

SENATE BILL 691

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1999 Regular Session
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By: **Senator Hooper**
Introduced and read first time: February 18, 1999
Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Motor Vehicle Liability Insurance - Protest by Insured of Proposed Action of**
3 **Insurer**

4 FOR the purpose of requiring the Insurance Commissioner to make an initial
5 determination whether a certain protest by an insured of a certain proposed
6 action by a motor vehicle liability insurer has merit; requiring the insurer to
7 maintain in effect for a certain period of time the current motor vehicle liability
8 insurance of the insured under certain circumstances; requiring the
9 Commissioner to provide certain notice; providing for the effect of the initial
10 determination of the Commissioner whether the proposed action of the insurer
11 has merit; requiring the Commissioner to dismiss the protest by the insured if
12 the Commissioner finds the proposed action of the insurer to be justified after a
13 hearing; requiring the Commissioner, if the Commissioner finds the proposed
14 action to be unjustified after a hearing, to reinstate certain coverage for the
15 insured and to pay to the insured a certain difference in certain premiums under
16 certain circumstances; requiring the insurer to pay certain uncompensated
17 liability of the insured under certain circumstances; and generally relating to
18 protests by insureds of proposed actions of insurers to cancel or fail to renew,
19 increase premiums, or reduce coverage under policies of motor vehicle liability
20 insurance.

21 BY repealing and reenacting, with amendments,
22 Article - Insurance
23 Section 27-605
24 Annotated Code of Maryland
25 (1997 Volume and 1998 Supplement)

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

1

Article - Insurance

2 27-605.

3 (a) (1) Except in accordance with this article, with respect to a policy of
4 motor vehicle liability insurance or a binder of motor vehicle liability insurance, if the
5 binder has been in effect for at least 45 days, issued in the State to any resident of the
6 household of the named insured, an insurer other than the Maryland Automobile
7 Insurance Fund may not:

8 (i) cancel or fail to renew the policy or binder for a reason other
9 than nonpayment of premium;

10 (ii) increase a premium for any coverage on the policy; or

11 (iii) reduce coverage under the policy.

12 (2) Notwithstanding paragraph (1) of this subsection, the requirements
13 of this section do not apply if:

14 (i) the premium increase described in paragraph (1)(ii) of this
15 subsection is part of a general increase in premiums approved by the Commissioner
16 and does not result from a reclassification of the insured;

17 (ii) the reduction in coverage described in paragraph (1)(iii) of this
18 subsection is part of a general reduction in coverage approved by the Commissioner or
19 satisfies the requirements of Title 19, Subtitle 5 of this article; or

20 (iii) the failure to renew the policy takes place under a plan of
21 withdrawal that:

22 1. is approved by the Commissioner under § 27-603 of this
23 subtitle; and

24 2. provides that each insured affected by the plan of
25 withdrawal shall be sent by certificate of mailing at least 45 days before the
26 nonrenewal of the policy a written notice that states the date that the policy will be
27 nonrenewed and that the nonrenewal is the result of the withdrawal of the insurer
28 from the market.

29 (b) (1) At least 45 days before the proposed effective date of the action, an
30 insurer that intends to take an action subject to this section must send written notice
31 of its proposed action to the insured at the last known address of the insured:

32 (i) for notice of cancellation or nonrenewal, by certified mail; and

33 (ii) for all other notices of actions subject to this section, by
34 certificate of mailing.

35 (2) The notice must be in triplicate and on a form approved by the
36 Commissioner.

