HOUSE BILL 990

D3, C4 6lr2884 CF 6lr3280

By: Delegate Morhaim

Introduced and read first time: February 10, 2016

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 16, 2016

CHAPTER

1 AN ACT concerning

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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 <u>individual</u> disability insurance policies; <u>defining</u> 9 a certain term; providing for the application of this Act; and generally relating to 10 liability of disability insurers for failure to act in good faith in settling first-party 11 claims.
- 12 BY repealing and reenacting, with amendments,
- 13 Article Courts and Judicial Proceedings
- 14 Section 3–1701
- 15 Annotated Code of Maryland
- 16 (2013 Replacement Volume and 2015 Supplement)
- 17 BY repealing and reenacting, with amendments,
- 18 Article Insurance
- 19 Section 27–1001
- 20 Annotated Code of Maryland
- 21 (2011 Replacement Volume and 2015 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

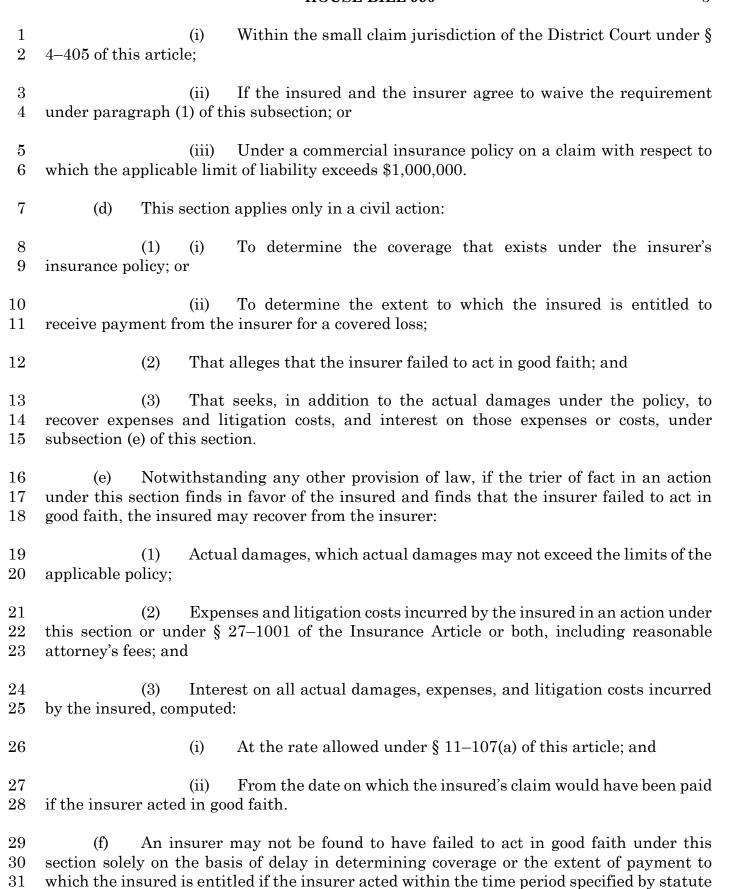
<u>Underlining</u> indicates amendments to bill.

Strike out indicates matter stricken from the bill by amendment or deleted from the law by amendment.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, 2 That the Laws of Maryland read as follows:

3 Article - Courts and Judicial Proceedings

- 4 3–1701.
- 5 (a) (1) In this subtitle the following words have the meanings indicated.
- 6 (2) "Casualty insurance" has the meaning stated in § 1–101 of the 7 Insurance Article.
- 8 (3) "Commercial insurance" has the meaning stated in § 27–601 of the 9 Insurance Article.
- 10 (4) (I) "DISABILITY INSURANCE" HAS THE MEANING STATED IN §
 11 1—101-OF THE INSURANCE ARTICLE MEANS INSURANCE THAT PROVIDES FOR LOST
 12 INCOME, REVENUE, OR PROCEEDS IN THE EVENT THAT AN ILLNESS, ACCIDENT, OR
- 13 INJURY RESULTS IN A DISABILITY THAT IMPAIRS AN INSURED'S ABILITY TO WORK
- 14 OR OTHERWISE GENERATE INCOME, REVENUE, OR PROCEEDS THAT THE INSURANCE
- 15 IS INTENDED TO REPLACE.
- 16 <u>(II) "DISABILITY INSURANCE" DOES NOT INCLUDE PAYMENT</u> 17 FOR MEDICAL EXPENSES, DISMEMBERMENT, OR ACCIDENTAL DEATH.
- [(4)] (5) "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)] (6) "Insurer" has the meaning stated in § 1–101 of the Insurance 22 Article.
- [(6)] (7) "Property insurance" has the meaning stated in § 1–101 of the Insurance Article.
- 25 (b) This subtitle applies only to first–party claims under property and casualty 26 insurance policies **OR** <u>INDIVIDUAL</u> **DISABILITY INSURANCE POLICIES** issued, sold, or 27 delivered in the State.
- 28 (c) (1) Except as provided in paragraph (2) of this subsection, a party may not 29 file an action under this subtitle before the date of a final decision under § 27–1001 of the 30 Insurance Article.
- 31 (2) Paragraph (1) of this subsection does not apply to an action:



