

SB0389/262816/1

BY: House Judiciary Committee

AMENDMENTS TO SENATE BILL 389
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Bad” and substitute “Failure to Act in Good”; strike beginning with the first “an” in line 3 down through “faith” in line 10 and substitute “the recovery of actual damages, expenses, litigation costs, and interest in first-party claims against property and casualty insurers under certain circumstances; providing that the interest is to be computed at a certain rate and from a certain date; requiring a clerk of a court to file a copy of certain verdicts and other dispositions with the Maryland Insurance Administration; providing that a failure to act in good faith under certain circumstances constitutes an unfair claim settlement practice for certain purposes; providing for certain penalties; providing for certain restitution in certain proceedings under certain circumstances; providing for certain procedures; providing for a certain appeal to a circuit court from a final decision under certain circumstances; providing for the tolling of certain limitations under certain circumstances; requiring the Administration to report annually on certain matters to the General Assembly on or before a certain date; defining certain terms; providing for the application of this Act; and generally relating to certain proceedings concerning property and casualty insurers who fail to act in good faith in settling a first-party claim under certain circumstances”; after line 10, insert:

“BY repealing and reenacting, with amendments,
Article 1 – Rules of Interpretation
Section 32
Annotated Code of Maryland
(2005 Replacement Volume and 2006 Supplement)”;

in line 13, after “Insurer” insert “; and 5-118”; and after line 15, insert:

“BY repealing and reenacting, with amendments,

(Over)

Article – Insurance

Section 27–303(7) and (8), 27–304(16) and (17), and 27–305(a) and (c)

Annotated Code of Maryland

(2006 Replacement Volume and 2006 Supplement)

BY adding to

Article – Insurance

Section 27–303(9), 27–304(18), and 27–1001 and the subtitle “Subtitle 10.

Property and Casualty Insurance – First–Party Claims”

Annotated Code of Maryland

(2006 Replacement Volume and 2006 Supplement)”.

AMENDMENT NO. 2

On page 1, after line 17, insert:

“Article 1 – Rules of Interpretation

32.

(a) Except as provided in subsection (b) of this section, in a statute providing for de novo judicial review or appeal of a quasi–judicial administrative agency action, the term “de novo” means judicial review based upon an administrative record and such additional evidence as would be authorized by § 10–222(f) and (g) of the State Government Article.

(b) This section does not apply to review of cases from:

(1) The Workers’ Compensation Commission; [or]

(2) The Health Care Alternative Dispute Resolution Office; OR

(3) THE MARYLAND INSURANCE ADMINISTRATION UNDER § 27-1001 OF THE INSURANCE ARTICLE.

On page 2, after line 2, insert:

“(A) (1) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “CASUALTY INSURANCE” HAS THE MEANING STATED IN § 1-101 OF THE INSURANCE ARTICLE.

(3) “COMMERCIAL INSURANCE” HAS THE MEANING STATED IN § 27-601 OF THE INSURANCE ARTICLE.

(4) “GOOD FAITH” MEANS AN INFORMED JUDGMENT BASED ON HONESTY AND DILIGENCE SUPPORTED BY EVIDENCE THE INSURER KNEW OR SHOULD HAVE KNOWN AT THE TIME THE INSURER MADE A DECISION ON A CLAIM.

(5) “INSURER” HAS THE MEANING STATED IN § 1-101 OF THE INSURANCE ARTICLE.

(6) “PROPERTY INSURANCE” HAS THE MEANING STATED IN § 1-101 OF THE INSURANCE ARTICLE.

(B) THIS SUBTITLE APPLIES ONLY TO FIRST-PARTY CLAIMS UNDER PROPERTY AND CASUALTY INSURANCE POLICIES ISSUED, SOLD, OR DELIVERED IN THE STATE.

(Over)

(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PARTY MAY NOT FILE AN ACTION UNDER THIS SUBTITLE BEFORE THE DATE OF A FINAL DECISION UNDER § 27-1001 OF THE INSURANCE ARTICLE.

