

SENATE BILL 272

C4, C3

1lr0038

(PRE-FILED)

By: **Chair, Finance Committee (By Request – Departmental – Maryland Insurance Administration)**

Requested: September 29, 2020

Introduced and read first time: January 13, 2021

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Insurance – Claim Payment – Clarification**

3 FOR the purpose of authorizing the Maryland Insurance Commissioner to require an
4 insurer that holds a certificate of authority to fulfill the holder's contractual
5 obligations or pay a certain claim instead of, or in addition to, suspending or revoking
6 the certificate; authorizing the Commissioner, on a finding of a violation of certain
7 provisions of law, to require an insurer, a nonprofit health service plan, or a health
8 maintenance organization to make a payment that has been improperly denied; and
9 generally relating to insurance and the enforcement authority of the Maryland
10 Insurance Commissioner.

11 BY repealing and reenacting, with amendments,
12 Article – Insurance
13 Section 4–113 and 27–305
14 Annotated Code of Maryland
15 (2017 Replacement Volume and 2020 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
17 That the Laws of Maryland read as follows:

18 **Article – Insurance**

19 4–113.

20 (a) The Commissioner shall deny a certificate of authority to an applicant or
21 refuse to renew, suspend, or revoke a certificate of authority if:

22 (1) the action is required by any provision of this article;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) the insurer no longer meets the requirements for the certificate of
2 authority because of a deficiency in assets or any other reason;

3 (3) the business of the insurer is fraudulently conducted;

4 (4) the insurer is insolvent, or its assets are not sufficient for carrying on
5 its business;

6 (5) the insurer fails to pay taxes on premiums required under this article;

7 (6) the insurer willfully fails to provide the Commissioner with required
8 information about medical malpractice insurance issued by the insurer in this State or any
9 other state;

10 (7) the issuance or renewal of a certificate of authority is contrary to the
11 public interest;

12 (8) the Commissioner finds that the principal management personnel of
13 the insurer is:

14 (i) untrustworthy or not of good character; or

15 (ii) so lacking in insurer managerial experience as to make the
16 proposed operation hazardous to the insurance-buying public or to the insurer's
17 stockholders; or

18 (9) the Commissioner has good reason to believe that the insurer is
19 affiliated, directly or indirectly, through ownership, control, management, reinsurance
20 transactions, or other insurance or business relations with a person whose business
21 operations are or have been marked by the manipulation of assets, accounts, or reinsurance
22 or by bad faith, to the detriment of insureds, stockholders, or creditors.

23 (b) The Commissioner may deny a certificate of authority to an applicant or,
24 subject to the hearing provisions of Title 2 of this article, refuse to renew, suspend, or revoke
25 a certificate of authority if the applicant or holder of the certificate of authority:

26 (1) violates any provision of this article other than one that provides for
27 mandatory denial, refusal to renew, suspension, or revocation for its violation;

28 (2) knowingly fails to comply with a regulation or order of the
29 Commissioner;

30 (3) is found by the Commissioner to be in unsound condition or in a
31 condition that renders further transaction of insurance business hazardous to the insurer's
32 policyholders or the public;

33 (4) is engaged in writing policies in a jurisdiction in which it operates on a

1 premium basis that the Commissioner finds to be insufficient, insecure, or impracticable so
2 as to endanger the solvency of the insurer;

3 (5) refuses or delays payment of amounts due claimants without just cause;

4 (6) refuses to be examined or to produce its accounts, records, or files for
5 examination by the Commissioner when required;

6 (7) refuses to provide additional information that the Commissioner
7 considers advisable in considering an application for renewal of the certificate of authority;

8 (8) fails to pay a final judgment against it in the State within 30 days after
9 the judgment becomes final;

10 (9) is affiliated with and under the same general management or
11 interlocking directorate or ownership as another insurer that transacts direct insurance in
12 the State without having a certificate of authority to do so, except as allowed to a surplus
13 lines insurer under Title 3, Subtitle 3 of this article;

14 (10) is found by the Commissioner to have participated, with or without the
15 knowledge of an insurance producer, in selling motor vehicle insurance without an actual
16 intent to sell the insurance, as evidenced by a persistent pattern of filing certificates of
17 insurance together with or closely followed by cancellation notices for the insurance;

