

HOUSE BILL 990

D3, C4

6lr2884
CF 6lr3280

By: **Delegate Morhaim**

Introduced and read first time: February 10, 2016

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Civil Actions – Liability of Disability Insurer – Failure to Act in Good Faith**

3 FOR the purpose of authorizing the recovery of actual damages, expenses, litigation costs,
4 and interest in first–party claims against disability insurers in certain civil actions
5 that allege that the insurer failed to act in good faith under certain circumstances;
6 requiring the Maryland Insurance Administration to include in a certain annual
7 report to the General Assembly certain information on certain complaints regarding
8 first–party insurance claims under disability insurance policies; providing for the
9 application of this Act; and generally relating to liability of disability insurers for
10 failure to act in good faith in settling first–party claims.

11 BY repealing and reenacting, with amendments,
12 Article – Courts and Judicial Proceedings
13 Section 3–1701
14 Annotated Code of Maryland
15 (2013 Replacement Volume and 2015 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Insurance
18 Section 27–1001
19 Annotated Code of Maryland
20 (2011 Replacement Volume and 2015 Supplement)

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

23 **Article – Courts and Judicial Proceedings**

24 3–1701.

25 (a) (1) In this subtitle the following words have the meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) “Casualty insurance” has the meaning stated in § 1–101 of the
2 Insurance Article.

3 (3) “Commercial insurance” has the meaning stated in § 27–601 of the
4 Insurance Article.

5 **(4) “DISABILITY INSURANCE” HAS THE MEANING STATED IN § 1–101**
6 **OF THE INSURANCE ARTICLE.**

7 **[(4)] (5)** “Good faith” means an informed judgment based on honesty and
8 diligence supported by evidence the insurer knew or should have known at the time the
9 insurer made a decision on a claim.

10 **[(5)] (6)** “Insurer” has the meaning stated in § 1–101 of the Insurance
11 Article.

12 **[(6)] (7)** “Property insurance” has the meaning stated in § 1–101 of the
13 Insurance Article.

14 (b) This subtitle applies only to first–party claims under property and casualty
15 insurance policies **OR DISABILITY INSURANCE POLICIES** issued, sold, or delivered in the
16 State.

17 (c) (1) Except as provided in paragraph (2) of this subsection, a party may not
18 file an action under this subtitle before the date of a final decision under § 27–1001 of the
19 Insurance Article.

20 (2) Paragraph (1) of this subsection does not apply to an action:

21 (i) Within the small claim jurisdiction of the District Court under §
22 4–405 of this article;

23 (ii) If the insured and the insurer agree to waive the requirement
24 under paragraph (1) of this subsection; or

25 (iii) Under a commercial insurance policy on a claim with respect to
26 which the applicable limit of liability exceeds \$1,000,000.

27 (d) This section applies only in a civil action:

28 (1) (i) To determine the coverage that exists under the insurer’s
29 insurance policy; or

30 (ii) To determine the extent to which the insured is entitled to
31 receive payment from the insurer for a covered loss;

1 (2) That alleges that the insurer failed to act in good faith; and

2 (3) That seeks, in addition to the actual damages under the policy, to
3 recover expenses and litigation costs, and interest on those expenses or costs, under
4 subsection (e) of this section.

5 (e) Notwithstanding any other provision of law, if the trier of fact in an action
6 under this section finds in favor of the insured and finds that the insurer failed to act in
7 good faith, the insured may recover from the insurer:

8 (1) Actual damages, which actual damages may not exceed the limits of the
9 applicable policy;

10 (2) Expenses and litigation costs incurred by the insured in an action under
11 this section or under § 27–1001 of the Insurance Article or both, including reasonable
12 attorney’s fees; and

13 (3) Interest on all actual damages, expenses, and litigation costs incurred
14 by the insured, computed:

15 (i) At the rate allowed under § 11–107(a) of this article; and

16 (ii) From the date on which the insured’s claim would have been paid
17 if the insurer acted in good faith.

18 (f) An insurer may not be found to have failed to act in good faith under this
19 section solely on the basis of delay in determining coverage or the extent of payment to
20 which the insured is entitled if the insurer acted within the time period specified by statute
21 or regulation for investigation of a claim by an insurer.