- 1 (3) The notice must state in clear and specific terms:
- 2 (i) the proposed action to be taken, including:
- 3 1. for a premium increase, the amount of the increase and
4 the type of coverage to which it is applicable; and
- 5 2. for a reduction in coverage, the type of coverage reduced
6 and the extent of the reduction;
- 7 (ii) the proposed effective date of the action;
- 8 (iii) subject to paragraph (4) of this subsection, the actual reason of
9 the insurer for proposing to take the action;
- 10 (iv) if there is coupled with the notice an offer to continue or renew
11 the policy in accordance with § 27-606 of this subtitle:
- 12 1. the name of the individual or individuals to be excluded
13 from coverage; and
- 14 2. the premium amount if the policy is continued or renewed
15 with the named individual or individuals excluded from coverage;
- 16 (v) the right of the insured to replace the insurance through the
17 Maryland Automobile Insurance Fund and the current address and telephone number
18 of the Fund;
- 19 (vi) the right of the insured to protest the proposed action of the
20 insurer and, except in the case of a premium increase that is consistent with the
21 insurer's surcharge plan as filed with the Commissioner and authorized under the
22 applicable provisions of Title 11 of this article, request a hearing before the
23 Commissioner on the proposed action by signing two copies of the notice and sending
24 them to the Commissioner within 30 days after the mailing date of the notice;
- 25 (vii) that if a protest is filed by the insured, the insurer must
26 maintain the current insurance in effect until [a final] AN INITIAL determination is
27 made by the Commissioner, subject to the payment of any authorized premium due or
28 becoming due before the determination; and
- 29 (viii) the authority of the Commissioner to award reasonable
30 attorney fees to the insured for representation at a hearing if the Commissioner finds
31 the proposed action of the insurer to be unjustified.
- 32 (4) (i) The insurer's statement of actual reason for proposing to take
33 an action subject to this section must be sufficiently clear and specific so that an
34 individual of average intelligence can identify the basis for the insurer's decision
35 without making further inquiry.

1 (ii) The use of generalized terms such as "personal habits", "living
2 conditions", "poor morals", or "violation or accident record" does not meet the
3 requirements of this paragraph.

4 (c) A statement of actual reason contained in the notice given under
5 subsection (b) of this section is privileged and does not constitute grounds for an
6 action against the insurer, its representatives, or another person that in good faith
7 provides to the insurer information on which the statement is based.

8 (d) (1) An insured may protest a proposed action of the insurer under this
9 section by signing two copies of the notice and sending them to the Commissioner
10 within 30 days after the mailing date of the notice.

11 (2) On receipt of a protest, the Commissioner shall notify the insurer of
12 the filing of the protest.

13 (3) A protest filed with the Commissioner stays the proposed action of
14 the insurer pending [a final] AN INITIAL determination by the Commissioner.

15 (4) (i) The insurer shall maintain in effect the same coverage and
16 premium that were in effect on the day the notice of proposed action was sent to the
17 insured until [a final] AN INITIAL determination is made, subject to the payment of
18 any authorized premium due or becoming due before the determination.

19 (ii) In the case of a premium increase, a dismissal of the protest is
20 deemed to be a final determination of the Commissioner 20 days after the mailing
21 date of the Commissioner's notice of action.

22 (e) (1) Based on the information contained in the notice, the Commissioner
23 SHALL:

24 (i) [shall determine] MAKE AN INITIAL DETERMINATION whether
25 the protest by the insured has merit; and

26 (ii) either [shall] dismiss the protest or disallow the proposed
27 action of the insurer.

28 (2) The Commissioner shall PROMPTLY notify the insurer and the
29 insured of the [action] INITIAL DETERMINATION of the Commissioner [promptly] in
30 writing.

31 (3) Subject to paragraph [(4)] (5) of this subsection, within [30] 20 days
32 after the mailing date of the Commissioner's notice of [action] INITIAL
33 DETERMINATION, the aggrieved party may request a hearing.

34 (4) (I) IF THE COMMISSIONER MAKES AN INITIAL DETERMINATION
35 THAT THE PROPOSED ACTION OF THE INSURER IS JUSTIFIED, A STAY UNDER
36 SUBSECTION (D)(3) OF THIS SECTION EXPIRES 20 DAYS AFTER THE MAILING DATE OF
37 THE COMMISSIONER'S NOTICE OF INITIAL DETERMINATION.

1 (II) IF THE COMMISSIONER MAKES AN INITIAL DETERMINATION
2 THAT THE PROPOSED ACTION OF THE INSURER IS NOT JUSTIFIED, COVERAGE SHALL
3 CONTINUE IN EFFECT PENDING THE COMMISSIONER'S DETERMINATION AFTER A
4 HEARING IF A HEARING IS REQUESTED BY THE INSURER.

5 [(4)] (5) Except in the case of a premium increase that is consistent with
6 the insurer's surcharge plan as filed with the Commissioner and authorized under
7 the applicable provisions of Title 11 of this article, the Commissioner shall:

8 (i) hold a hearing within a reasonable time after the request for a
9 hearing; and

10 (ii) give written notice of the time and place of the hearing at least
11 10 days before the hearing.

