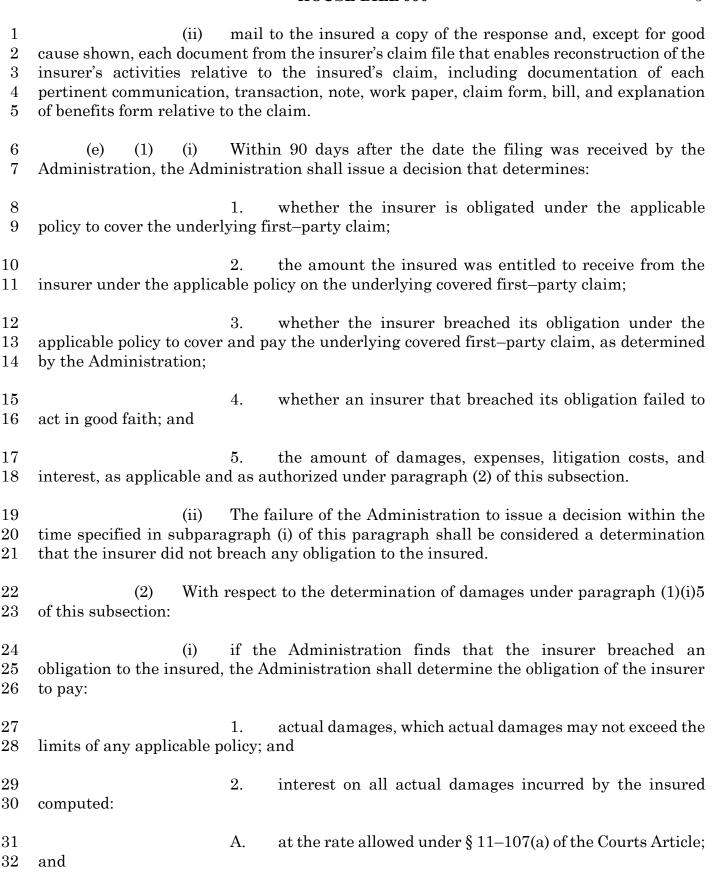
31 27–1001.

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1 In this section, "good faith" means an informed judgment based on honesty 2 and diligence supported by evidence the insurer knew or should have known at the time 3 the insurer made a decision on a claim. 4 (b) This section applies only to actions under § 3–1701 of the Courts Article. 5 Except as provided in paragraph (2) of this subsection, a person may not bring or pursue an action under § 3–1701 of the Courts Article in a court unless the 6 7 person complies with this section. 8 (2)Paragraph (1) of this subsection does not apply to an action: 9 within the small claim jurisdiction of the District Court under § 4–405 of the Courts Article: 10 11 (ii) if the insured and the insurer agree to waive the requirement 12 under paragraph (1) of this subsection; or 13 under a commercial insurance policy on a claim with respect to (iii) which the applicable limit of liability exceeds \$1,000,000. 14 15 A complaint stating a cause of action under § 3–1701 of the Courts Article shall first be filed with the Administration. 16 (2)The complaint shall: 17 18 be accompanied by each document that the insured has (i) submitted to the insurer for proof of loss; 19 20 specify the applicable insurance coverage and the amount of the (ii) 21claim under the applicable coverage; and 22 (iii) state the amount of actual damages, and the claim for expenses 23and litigation costs described under subsection (e)(2) of this section. 24 (3) The Administration shall forward the filing to the insurer. 25Within 30 days after the date the filing is forwarded to the insurer by 26 the Administration, the insurer shall: 27 file with the Administration, except for good cause shown, a 28 written response together with a copy of each document from the insurer's claim file that 29 enables reconstruction of the insurer's activities relative to the insured's claim, including 30 documentation of each pertinent communication, transaction, note, work paper, claim form,

