

HOUSE BILL 904

C4

EMERGENCY BILL

71r1645
CF SB 721

By: **Delegate Olszewski**

Introduced and read first time: February 9, 2007

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Homeowner's Insurance – Action for Bad Faith Settlement of or Bad Faith**
3 **Failure to Settle a Claim**

4 FOR the purpose of establishing certain procedures for certain insureds to bring a
5 certain action against a certain insurer for a bad faith settlement of or bad faith
6 failure to settle a claim made under a policy of homeowner's insurance;
7 requiring an insured to send a certain written notice of the insured's intent to
8 file a certain action to a certain insurer within a certain time period;
9 authorizing an insurer to request that an insured allow an inspection of the
10 insured property and provide certain evidence; prohibiting an insurer from
11 alleging that an insured has denied reasonable access to an insurer or its agent
12 under certain circumstances; requiring an insurer to send a written response to
13 an insured within certain time periods; requiring the written response to offer
14 to settle the claim and state the amount of the settlement offer or to state that
15 the insurer refuses to settle the claim; requiring an insured to send a certain
16 notice to an insurer stating that the insured rejects the insurer's settlement
17 offer and the reason for the rejection or that the insured accepts the settlement
18 offer; authorizing an insured to bring a certain civil action against an insurer if
19 the insurer fails to take a certain action or refuses to settle a claim; requiring a
20 certain claimant to send a copy of a certain notice and a certain complaint to the
21 Maryland Insurance Commissioner and People's Insurance Counsel; providing
22 that if an insurer is found to have settled a claim in bad faith or, in bad faith,
23 failed to settle a claim, the insurer is liable to a claimant for certain losses,
24 consequential damages, punitive damages, and reasonable attorney's fees;
25 defining certain terms; providing for the application of this Act; making this Act

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 an emergency measure; and generally relating to homeowner's insurance and
2 the bad faith settlement of or bad faith failure to settle a claim.

3 BY adding to
4 Article – Insurance
5 Section 19–208
6 Annotated Code of Maryland
7 (2006 Replacement Volume and 2006 Supplement)

8 Preamble

9 WHEREAS, Hurricane Isabel was the only Category 5 hurricane of the 2003
10 Atlantic hurricane season and arrived in Maryland on September 19, 2003, as Tropical
11 Storm Isabel; and

12 WHEREAS, The effects of Tropical Storm Isabel, including tropical storm force
13 winds and a storm surge inundating areas along the Chesapeake Bay and Atlantic
14 Ocean caused severe damage to thousands of buildings and homes in the State; and

15 WHEREAS, Some citizens of Maryland remain homeless today due to claims
16 not yet settled with homeowner's insurance companies; now, therefore,

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

19 **Article – Insurance**

20 **19–208.**

21 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
22 MEANINGS INDICATED.

23 (2) “ACTION” MEANS A CIVIL LAWSUIT FOR DAMAGES ASSERTING
24 A CLAIM OF BAD FAITH SETTLEMENT OF OR BAD FAITH FAILURE TO SETTLE A
25 CLAIM MADE UNDER A POLICY OF HOMEOWNER’S INSURANCE.

26 (3) “CLAIMANT” MEANS AN INSURED UNDER A POLICY OF
27 HOMEOWNER’S INSURANCE WHO FILES AN ACTION AGAINST AN INSURER.

1 (4) **“INSURED PROPERTY” MEANS THE DWELLING, STRUCTURE,**
2 **CONTENTS, AND ANY OTHER PROPERTY COVERED UNDER A POLICY OF**
3 **HOMEOWNER’S INSURANCE.**

4 (5) **“REASONABLE ACCESS” MEANS PART OR ALL OF 1 BUSINESS**
5 **DAY THAT IS DESIGNATED BY THE INSURED AT LEAST 5 DAYS BEFORE AN**
6 **INSPECTION.**

7 **(B) BEFORE AN INSURED MAY BRING AN ACTION, THE INSURED SHALL**
8 **COMPLY WITH THE REQUIREMENTS OF THIS SECTION.**

9 **(C) (1) AT LEAST 30 DAYS BEFORE FILING THE ACTION, AN INSURED**
10 **SHALL SEND WRITTEN NOTICE OF THE INSURED’S INTENT TO FILE AN ACTION**
11 **TO THE INSURER UNDER THE INSURED’S POLICY OF HOMEOWNER’S INSURANCE.**

12 **(2) THE NOTICE SHALL BE SENT BY CERTIFIED MAIL.**

13 **(3) THE NOTICE SHALL:**

14 **(I) ASSERT A CLAIM OF BAD FAITH SETTLEMENT OF OR BAD**
15 **FAITH FAILURE TO SETTLE A CLAIM MADE UNDER A POLICY OF HOMEOWNER’S**
16 **INSURANCE; AND**

17 **(II) DESCRIBE THE LOSS IN DETAIL REASONABLY**
18 **SUFFICIENT FOR THE INSURER TO DETERMINE THE TYPE OF LOSS SUSTAINED**
19 **BY THE INSURED.**

20 **(D) (1) WITHIN 5 DAYS AFTER RECEIPT OF THE NOTICE REQUIRED**
21 **UNDER SUBSECTION (C) OF THIS SECTION, AN INSURER MAY REQUEST THAT**
22 **THE INSURED:**

23 **(I) ALLOW THE INSURER OR ITS AGENT REASONABLE**
24 **ACCESS BETWEEN THE HOURS OF 8 A.M. AND 6 P.M. TO INSPECT THE INSURED**
25 **PROPERTY TO DETERMINE THE NATURE AND CAUSE OF THE LOSS AND THE**
26 **NATURE AND COST OF REPAIRS NECESSARY TO COMPENSATE THE INSURED IN**
27 **ACCORDANCE WITH THE TERMS OF THE INSURED’S HOMEOWNER’S INSURANCE**
28 **POLICY; AND**

