

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 389

(Senator Stone)

Judicial Proceedings

Judiciary

Civil Actions - Liability of Insurer - Failure to Act in Good Faith

This bill provides that, in a first-party property and casualty insurance claim, an insured who proves that an insurer did not act in good faith may recover expenses and litigation costs in addition to actual damages. The bill also alters administrative review procedures by the Maryland Insurance Administration (MIA) in such cases, and establishes that failure to act in good faith constitutes an unfair claim settlement practice for which the Insurance Commissioner may impose a fine and other specified penalties.

The administrative penalties and license sanctions that may be imposed by MIA under this bill apply prospectively and do not affect acts or omissions occurring before October 1, 2007.

Fiscal Summary

State Effect: The bill could increase the workload of the Office of the Attorney General (OAG) and MIA, possibly necessitating a half-time position in OAG, paid by MIA. Revenues to the Insurance Regulation Fund could increase to the extent that insurers revise their policy forms. The bill is not expected to materially affect the workload of the Judiciary.

Maryland Automobile Insurance Fund (MAIF): MAIF could experience a significant increase in payouts. Any such increase could be offset by an increase in premium revenues.

Local Effect: The bill is not expected to materially affect the workload of the circuit court.

Small Business Effect: Minimal. Possible increase in expenditures by insurers that qualify as small businesses to revise policy forms and expedite claims.

Analysis

Bill Summary: The bill is limited to first-party property and casualty claims. It applies in a civil action • to determine the coverage that exists under the insurer’s insurance policy or the extent to which the insured is entitled to receive payment for a covered loss; • that alleges the insurer failed to act in good faith; and • seeks to recover expenses and litigation costs in addition to actual damages under the policy. “Good faith” is defined as 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. An insurer may not be found to have failed to act in good faith solely because of the time taken by an insurance company in its investigation of a claim within the time specified by statute or regulation.

The bill provides that a consumer who proves that the person’s insurer did not act in good faith may recover expenses and litigation costs, including reasonable attorney’s fees not exceeding one-third of the actual damages recovered, in addition to actual damages. Actual damages recovered may not exceed the limits of the applicable policy.

A jury trial is available at the election of any party. The bill does not limit the right of any person to maintain a civil action otherwise available under any other provision of law.

A party may not file an action under the bill until the date of a final decision by MIA on the party’s claim if expenses and litigation costs are sought. A case may be filed initially in court if the case is within the small claims jurisdiction of the District Court, the parties agree, or the claim is under commercial insurance exceeding \$1 million.

If a complaint is filed with MIA, the bill • requires prompt submission of documents by the parties; • requires MIA to promptly make its determinations and issue a decision within 90 days from the date of filing; and • allows any party within 30 days after an adverse decision from MIA to request a hearing conducted by the Office of Administrative Hearings or to appeal to a circuit court. A party who receives an adverse decision at an administrative hearing may appeal to a circuit court.

Where more than one party receives an adverse administrative decision, if a party requests an administrative hearing and another party files an appeal to the circuit court,

jurisdiction over the request for the hearing is transferred to the circuit court and consolidated for trial with the appeal.

The bill also provides that a single instance of an insurance company failing to act in good faith is an unfair claim settlement practice for which the Insurance Commissioner may impose a fine of up to \$125,000. The Commissioner also may order an insurer to pay actual damages, expenses, and litigation costs as part of the restitution if MIA proceeds on a violation under its regulatory enforcement authority.

In addition, MIA may proceed with more severe sanctions against property and casualty insurers currently available under MIA's enforcement authority if an insurance company's failure to act in good faith in settling first party claims is committed with the frequency to indicate a general business practice.

MIA is required to report annually to the General Assembly on the number and type of claims filed and their dispositions at the administrative and judicial levels.

Current Law: Generally, if an insured wishes to challenge a determination by its insurer that a loss is not covered under the policy or the amount of coverage, the insured may: (1) pursue a civil action for breach of contract; or (2) appeal the determination to MIA under the unfair claim settlement practices provisions. Under these provisions, it is an unfair claim settlement practice to refuse to pay a claim for an arbitrary or capricious reason. If MIA determines that the unfair claim settlement provisions have been violated, it may order restitution of up to the amount actual damages, subject to the policy's limits.

MIA may impose a penalty of up to \$2,500 for each violation of the unfair claim settlement practices provisions. MIA may also issue a cease and desist order. In addition to any administrative penalty, a person who commits an unfair settlement practice with the frequency to indicate a general business practice may be guilty of a misdemeanor and on conviction is subject to a fine of up to \$100,000, if a greater penalty is not applicable.

Background: Generally, attorney's fees are not recoverable in a civil action absent a requirement in statute or a contractual agreement, or under the Maryland Rules. Under the Maryland Rules, a court must find that the conduct of a party in maintaining or defending a proceeding was in bad faith or without substantial justification before the court may require the offending party, the attorney advising the conduct, or both, to pay the adverse party's costs, including reasonable attorney's fees.

State Effect:

Office of the Attorney General and Maryland Insurance Administration: OAG and MIA advise that the bill could increase the amount of administrative litigation. The number of additional cases that would be litigated with MIA cannot be estimated at this time. If there is a significant increase in administrative workload, a half-time attorney staff position in OAG could be required. OAG staff assigned to Insurance Administration cases are paid by MIA.

Additionally, to the extent that insurance companies must revise their policy forms, revenue to the Insurance Regulation Fund would increase. Forms filed by insurers with MIA must be accompanied by a \$125 fee. It is unknown how many additional forms would be filed.

MAIF: Payouts for MAIF would increase to the extent MAIF is involved in litigation regulated by the bill and is determined to have failed to act in good faith. Payouts could also increase to the extent MAIF settled claims at a higher amount because of the bill. Any such amounts cannot be reliably ascertained, but could be significant. Any significant increase in payouts would be offset by increasing premiums to balance revenues and expenditures.

Additional Information

Prior Introductions: Similar bills were introduced in 2004, 2000, 1999, and 1998. SB 566 of 2004 received an unfavorable report from the Senate Judicial Proceedings Committee. HB 1328 of 2000 and HB 244 of 1999 received unfavorable reports from the House Economic Matters Committee. HB 1030 of 1998 was assigned jointly to the House Judiciary Committee and Economic Matters; it received an unfavorable report.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland Insurance Administration, Maryland Automobile Insurance Fund, Department of Legislative Services

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