18 (11) except as allowed under § 10–103(c) of this article, is found by the
19 Commissioner to have knowingly participated with a person, acting as an insurance
20 producer, that does not have an appointment from the insurer in accepting insurance
21 contracts that the person has sold, solicited, or negotiated, if committed with sufficient
22 frequency to indicate a general business practice;

23 (12) has had a certificate of authority revoked or suspended by the insurance
24 regulatory authority of another state;

25 (13) has violated the provisions of Title 6.5 of the State Government Article;

26 (14) fails to provide to the Commissioner or an insurance producer any
27 information required by § 10–118 of this article regarding the termination of an
28 appointment of the insurance producer; or

29 (15) in providing information required by or provided pursuant to § 10–118
30 of this article regarding the termination of an appointment of an insurance producer, makes
31 an inaccurate statement with actual malice.

32 (c) (1) On refusal to renew, suspension, or revocation of an insurer's certificate
33 of authority, the Commissioner immediately shall notify:

34 (i) the insurer; and

1 (ii) each insurance producer of the insurer in the state of record in
2 the office of the Commissioner.

3 (2) The refusal to renew, revocation, or suspension of a certificate of
4 authority automatically suspends or revokes the appointment of each insurance producer
5 of the insurer in the State.

6 (3) The Commissioner shall state in the notice to each insurance producer
7 under paragraph (1) of this subsection that the appointment of the insurance producer has
8 been suspended or revoked.

9 (4) The Commissioner may publish notice of the revocation of a certificate
10 of authority in a newspaper published in the State.

11 (d) Instead of or in addition to suspending or revoking a certificate of authority,
12 the Commissioner may:

13 (1) impose on the holder a penalty of not less than \$100 but not more than
14 \$125,000 for each violation of this article; [and]

15 (2) require the holder to make restitution to any person who has suffered
16 financial injury because of the violation of this article; AND

17 **(3) REQUIRE THE HOLDER TO:**

18 **(I) FULFILL THE HOLDER'S CONTRACTUAL OBLIGATIONS; OR**

19 **(II) PAY A CLAIM THAT WAS DENIED, IN WHOLE OR IN PART, IN**
20 **VIOLATION OF A PROVISION OF THIS ARTICLE.**

21 (e) The Commissioner shall adopt regulations to:

22 (1) establish standards for the imposition of a penalty under subsection (d)
23 of this section; and

24 (2) carry out the provisions of subsection (b)(11) of this section.

25 27-305.

26 (a) The Commissioner may impose a penalty:

27 (1) not exceeding \$2,500 for each violation of § 27-303 of this subtitle or a
28 regulation adopted under § 27-303 of this subtitle; and

29 (2) not exceeding \$125,000 for each violation of § 27-303(9) of this subtitle

1 or a regulation adopted under § 27–303(9) of this subtitle.

2 (b) The penalty for a violation of § 27–304 of this subtitle is as provided in §§
3 1–301, 4–113, and 4–114 of this article and § 27–103 of this title.

4 (c) (1) On finding a violation of this subtitle, the Commissioner may require
5 an insurer, nonprofit health service plan, or health maintenance organization to:

6 (I) make restitution to each claimant who has suffered actual
7 economic damage because of the violation; **OR**

8 (II) **MAKE A PAYMENT THAT HAS BEEN DENIED IMPROPERLY.**

9 (2) Subject to paragraph (3) of this subsection, restitution may not exceed
10 the amount of actual economic damage sustained, subject to the limits of any applicable
11 policy.

12 (3) For a violation of § 27–303(9) of this subtitle, the Commissioner may
13 require restitution to an insured for the following:

14 (i) actual damages, which actual damages may not exceed the limits
15 of any applicable policy;

16 (ii) expenses and litigation costs incurred by the insured in pursuing
17 an administrative complaint under § 27–303(9) of this subtitle, including reasonable
18 attorney’s fees; and

19 (iii) interest on all actual damages, expenses, and litigation costs
20 incurred by the insured computed:

21 1. at the rate allowed under § 11–107(a) of the Courts Article;
22 and

23 2. from the date on which the insured’s claim would have
24 been paid if the insurer acted in good faith.

25 (4) The amount of attorney’s fees recovered from an insurer under
26 paragraph (3) of this subsection may not exceed one–third of the actual damages recovered.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2021.