(2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO AN ACTION:

(I) WITHIN THE SMALL CLAIM JURISDICTION OF THE DISTRICT COURT UNDER § 4-405 OF THIS ARTICLE;

(II) IF THE INSURED AND THE INSURER AGREE TO WAIVE THE REQUIREMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION; OR

(III) UNDER A COMMERCIAL INSURANCE POLICY ON A CLAIM WITH RESPECT TO WHICH THE APPLICABLE LIMIT OF LIABILITY EXCEEDS \$1,000,000.”;

strike in their entirety lines 3 through 18, inclusive, and substitute:

“(D) THIS SECTION APPLIES ONLY IN A CIVIL ACTION:

(1) (I) TO DETERMINE THE COVERAGE THAT EXISTS UNDER THE INSURER’S INSURANCE POLICY; OR

(II) TO DETERMINE THE EXTENT TO WHICH THE INSURED IS ENTITLED TO RECEIVE PAYMENT FROM THE INSURER FOR A COVERED LOSS;

(2) THAT ALLEGES THAT THE INSURER FAILED TO ACT IN GOOD FAITH; AND

(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.”;

in line 19, strike “(C)” and substitute “(E)”; in line 20, strike “COURT” and substitute “TRIER OF FACT”; in lines 21 and 22, strike “ACTED IN BAD FAITH” and substitute “FAILED TO ACT IN GOOD FAITH”; strike beginning with “MAY” in line 23 down through “POLICY” in line 24 and substitute “ACTUAL DAMAGES MAY NOT EXCEED THE LIMITS OF THE APPLICABLE POLICY”; strike beginning with “NONECONOMIC” in line 25 down through “(4)” in line 27; and in line 28, after “INSURED” insert “IN AN ACTION UNDER THIS SECTION OR UNDER § 27-1001 OF THE INSURANCE ARTICLE OR BOTH”.

On page 3, in line 1, strike “(5)” and substitute “(3)”; in the same line, strike “EXPENSES” and substitute “ACTUAL DAMAGES, EXPENSES,”; strike beginning with the second “THE” in line 5 down through “AGENT” in line 6 and substitute “ON WHICH THE INSURED’S CLAIM WOULD HAVE BEEN PAID IF THE INSURER ACTED IN GOOD FAITH”; after line 6, insert:

“(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.

(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.

(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.”;

in line 8, strike “**(D)**” and substitute “**(I)**”; in line 9, after “**DAMAGES**” insert “**OR OTHER REMEDIES**”; and after line 10, insert:

“(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.

5-118.

FOR THE PURPOSES OF THIS SUBTITLE, THE FILING OF A COMPLAINT WITH THE MARYLAND INSURANCE ADMINISTRATION IN ACCORDANCE WITH § 27-1001 OF THE INSURANCE ARTICLE SHALL BE DEEMED THE FILING OF AN ACTION UNDER § 3-1701 OF THIS ARTICLE.

Article – Insurance

27-303.

It is an unfair claim settlement practice and a violation of this subtitle for an insurer or nonprofit health service plan to:

(7) fail to meet the requirements of Title 15, Subtitle 10B of this article for preauthorization for a health care service; [or]

(8) fail to comply with the provisions of Title 15, Subtitle 10A of this article; OR

(9) FAIL TO ACT IN GOOD FAITH, AS DEFINED UNDER § 27-1001 OF THIS TITLE, IN SETTling A FIRST-PARTY CLAIM UNDER A POLICY OF PROPERTY AND CASUALTY INSURANCE.

27-304.

It is an unfair claim settlement practice and a violation of this subtitle for an insurer or nonprofit health service plan, when committed with the frequency to indicate a general business practice, to:

(16) fail to meet the requirements of Title 15, Subtitle 10B of this article for preauthorization for a health care service; [or]

(17) fail to comply with the provisions of Title 15, Subtitle 10A of this article; OR

(18) FAIL TO ACT IN GOOD FAITH, AS DEFINED UNDER § 27-1001 OF THIS TITLE, IN SETTling A FIRST-PARTY CLAIM UNDER A POLICY OF PROPERTY AND CASUALTY INSURANCE.

27-305.

(a) The Commissioner may impose a penalty:

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

(2) NOT EXCEEDING \$125,000 FOR EACH VIOLATION OF § 27-303(9) OF THIS SUBTITLE OR A REGULATION ADOPTED UNDER § 27-303(9) OF THIS SUBTITLE.

(Over)

(c) (1) On finding a violation of this subtitle, the Commissioner may require an insurer or nonprofit health service plan to make restitution to each claimant who has suffered actual economic damage because of the violation.