12 [(5)] (6) A hearing held under this subsection shall be conducted in
13 accordance with Title 10, Subtitle 2 of the State Government Article.

14 [(6)] (7) At the hearing the insurer has the burden of proving its
15 proposed action to be justified and, in doing so, may rely only on the reasons set forth
16 in its notice to the insured.

17 (f) (1) The Commissioner shall issue an order within 30 days after the
18 conclusion of the hearing.

19 (2) If the Commissioner finds the proposed action of the insurer to be
20 justified, the Commissioner shall[:

21 (i)] dismiss the protest[; and

22 (ii) allow the proposed action to be taken on the later of:

23 1. its proposed effective date; and

24 2. 30 days after the date of the determination].

25 (3) If the Commissioner finds the proposed action to be unjustified, the
26 Commissioner:

27 (i) shall disallow the action; [and]

28 (ii) may order the insurer to pay reasonable attorney fees incurred
29 by the insured for representation at the hearing as the Commissioner considers
30 appropriate;

31 (III) SHALL REQUIRE THE INSURER TO REINSTATE COVERAGE FOR
32 THE INSURED EQUAL TO THE COVERAGE THAT INSURED HAD PRIOR TO THE ACTION
33 TAKEN UNDER SUBSECTION (E)(4) OF THIS SECTION;

34 (IV) SHALL REQUIRE THE INSURER TO PAY TO THE INSURED ANY
35 DIFFERENCE BETWEEN THE INSURED'S PREMIUM AT THE TIME THE POLICY WAS

1 TERMINATED AND ANY HIGHER PREMIUM THAT THE INSURED WAS REQUIRED TO
2 PAY FOR A POLICY PROVIDING THE SAME COVERAGES AND LIMITS FROM THE TIME
3 THE INSURER WAS PERMITTED TO TAKE ACTION UNDER SUBSECTION (E)(4) OF THIS
4 SECTION AND THE REINSTATEMENT OF COVERAGE; AND

5 (V) IF THE INSURED WAS INVOLVED IN AN ACCIDENT BETWEEN
6 THE TIME THE INSURER TERMINATED COVERAGE UNDER SUBSECTION (E)(4) OF THIS
7 SECTION AND THE REINSTATEMENT OF COVERAGE, AND THERE IS AN UNFUNDED
8 LIABILITY BECAUSE THE INSURED WAS UNABLE TO OBTAIN LIABILITY COVERAGE
9 LIMITS EQUAL TO THOSE THE INSURED MAINTAINED WITH THE INSURER THAT
10 TERMINATED THE POLICY, SHALL REQUIRE THE INSURER TO PAY THE
11 UNCOMPENSATED LIABILITY IF THE INSURED PROVIDES:

12 1. EVIDENCE THAT AN UNSATISFIED LIABILITY CLAIM
13 EXISTS; AND

14 2. WRITTEN CONFIRMATION FROM THE MARYLAND
15 AUTOMOBILE INSURANCE FUND THAT THE INSURED SOUGHT LIMITS OF LIABILITY
16 EQUAL TO OR GREATER THAN THE LIMITS THE INSURED MAINTAINED WITH THE
17 INSURER THAT TERMINATED THE POLICY AND THAT THE REQUEST WAS DENIED.

18 (4) (I) EXCEPT AS PROVIDED IN PARAGRAPH (3)(IV) OF THIS
19 SUBSECTION, AN INSURER IS NOT RESPONSIBLE FOR CLAIMS ARISING FROM
20 ACCIDENTS OR OCCURRENCES AFTER THE EFFECTIVE DATE OF AN ACTION UNDER
21 SUBSECTION (E)(4) OF THIS SECTION.

22 (II) THE PROVISIONS OF PARAGRAPH (3) OF THIS SUBSECTION DO
23 NOT IMPOSE ANY LIABILITY ON AN INSURER THAT TERMINATES A POLICY IF THE
24 INSURED DID NOT OBTAIN THE LIABILITY COVERAGE REQUIRED BY STATE LAW.

25 (g) The Commissioner may delegate the powers and duties of the
26 Commissioner under this section to one or more employees or hearing examiners.

27 (h) A party to a proceeding under this section may appeal the decision of the
28 Commissioner in accordance with § 2-215 of this article.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 1999.