1 **(II) PROVIDE ANY EVIDENCE NOT PREVIOUSLY PROVIDED**
2 **BY THE INSURED THAT ESTABLISHES THE NATURE AND CAUSE OF THE LOSS OR**
3 **THE NATURE AND COST OF REPAIRS NECESSARY TO COMPENSATE THE INSURED**
4 **IN ACCORDANCE WITH THE TERMS OF THE INSURED'S HOMEOWNER'S**
5 **INSURANCE POLICY.**

6 **(2) AN INSURER MAY NOT ALLEGE THAT AN INSURED HAS DENIED**
7 **REASONABLE ACCESS TO THE INSURER OR ITS AGENT ON THE GROUNDS THAT**
8 **REPAIRS, RESTORATIONS, OR REPLACEMENTS HAVE BEEN COMPLETED BEFORE**
9 **AN INSPECTION OF THE INSURED PROPERTY IS CONDUCTED.**

10 **(E) EVIDENCE PROVIDED BY AN INSURED UNDER SUBSECTION**
11 **(D)(1)(II) OF THIS SECTION MAY INCLUDE ANY EVIDENCE DISCOVERABLE**
12 **UNDER THE MARYLAND RULES, INCLUDING ADJUSTER REPORTS, EXPERT**
13 **REPORTS, PHOTOGRAPHS, OR VIDEOTAPES.**

14 **(F) (1) (I) WITHIN 10 DAYS AFTER AN INSPECTION OF THE**
15 **INSURED PROPERTY REQUESTED UNDER SUBSECTION (D)(1)(I) OF THIS**
16 **SECTION, OR THE RECEIPT OF EVIDENCE REQUESTED UNDER SUBSECTION**
17 **(D)(1)(II) OF THIS SECTION, WHICHEVER IS EARLIER, AN INSURER SHALL SEND**
18 **A WRITTEN RESPONSE TO THE INSURED.**

19 **(II) AN INSURER THAT DOES NOT REQUEST AN INSPECTION**
20 **OR EVIDENCE UNDER SUBSECTION (D)(1) OF THIS SECTION SHALL SEND A**
21 **WRITTEN RESPONSE TO THE INSURED WITHIN 15 DAYS AFTER RECEIPT OF THE**
22 **NOTICE REQUIRED UNDER SUBSECTION (C) OF THIS SECTION.**

23 **(2) THE WRITTEN RESPONSE SHALL:**

24 **(I) BE SENT BY CERTIFIED MAIL OR PERSONAL DELIVERY;**

25 **(II) OFFER TO SETTLE THE CLAIM AND STATE THE AMOUNT**
26 **OF THE SETTLEMENT OFFER; OR**

27 **(III) STATE THAT THE INSURER REFUSES TO SETTLE THE**
28 **CLAIM.**

1 **(G) WITHIN 15 DAYS AFTER RECEIVING A SETTLEMENT OFFER UNDER**
2 **SUBSECTION (F)(2)(II) OF THIS SECTION, THE INSURED SHALL SEND A WRITTEN**
3 **NOTICE TO THE INSURER BY CERTIFIED MAIL STATING:**

4 **(1) (I) THAT THE INSURED REJECTS THE SETTLEMENT OFFER;**
5 **AND**

6 **(II) THE REASON FOR THE REJECTION; OR**

7 **(2) THAT THE INSURED ACCEPTS THE SETTLEMENT OFFER.**

8 **(H) AN INSURED MAY FILE AN ACTION WITHOUT FURTHER NOTICE IF**
9 **THE INSURER:**

10 **(1) DOES NOT SEND A WRITTEN RESPONSE TO THE INSURED AS**
11 **REQUIRED BY SUBSECTION (F) OF THIS SECTION; OR**

12 **(2) STATES IN ITS WRITTEN RESPONSE THAT IT REFUSES TO**
13 **SETTLE THE CLAIM.**

14 **(I) A CLAIMANT WHO FILES AN ACTION UNDER THIS SECTION SHALL**
15 **SEND TO THE COMMISSIONER AND THE PEOPLE’S INSURANCE COUNSEL A COPY**
16 **OF THE:**

17 **(1) NOTICE REQUIRED UNDER SUBSECTION (C) OF THIS SECTION;**
18 **AND**

19 **(2) COMPLAINT FILED IN THE ACTION.**

20 **(J) IF AN INSURER IS FOUND TO HAVE SETTLED A CLAIM IN BAD FAITH**
21 **OR, IN BAD FAITH, FAILED TO SETTLE A CLAIM, THE INSURER IS LIABLE TO THE**
22 **CLAIMANT FOR:**

23 **(1) THE AMOUNT OF THE CLAIMANT’S LOSSES, INCLUDING ANY**
24 **AMOUNT DUE TO THE CLAIMANT UNDER THE CLAIMANT’S HOMEOWNER’S**
25 **INSURANCE POLICY;**

26 **(2) CONSEQUENTIAL DAMAGES;**

1 **(3) PUNITIVE DAMAGES NOT EXCEEDING 2 TIMES THE AMOUNT**
2 **AWARDED UNDER ITEMS (1) AND (2) OF THIS SUBSECTION; AND**

3 **(4) REASONABLE ATTORNEY'S FEES.**

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act applies to a
5 claim made by an insured under a policy of homeowner's insurance that was filed on or
6 after September 17, 2003, and for which a full release has not been given by the
7 insured.

8 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency
9 measure, is necessary for the immediate preservation of the public health or safety,
10 has been passed by a yea and nay vote supported by three-fifths of all the members
11 elected to each of the two Houses of the General Assembly, and shall take effect from
12 the date it is enacted.