(2) [Restitution] SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, RESTITUTION may not exceed the amount of actual economic damage sustained, subject to the limits of any applicable policy.

(3) FOR A VIOLATION OF § 27-303(9) OF THIS SUBTITLE, THE COMMISSIONER MAY REQUIRE RESTITUTION TO AN INSURED FOR THE FOLLOWING:

(I) ACTUAL DAMAGES, WHICH ACTUAL DAMAGES MAY NOT EXCEED THE LIMITS OF ANY APPLICABLE POLICY;

(II) EXPENSES AND LITIGATION COSTS INCURRED BY THE INSURED IN PURSUING AN ADMINISTRATIVE COMPLAINT UNDER § 27-303(9) OF THIS SUBTITLE, INCLUDING REASONABLE ATTORNEY'S FEES; AND

(III) INTEREST ON ALL ACTUAL DAMAGES, EXPENSES, AND LITIGATION COSTS INCURRED BY THE INSURED COMPUTED:

1. AT THE RATE ALLOWED UNDER § 11-107(A) OF THE COURTS ARTICLE; AND

2. FROM THE DATE ON WHICH THE INSURED'S CLAIM WOULD HAVE BEEN PAID IF THE INSURER ACTED IN GOOD FAITH.

(4) THE AMOUNT OF ATTORNEY'S FEES RECOVERED FROM AN INSURER UNDER PARAGRAPH (3) OF THIS SUBSECTION MAY NOT EXCEED ONE-THIRD OF THE ACTUAL DAMAGES RECOVERED.

SUBTITLE 10. PROPERTY AND CASUALTY INSURANCE – FIRST-PARTY CLAIMS.

27-1001.

(A) IN THIS SECTION, "GOOD FAITH" MEANS AN INFORMED JUDGMENT BASED ON HONESTY AND DILIGENCE SUPPORTED BY EVIDENCE THE INSURER KNEW OR SHOULD HAVE KNOWN AT THE TIME THE INSURER MADE A DECISION ON A CLAIM.

(B) THIS SECTION APPLIES ONLY TO ACTIONS UNDER § 3-1701 OF THE COURTS ARTICLE.

(C) (1) 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 PERSON COMPLIES WITH THIS SECTION.

(2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO AN ACTION:

(I) WITHIN THE SMALL CLAIM JURISDICTION OF THE DISTRICT COURT UNDER § 4-405 OF THE COURTS ARTICLE;

(II) IF THE INSURED AND THE INSURER AGREE TO WAIVE THE REQUIREMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION; OR

(Over)

(III) UNDER A COMMERCIAL INSURANCE POLICY ON A CLAIM WITH RESPECT TO WHICH THE APPLICABLE LIMIT OF LIABILITY EXCEEDS \$1,000,000.

(D) (1) A COMPLAINT STATING A CAUSE OF ACTION UNDER § 3-1701 OF THE COURTS ARTICLE SHALL FIRST BE FILED WITH THE ADMINISTRATION.

(2) THE COMPLAINT SHALL:

(I) BE ACCOMPANIED BY EACH DOCUMENT THAT THE INSURED HAS SUBMITTED TO THE INSURER FOR PROOF OF LOSS;

(II) SPECIFY THE APPLICABLE INSURANCE COVERAGE AND THE AMOUNT OF THE CLAIM UNDER THE APPLICABLE COVERAGE; AND

(III) STATE THE AMOUNT OF ACTUAL DAMAGES, AND THE CLAIM FOR EXPENSES AND LITIGATION COSTS DESCRIBED UNDER SUBSECTION (E)(2) OF THIS SECTION.

(3) THE ADMINISTRATION SHALL FORWARD THE FILING TO THE INSURER.

