

SENATE BILL 102

D3
SB 124/18 – JPR

9lr0475

By: **Senator Zirkin**

Introduced and read first time: January 14, 2019

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Direct Action Against Insurer**

3 FOR the purpose of requiring a certain insurance policy issued, sold, or delivered in the
4 State to be construed to make the insurer directly liable, within the terms and limits
5 of the policy, to certain third-party claimants; providing that a third-party claimant
6 has a right of direct action against a certain insurer subject to certain requirements;
7 authorizing a third-party claimant to bring an action against certain parties under
8 certain circumstances; establishing that an action brought by a third-party claimant
9 is subject to certain defenses; defining certain terms; making certain technical and
10 conforming changes; altering the applicability of certain provisions of law; providing
11 for the application of this Act; and generally relating to direct actions by third-party
12 claimants against insurers.

13 BY renumbering

14 Article – Courts and Judicial Proceedings
15 Section 3–1701
16 to be Section 3–1702
17 Annotated Code of Maryland
18 (2013 Replacement Volume and 2018 Supplement)

19 BY adding to

20 Article – Courts and Judicial Proceedings
21 Section 3–1701 and 3–1703
22 Annotated Code of Maryland
23 (2013 Replacement Volume and 2018 Supplement)

24 BY repealing and reenacting, with amendments,

25 Article – Courts and Judicial Proceedings
26 Section 3–1702(a) through (c)
27 Annotated Code of Maryland
28 (2013 Replacement Volume and 2018 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (As enacted by Section 1 of this Act)

2 BY repealing and reenacting, with amendments,
3 Article – Courts and Judicial Proceedings
4 Section 5–118
5 Annotated Code of Maryland
6 (2013 Replacement Volume and 2018 Supplement)

7 BY repealing and reenacting, with amendments,
8 Article – Insurance
9 Section 27–1001(b), (c)(1), (d)(1), and (h)(1) and (2)
10 Annotated Code of Maryland
11 (2017 Replacement Volume and 2018 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
13 That Section(s) 3–1701 of Article – Courts and Judicial Proceedings of the Annotated Code
14 of Maryland be renumbered to be Section(s) 3–1702.

15 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
16 as follows:

17 **Article – Courts and Judicial Proceedings**

18 **3–1701.**

19 **IN THIS SUBTITLE, “INSURER” HAS THE MEANING STATED IN § 1–101 OF THE**
20 **INSURANCE ARTICLE.**

21 3–1702.

22 (a) (1) In this [subtitle] SECTION the following words have the meanings
23 indicated.

24 (2) “Casualty insurance” has the meaning stated in § 1–101 of the
25 Insurance Article.

26 (3) “Commercial insurance” has the meaning stated in § 27–601 of the
27 Insurance Article.

28 (4) (i) “Disability insurance” means insurance that provides for lost
29 income, revenue, or proceeds in the event that an illness, accident, or injury results in a
30 disability that impairs an insured’s ability to work or otherwise generate income, revenue,
31 or proceeds that the insurance is intended to replace.

32 (ii) “Disability insurance” does not include payment for medical
33 expenses, dismemberment, or accidental death.

1 (5) “Good faith” means an informed judgment based on honesty and
2 diligence supported by evidence the insurer knew or should have known at the time the
3 insurer made a decision on a claim.

4 (6) [“Insurer” has the meaning stated in § 1–101 of the Insurance Article.

5 (7)] “Property insurance” has the meaning stated in § 1–101 of the
6 Insurance Article.

7 (b) This [subtitle] SECTION applies only to first–party claims under property and
8 casualty insurance policies or individual disability insurance policies issued, sold, or
9 delivered in the State.

10 (c) (1) Except as provided in paragraph (2) of this subsection, a party may not
11 file an action under this [subtitle] SECTION before the date of a final decision under §
12 27–1001 of the Insurance Article.

13 (2) Paragraph (1) of this subsection does not apply to an action:

14 (i) Within the small claim jurisdiction of the District Court under §
15 4–405 of this article;

16 (ii) If the insured and the insurer agree to waive the requirement
17 under paragraph (1) of this subsection; or

18 (iii) Under a commercial insurance policy on a claim with respect to
19 which the applicable limit of liability exceeds \$1,000,000.

20 **3–1703.**

21 (A) IN THIS SECTION, “THIRD–PARTY CLAIMANT” MEANS ANY PERSON
22 ASSERTING A CLAIM AGAINST A PERSON INSURED UNDER AN AUTOMOBILE
23 INSURANCE POLICY, A HOMEOWNER’S INSURANCE POLICY, OR A RENTER’S
24 INSURANCE POLICY.

25 (B) ANY AUTOMOBILE INSURANCE POLICY, HOMEOWNER’S INSURANCE
26 POLICY, OR RENTER’S INSURANCE POLICY ISSUED, SOLD, OR DELIVERED IN THE
27 STATE SHALL BE CONSTRUED TO MAKE THE INSURER DIRECTLY LIABLE, WITHIN
28 THE TERMS AND LIMITS OF THE POLICY, TO THIRD–PARTY CLAIMANTS.

29 (C) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, A
30 THIRD–PARTY CLAIMANT HAS A RIGHT OF DIRECT ACTION AGAINST THE INSURER
31 THAT ISSUED THE AUTOMOBILE INSURANCE POLICY, HOMEOWNER’S INSURANCE
32 POLICY, OR RENTER’S INSURANCE POLICY.

1 **(2) A THIRD-PARTY CLAIMANT MAY BRING AN ACTION AGAINST:**

2 **(I) THE INSURER ALONE, IF THE THIRD-PARTY CLAIMANT**
 3 **AGREES TO CAP RECOVERY AT APPLICABLE POLICY LIMITS; OR**

4 **(II) THE INSURER AND THE INSURED JOINTLY.**

5 **(3) AN ACTION BROUGHT BY A THIRD-PARTY CLAIMANT UNDER THIS**
 6 **SUBSECTION IS SUBJECT TO THE SAME DEFENSES THAT COULD BE RAISED BY THE**
 7 **INSURER TO AN ACTION BROUGHT BY THE INSURED.**

8 5-118.

9 For the purposes of this subtitle, the filing of a complaint with the Maryland
 10 Insurance Administration in accordance with § 27-1001 of the Insurance Article shall be
 11 deemed the filing of an action under § [3-1701] **3-1702** of this article.

12 **Article - Insurance**

13 27-1001.

14 (b) This section applies only to actions under § [3-1701] **3-1702** of the Courts
 15 Article.

16 (c) (1) Except as provided in paragraph (2) of this subsection, a person may
 17 not bring or pursue an action under § [3-1701] **3-1702** of the Courts Article in a court
 18 unless the person complies with this section.

19 (d) (1) A complaint stating a cause of action under § [3-1701] **3-1702** of the
 20 Courts Article shall first be filed with the Administration.

21 (h) On or before January 1 of each year beginning in 2009, in accordance with §
 22 2-1246 of the State Government Article, the Administration shall report to the General
 23 Assembly on the following for the prior fiscal year:

24 (1) the number and types of complaints under this section or § [3-1701]
 25 **3-1702** of the Courts Article from insureds regarding first-party insurance claims under
 26 property and casualty insurance policies;

27 (2) the number and types of complaints under this section or § [3-1701]
 28 **3-1702** of the Courts Article from insureds regarding first-party insurance claims under
 29 individual disability insurance policies;

30 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to
 31 apply only prospectively and may not be applied or interpreted to have any effect on or

1 application to any insurance policy issued or delivered in the State before the effective date
2 of this Act.

3 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2019.