22 (g) The amount of attorney’s fees recovered from an insurer under subsection (e)
23 of this section may not exceed one–third of the actual damages recovered.

24 (h) The clerk of the court shall file a copy of the verdict or any other final
25 disposition of an action under this section with the Maryland Insurance Administration.

26 (i) This section does not limit the right of any person to maintain a civil action
27 for damages or other remedies otherwise available under any other provision of law.

28 (j) If a party to the proceeding elects to have the case tried by a jury in accordance
29 with the Maryland Rules, the case shall be tried by a jury.

30 **Article – Insurance**

31 27–1001.

1 (a) In this section, “good faith” means an informed judgment based on honesty
2 and diligence supported by evidence the insurer knew or should have known at the time
3 the insurer made a decision on a claim.

4 (b) This section applies only to actions under § 3–1701 of the Courts Article.

5 (c) (1) Except as provided in paragraph (2) of this subsection, a person may
6 not bring or pursue an action under § 3–1701 of the Courts Article in a court unless the
7 person complies with this section.

8 (2) Paragraph (1) of this subsection does not apply to an action:

9 (i) within the small claim jurisdiction of the District Court under §
10 4–405 of the Courts Article;

11 (ii) if the insured and the insurer agree to waive the requirement
12 under paragraph (1) of this subsection; or

13 (iii) under a commercial insurance policy on a claim with respect to
14 which the applicable limit of liability exceeds \$1,000,000.

15 (d) (1) A complaint stating a cause of action under § 3–1701 of the Courts
16 Article shall first be filed with the Administration.

17 (2) The complaint shall:

18 (i) be accompanied by each document that the insured has
19 submitted to the insurer for proof of loss;

20 (ii) specify the applicable insurance coverage and the amount of the
21 claim under the applicable coverage; and

22 (iii) state the amount of actual damages, and the claim for expenses
23 and litigation costs described under subsection (e)(2) of this section.

24 (3) The Administration shall forward the filing to the insurer.

25 (4) Within 30 days after the date the filing is forwarded to the insurer by
26 the Administration, the insurer shall:

27 (i) file with the Administration, except for good cause shown, a
28 written response together with a copy of each document from the insurer’s claim file that
29 enables reconstruction of the insurer’s activities relative to the insured’s claim, including
30 documentation of each pertinent communication, transaction, note, work paper, claim form,
31 bill, and explanation of benefits form relative to the claim; and

1 (ii) mail to the insured a copy of the response and, except for good
2 cause shown, each document from the insurer's claim file that enables reconstruction of the
3 insurer's activities relative to the insured's claim, including documentation of each
4 pertinent communication, transaction, note, work paper, claim form, bill, and explanation
5 of benefits form relative to the claim.

6 (e) (1) (i) Within 90 days after the date the filing was received by the
7 Administration, the Administration shall issue a decision that determines:

8 1. whether the insurer is obligated under the applicable
9 policy to cover the underlying first-party claim;

10 2. the amount the insured was entitled to receive from the
11 insurer under the applicable policy on the underlying covered first-party claim;

12 3. whether the insurer breached its obligation under the
13 applicable policy to cover and pay the underlying covered first-party claim, as determined
14 by the Administration;

15 4. whether an insurer that breached its obligation failed to
16 act in good faith; and

17 5. the amount of damages, expenses, litigation costs, and
18 interest, as applicable and as authorized under paragraph (2) of this subsection.

19 (ii) The failure of the Administration to issue a decision within the
20 time specified in subparagraph (i) of this paragraph shall be considered a determination
21 that the insurer did not breach any obligation to the insured.