(4) WITHIN 30 DAYS AFTER THE DATE THE FILING IS FORWARDED TO THE INSURER BY THE ADMINISTRATION, THE INSURER SHALL:

(I) FILE WITH THE ADMINISTRATION, EXCEPT FOR GOOD CAUSE SHOWN, A WRITTEN RESPONSE TOGETHER WITH A COPY OF EACH DOCUMENT FROM THE INSURER'S CLAIM FILE THAT ENABLES RECONSTRUCTION OF THE INSURER'S ACTIVITIES RELATIVE TO THE INSURED'S CLAIM, INCLUDING DOCUMENTATION OF EACH PERTINENT COMMUNICATION,

TRANSACTION, NOTE, WORK PAPER, CLAIM FORM, BILL, AND EXPLANATION OF BENEFITS FORM RELATIVE TO THE CLAIM; AND

(II) MAIL TO THE INSURED A COPY OF THE RESPONSE AND, EXCEPT FOR GOOD CAUSE SHOWN, EACH DOCUMENT FROM THE INSURER'S CLAIM FILE THAT ENABLES RECONSTRUCTION OF THE INSURER'S ACTIVITIES RELATIVE TO THE INSURED'S CLAIM, INCLUDING DOCUMENTATION OF EACH PERTINENT COMMUNICATION, TRANSACTION, NOTE, WORK PAPER, CLAIM FORM, BILL, AND EXPLANATION OF BENEFITS FORM RELATIVE TO THE CLAIM.

(E) (1) (I) WITHIN 90 DAYS AFTER THE DATE THE FILING WAS RECEIVED BY THE ADMINISTRATION, THE ADMINISTRATION SHALL ISSUE A DECISION THAT DETERMINES:

1. WHETHER THE INSURER IS OBLIGATED UNDER THE APPLICABLE POLICY TO COVER THE UNDERLYING FIRST-PARTY CLAIM;

2. THE AMOUNT THE INSURED WAS ENTITLED TO RECEIVE FROM THE INSURER UNDER THE APPLICABLE POLICY ON THE UNDERLYING COVERED FIRST-PARTY CLAIM;

3. WHETHER THE INSURER BREACHED ITS OBLIGATION UNDER THE APPLICABLE POLICY TO COVER AND PAY THE UNDERLYING COVERED FIRST-PARTY CLAIM, AS DETERMINED BY THE ADMINISTRATION;

4. WHETHER AN INSURER THAT BREACHED ITS OBLIGATION FAILED TO ACT IN GOOD FAITH; AND

(Over)

5. THE AMOUNT OF DAMAGES, EXPENSES, LITIGATION COSTS, AND INTEREST, AS APPLICABLE AND AS AUTHORIZED UNDER PARAGRAPH (2) OF THIS SUBSECTION.

(II) THE FAILURE OF THE ADMINISTRATION TO ISSUE A DECISION WITHIN THE TIME SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE CONSIDERED A DETERMINATION THAT THE INSURER DID NOT BREACH ANY OBLIGATION TO THE INSURED.

(2) WITH RESPECT TO THE DETERMINATION OF DAMAGES UNDER PARAGRAPH (1)(I)5 OF THIS SUBSECTION:

(I) IF THE ADMINISTRATION FINDS THAT THE INSURER BREACHED AN OBLIGATION TO THE INSURED, THE ADMINISTRATION SHALL DETERMINE THE OBLIGATION OF THE INSURER TO PAY:

1. ACTUAL DAMAGES, WHICH ACTUAL DAMAGES MAY NOT EXCEED THE LIMITS OF ANY APPLICABLE POLICY; AND

2. INTEREST ON ALL ACTUAL DAMAGES INCURRED BY THE INSURED COMPUTED:

A. AT THE RATE ALLOWED UNDER § 11-107(A) OF THE COURTS ARTICLE; AND

B. FROM THE DATE ON WHICH THE INSURED'S CLAIM SHOULD HAVE BEEN PAID; AND

(II) IF THE ADMINISTRATION ALSO FINDS THAT THE INSURER FAILED TO ACT IN GOOD FAITH, THE ADMINISTRATION SHALL ALSO DETERMINE THE OBLIGATION OF THE INSURER TO PAY:

1. EXPENSES AND LITIGATION COSTS INCURRED BY THE INSURED, INCLUDING REASONABLE ATTORNEY'S FEES, IN PURSUING RECOVERY UNDER THIS SUBTITLE; AND

2. INTEREST ON ALL EXPENSES AND LITIGATION COSTS INCURRED BY THE INSURED COMPUTED:

A. AT THE RATE ALLOWED UNDER § 11-107(A) OF THE COURTS ARTICLE; AND

B. FROM THE APPLICABLE DATE OR DATES ON WHICH THE INSURED'S EXPENSES AND COSTS WERE INCURRED.

(3) 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.