bill, and explanation of benefits form relative to the claim; and



from the date on which the insured's claim should have

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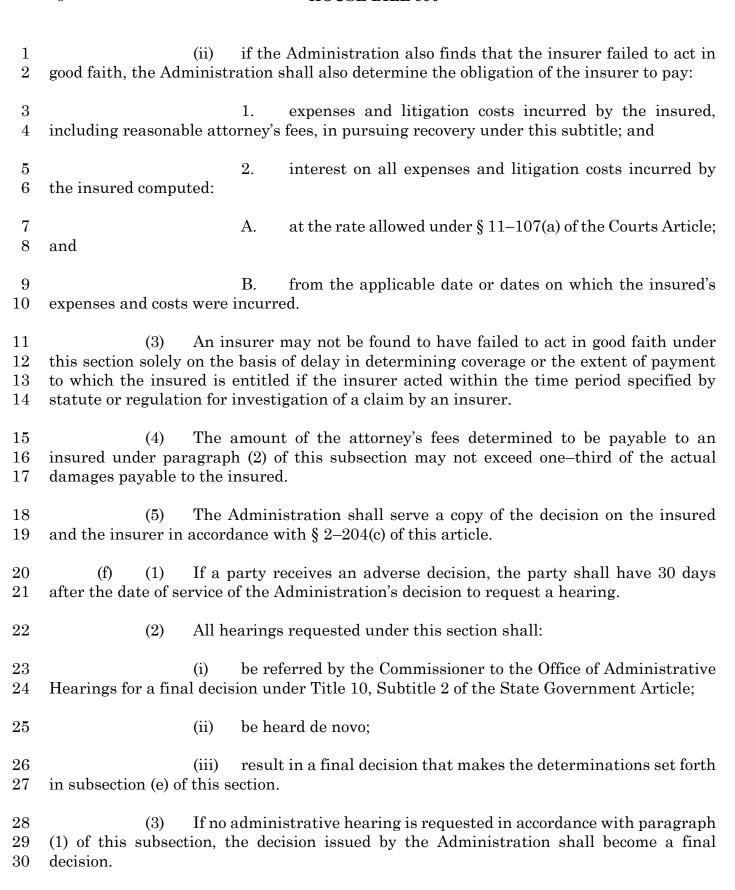
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been paid; and

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(1)



If a party receives an adverse decision, the party may appeal a final

decision by the Administration or an administrative law judge under this section to a circuit

- 1 court in accordance with § 2–215 of this article and Title 10, Subtitle 2 of the State 2 Government Article.
- 3 (2) (i) This paragraph applies only if more than one party receives an 4 adverse decision from the Administration.
- 5 (ii) If a party requests a hearing before the Office of Administrative 6 Hearings and another party files an appeal to a circuit court:
- 7 l. jurisdiction over the request for hearing is transferred to 8 the circuit court;
- 9 2. the request for hearing, the Administration's decision, and 10 the Administration's case file, including the complaint, response, and all documents 11 submitted to the Administration, shall be transmitted promptly to the circuit court; and
- 12 3. the request for hearing shall be docketed in the circuit court and consolidated for trial with the appeal.
- 14 (3) Notwithstanding any other provision of law, an appeal to a circuit court 15 under this section shall be heard de novo.
- 16 (h) On or before January 1 of each year beginning in 2009, in accordance with § 2–1246 of the State Government Article, the Administration shall report to the General Assembly on the following for the prior fiscal year:
- 19 (1) the number and types of complaints under this section or § 3–1701 of 20 the Courts Article from insureds regarding first–party insurance claims under property 21 and casualty insurance policies;
- 22 (2) THE NUMBER AND TYPES OF COMPLAINTS UNDER THIS SECTION OR § 3–1701 OF THE COURTS ARTICLE FROM INSUREDS REGARDING FIRST-PARTY INSURANCE CLAIMS UNDER DISABILITY INSURANCE POLICIES;
- 25 [(2)] (3) the administrative and judicial dispositions of the complaints 26 described in [item (1)] ITEMS (1) AND (2) of this subsection;
- [(3)] (4) the number and types of regulatory enforcement actions instituted by the Administration for unfair claim settlement practices under  $\S 27-303(9)$  or  $\S 27-304(18)$  of this title; and
- [(4)] (5) the administrative and judicial dispositions of the regulatory enforcement actions for unfair claim settlement practices described under item [(3)] (4) of this subsection.

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SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any first–party claim based on an act or omission that occurs before the effective date of this Act.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect 6 October 1, 2016.