22 (2) With respect to the determination of damages under paragraph (1)(i)
23 of this subsection:

24 (i) if the Administration finds that the insurer breached an
25 obligation to the insured, the Administration shall determine the obligation of the insurer
26 to pay:

27 1. actual damages, which actual damages may not exceed the
28 limits of any applicable policy; and

29 2. interest on all actual damages incurred by the insured
30 computed:

31 A. at the rate allowed under § 11-107(a) of the Courts Article;
32 and

33 B. from the date on which the insured's claim should have
34 been paid; and

1 (ii) if the Administration also finds that the insurer failed to act in
2 good faith, the Administration shall also determine the obligation of the insurer to pay:

3 1. expenses and litigation costs incurred by the insured,
4 including reasonable attorney's fees, in pursuing recovery under this subtitle; and

5 2. interest on all expenses and litigation costs incurred by
6 the insured computed:

7 A. at the rate allowed under § 11-107(a) of the Courts Article;
8 and

9 B. from the applicable date or dates on which the insured's
10 expenses and costs were incurred.

11 (3) An insurer may not be found to have failed to act in good faith under
12 this section solely on the basis of delay in determining coverage or the extent of payment
13 to which the insured is entitled if the insurer acted within the time period specified by
14 statute or regulation for investigation of a claim by an insurer.

15 (4) The amount of the attorney's fees determined to be payable to an
16 insured under paragraph (2) of this subsection may not exceed one-third of the actual
17 damages payable to the insured.

18 (5) The Administration shall serve a copy of the decision on the insured
19 and the insurer in accordance with § 2-204(c) of this article.

20 (f) (1) If a party receives an adverse decision, the party shall have 30 days
21 after the date of service of the Administration's decision to request a hearing.

22 (2) All hearings requested under this section shall:

23 (i) be referred by the Commissioner to the Office of Administrative
24 Hearings for a final decision under Title 10, Subtitle 2 of the State Government Article;

25 (ii) be heard de novo;

26 (iii) result in a final decision that makes the determinations set forth
27 in subsection (e) of this section.

28 (3) If no administrative hearing is requested in accordance with paragraph
29 (1) of this subsection, the decision issued by the Administration shall become a final
30 decision.

31 (g) (1) If a party receives an adverse decision, the party may appeal a final
32 decision by the Administration or an administrative law judge under this section to a circuit

1 court in accordance with § 2–215 of this article and Title 10, Subtitle 2 of the State
2 Government Article.

3 (2) (i) This paragraph applies only if more than one party receives an
4 adverse decision from the Administration.

5 (ii) If a party requests a hearing before the Office of Administrative
6 Hearings and another party files an appeal to a circuit court:

7 1. jurisdiction over the request for hearing is transferred to
8 the circuit court;

9 2. the request for hearing, the Administration's decision, and
10 the Administration's case file, including the complaint, response, and all documents
11 submitted to the Administration, shall be transmitted promptly to the circuit court; and

12 3. the request for hearing shall be docketed in the circuit
13 court and consolidated for trial with the appeal.

14 (3) Notwithstanding any other provision of law, an appeal to a circuit court
15 under this section shall be heard de novo.

16 (h) On or before January 1 of each year beginning in 2009, in accordance with §
17 2–1246 of the State Government Article, the Administration shall report to the General
18 Assembly on the following for the prior fiscal year:

19 (1) the number and types of complaints under this section or § 3–1701 of
20 the Courts Article from insureds regarding first-party insurance claims under property
21 and casualty insurance policies;

22 **(2) THE NUMBER AND TYPES OF COMPLAINTS UNDER THIS SECTION**
23 **OR § 3–1701 OF THE COURTS ARTICLE FROM INSUREDS REGARDING FIRST-PARTY**
24 **INSURANCE CLAIMS UNDER DISABILITY INSURANCE POLICIES;**

25 **[(2)] (3)** the administrative and judicial dispositions of the complaints
26 described in **[item (1)] ITEMS (1) AND (2)** of this subsection;

27 **[(3)] (4)** the number and types of regulatory enforcement actions
28 instituted by the Administration for unfair claim settlement practices under § 27–303(9) or
29 § 27–304(18) of this title; and

30 **[(4)] (5)** the administrative and judicial dispositions of the regulatory
31 enforcement actions for unfair claim settlement practices described under item **[(3)] (4)** of
32 this subsection.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
2 apply only prospectively and may not be applied or interpreted to have any effect on or
3 application to any first-party claim based on an act or omission that occurs before the
4 effective date of this Act.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2016.