(4) THE AMOUNT OF THE ATTORNEY'S FEES DETERMINED TO BE PAYABLE TO AN INSURED UNDER PARAGRAPH (2) OF THIS SUBSECTION MAY NOT EXCEED ONE-THIRD OF THE ACTUAL DAMAGES PAYABLE TO THE INSURED.

(5) THE ADMINISTRATION SHALL SERVE A COPY OF THE DECISION ON THE INSURED AND THE INSURER IN ACCORDANCE WITH § 2-204(C) OF THIS ARTICLE.

(F) (1) IF A PARTY RECEIVES AN ADVERSE DECISION, THE PARTY SHALL HAVE 30 DAYS AFTER THE DATE OF SERVICE OF THE ADMINISTRATION'S DECISION TO REQUEST A HEARING.

(2) ALL HEARINGS REQUESTED UNDER THIS SECTION SHALL:

(I) BE REFERRED BY THE COMMISSIONER TO THE OFFICE OF ADMINISTRATIVE HEARINGS FOR A FINAL DECISION UNDER TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE;

(II) BE HEARD DE NOVO;

(III) RESULT IN A FINAL DECISION THAT MAKES THE DETERMINATIONS SET FORTH IN SUBSECTION (E) OF THIS SECTION.

(3) IF NO ADMINISTRATIVE HEARING IS REQUESTED IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION, THE DECISION ISSUED BY THE ADMINISTRATION SHALL BECOME A FINAL DECISION.

(G) (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 COURT IN ACCORDANCE WITH § 2-215 OF THIS ARTICLE AND TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(2) (I) THIS PARAGRAPH APPLIES ONLY IF MORE THAN ONE PARTY RECEIVES AN ADVERSE DECISION FROM THE ADMINISTRATION.

(II) IF A PARTY REQUESTS A HEARING BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS AND ANOTHER PARTY FILES AN APPEAL TO A CIRCUIT COURT:

1. JURISDICTION OVER THE REQUEST FOR HEARING IS TRANSFERRED TO THE CIRCUIT COURT;

2. THE REQUEST FOR HEARING, THE ADMINISTRATION'S DECISION, AND THE ADMINISTRATION'S CASE FILE, INCLUDING THE COMPLAINT, RESPONSE, AND ALL DOCUMENTS SUBMITTED TO THE ADMINISTRATION, SHALL BE TRANSMITTED PROMPTLY TO THE CIRCUIT COURT; AND

3. THE REQUEST FOR HEARING SHALL BE DOCKETED IN THE CIRCUIT COURT AND CONSOLIDATED FOR TRIAL WITH THE APPEAL.

(3) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN APPEAL TO A CIRCUIT COURT UNDER THIS SECTION SHALL BE HEARD DE NOVO.

(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:

(1) THE NUMBER AND TYPES OF COMPLAINTS UNDER THIS SECTION OR § 3-1701 OF THE COURTS ARTICLE FROM INSUREDS REGARDING

FIRST-PARTY INSURANCE CLAIMS UNDER PROPERTY AND CASUALTY
INSURANCE POLICIES;

(2) THE ADMINISTRATIVE AND JUDICIAL DISPOSITIONS OF THE
COMPLAINTS DESCRIBED IN ITEM (1) OF THIS SUBSECTION;

(3) THE NUMBER AND TYPES OF REGULATORY ENFORCEMENT
ACTIONS INSTITUTED BY THE ADMINISTRATION FOR UNFAIR CLAIM
SETTLEMENT PRACTICES UNDER § 27-303(9) OR § 27-304(18) OF THIS TITLE;
AND

(4) THE ADMINISTRATIVE AND JUDICIAL DISPOSITIONS OF THE
REGULATORY ENFORCEMENT ACTIONS FOR UNFAIR CLAIM SETTLEMENT
PRACTICES DESCRIBED UNDER ITEM (3) OF THIS SUBSECTION.”.

AMENDMENT NO. 3

On page 3, before line 11, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That the provisions of this
Act providing for administrative penalties and license sanctions that may be imposed
by the Maryland Insurance Commissioner apply only to an act or omission occurring
on or after the effective date of this Act.”;

and in line 11, strike “2.” and substitute “3.”.