

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 124 (Senator Zirkin)
 Judicial Proceedings

Courts - Direct Action Against Insurer

This bill establishes that a “third-party claimant” has a right to directly sue the insurer of a tortfeasor with respect to an automobile, homeowner’s, or renter’s policy claim. “Third-party claimant” means any person asserting a claim against a person insured under an automobile, homeowner’s, or renter’s insurance policy. The bill also requires any automobile, homeowner’s, or renter’s insurance policy issued, sold, or delivered in the State to be construed to make the insurer directly liable, within the terms and limits of the policy, to third-party claimants. **The bill applies prospectively and may not be applied or interpreted to have any effect on or application to any insurance policy issued or delivered in the State before the bill’s October 1, 2018 effective date.**

Fiscal Summary

State Effect: Minimal increase in special fund revenues due to additional requests for service of process. Special fund expenditures increase by \$39,100 in FY 2019 to process additional requests generated by the bill. Future year expenditures reflect annualization.

| (in dollars) | FY 2019 | FY 2020 | FY 2021 | FY 2022 | FY 2023 |
|----------------|------------|------------|------------|------------|------------|
| SF Revenue | - | - | - | - | - |
| SF Expenditure | \$39,100 | \$46,300 | \$47,500 | \$49,300 | \$51,100 |
| Net Effect | (\$39,100) | (\$46,300) | (\$47,500) | (\$49,300) | (\$51,100) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill can be implemented with existing local resources.

Small Business Effect: None.

Analysis

Bill Summary: In addition to being able to bring an action against an insurer and the insured jointly, a third-party claimant may bring an action against the insurer alone, as long as the third-party claimant agrees to cap recovery at applicable policy limits. An action brought by a third-party claimant is subject to the same defenses that could be raised by the insurer in an action brought by the insured.

Current Law: An injured third party may not directly sue the insurer of his/her tortfeasor. The premise behind this prohibition, also known as privity of contract, is the idea that an insurance policy is a contract between an insurer and the insured and only the two parties to the contract have the authority to enforce rights or claim damages under the contract/policy.

Several states have enacted direct-action statutes to allow injured third parties to directly sue insurers. The statutes vary, but some of them require the injured party to file a lawsuit against the tortfeasor and, after obtaining a judgment against the tortfeasor, file another lawsuit against the insurer within specified timeframes.

Under Maryland Rule 5-411, evidence that a person was or was not insured against liability is not admissible upon the issue as to whether the person acted negligently or otherwise wrongfully. Rule 5-411 does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

State Fiscal Effect: Special fund revenues for the Maryland Insurance Administration (MIA) increase minimally due to increased requests for service of process under the bill. While the data is not available to determine the number of additional requests for service of process that the bill generates, it is possible that the number of requests will noticeably increase. *By way of illustration*, if the bill generates 5,200 additional requests for service of process, special fund revenues for MIA increase by \$58,500 in fiscal 2019, accounting for the bill's effective date, and by \$78,000 on an annual basis.

Special fund expenditures for MIA increase by \$39,134 in fiscal 2019, which accounts for the bill's October 1, 2018 effective date. This estimate reflects the cost of hiring one administrative employee to process the additional requests for service of process generated by the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | |
|---|-----------------|
| Position | 1 |
| Salary and Fringe Benefits | \$33,775 |
| Operating Expenses | <u>5,359</u> |
| Total FY 2019 State Expenditures | \$39,134 |

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

Section 4-107 of the Insurance Article requires each insurer applying for a certificate of authority to appoint the Insurance Commissioner as attorney for service of process issued against the insurer in the State. The same requirement applies to an unauthorized surplus lines insurer and qualified surplus lines broker. To serve a summons, subpoena, or garnishment against a licensed insurance company, a person must serve the Insurance Commissioner as resident agent for the acceptance of service of process. A claimant must pay to MIA a fee of \$15 for each service of legal process. MIA advises that the \$15 fee barely covers the costs of processing requests and sending the relevant materials through certified mail. According to the *Preliminary Evaluation of the Maryland Insurance Administration*, MIA was first authorized to collect the fee in 1929; information is not available on the last time the fee was changed.

MIA advises that it receives approximately 20 requests for service of legal process per day, which equates to 5,200 per year based on a 260-day work year, and the bill could potentially double the number of requests it receives. According to MIA, these requests are received in a packet of paperwork, and a packet may contain multiple requests for service of process involving insurers, agents, and other associated individuals/entities. MIA advises that (1) it takes approximately 40 minutes to process each request, including researching relevant information to handle the service of process correctly and entering information into MIA's database; (2) its current workload is handled by one employee who spends all of her time on this function and receives assistance from another employee when the volume cannot be handled within a timely manner; and (3) it is operating at capacity with respect to processing service of process.

Additional Information

Prior Introductions: SB 911 of 2017 received a hearing in the Senate Judicial Proceedings Committee. No further action was taken on the bill.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Insurance Administration; Department of Legislative Services

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mm/kdm

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