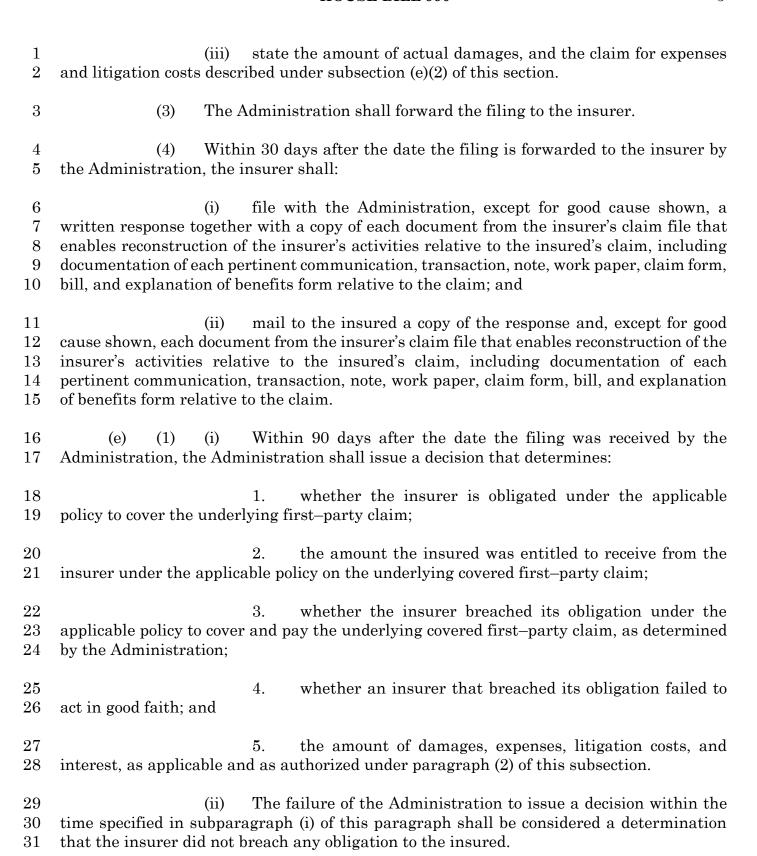
or regulation for investigation of a claim by an insurer.

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- 1 (g) The amount of attorney's fees recovered from an insurer under subsection (e) 2 of this section may not exceed one—third of the actual damages recovered.
- 3 (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.
- 5 (i) This section does not limit the right of any person to maintain a civil action 6 for damages or other remedies otherwise available under any other provision of law.
- 7 (j) If a party to the proceeding elects to have the case tried by a jury in accordance 8 with the Maryland Rules, the case shall be tried by a jury.

9 Article – Insurance

- 10 27–1001.
- 11 (a) In this section, "good faith" means an informed judgment based on honesty 12 and diligence supported by evidence the insurer knew or should have known at the time 13 the insurer made a decision on a claim.
- 14 (b) This section applies only to actions under § 3–1701 of the Courts Article.
- 15 (c) (1) Except as provided in paragraph (2) of this subsection, a person may 16 not bring or pursue an action under § 3–1701 of the Courts Article in a court unless the 17 person complies with this section.
- 18 (2) Paragraph (1) of this subsection does not apply to an action:
- 19 (i) within the small claim jurisdiction of the District Court under § 20 4–405 of the Courts Article;
- 21 (ii) if the insured and the insurer agree to waive the requirement 22 under paragraph (1) of this subsection; or
- 23 (iii) under a commercial insurance policy on a claim with respect to which the applicable limit of liability exceeds \$1,000,000.
- 25 (d) (1) A complaint stating a cause of action under § 3–1701 of the Courts 26 Article shall first be filed with the Administration.
- 27 (2) The complaint shall:
- 28 (i) be accompanied by each document that the insured has 29 submitted to the insurer for proof of loss;
- 30 (ii) specify the applicable insurance coverage and the amount of the 31 claim under the applicable coverage; and



32 (2) With respect to the determination of damages under paragraph (1)(i)5 33 of this subsection:

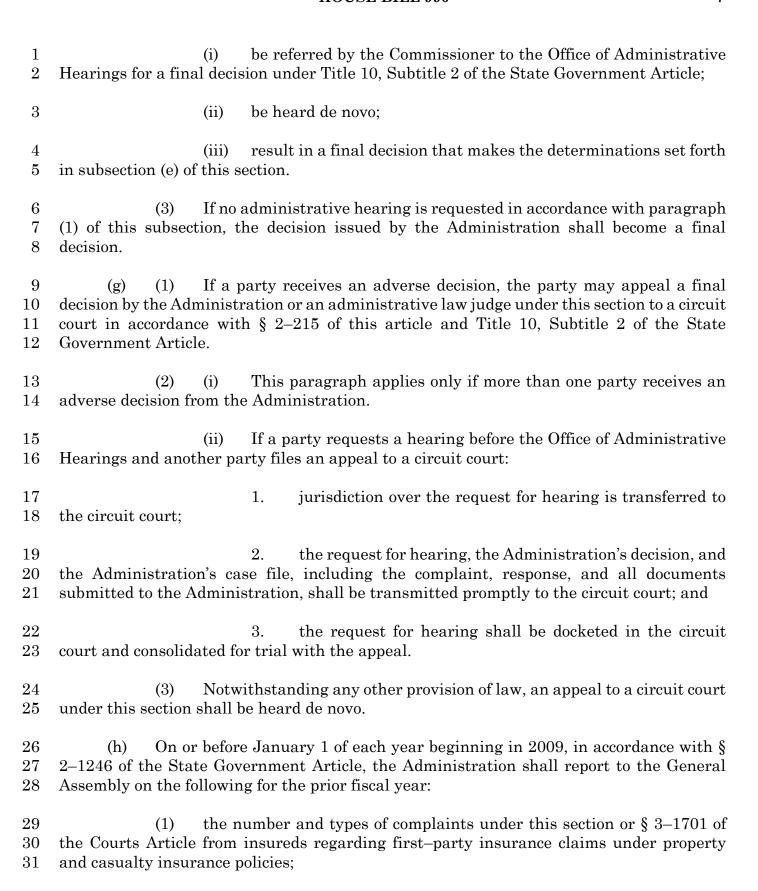
- 6 **HOUSE BILL 990** 1 if the Administration finds that the insurer breached an 2 obligation to the insured, the Administration shall determine the obligation of the insurer 3 to pay: 4 1. actual damages, which actual damages may not exceed the 5 limits of any applicable policy; and 6 2. interest on all actual damages incurred by the insured 7 computed: 8 Α. at the rate allowed under § 11–107(a) of the Courts Article; 9 and 10 В. from the date on which the insured's claim should have 11 been paid; and 12 (ii) if the Administration also finds that the insurer failed to act in 13 good faith, the Administration shall also determine the obligation of the insurer to pay: 14 expenses and litigation costs incurred by the insured, including reasonable attorney's fees, in pursuing recovery under this subtitle; and 15 16 2.interest on all expenses and litigation costs incurred by 17 the insured computed: 18 A. at the rate allowed under § 11–107(a) of the Courts Article; 19 and 20 B. from the applicable date or dates on which the insured's 21expenses and costs were incurred. 22An insurer may not be found to have failed to act in good faith under 23this section solely on the basis of delay in determining coverage or the extent of payment 24to which the insured is entitled if the insurer acted within the time period specified by
- 26 (4) The amount of the attorney's fees determined to be payable to an 27 insured under paragraph (2) of this subsection may not exceed one—third of the actual 28 damages payable to the insured.

statute or regulation for investigation of a claim by an insurer.

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- 29 (5) The Administration shall serve a copy of the decision on the insured 30 and the insurer in accordance with § 2–204(c) of this article.
- 31 (f) (1) If a party receives an adverse decision, the party shall have 30 days 32 after the date of service of the Administration's decision to request a hearing.
 - (2) All hearings requested under this section shall:



1 2 3	(2) THE NUMBER AND TYPES OF COMPLAINTS UNDER THIS SECTION OR § 3–1701 OF THE COURTS ARTICLE FROM INSUREDS REGARDING FIRST-PARTY INSURANCE CLAIMS UNDER INDIVIDUAL DISABILITY INSURANCE POLICIES;
4 5	[(2)] (3) the administrative and judicial dispositions of the complaints described in [item (1)] ITEMS (1) AND (2) of this subsection;
6 7 8	[(3)] (4) the number and types of regulatory enforcement actions instituted by the Administration for unfair claim settlement practices under $\S 27-303(9)$ or $\S 27-304(18)$ of this title; and
9 10 11	[(4)] (5) the administrative and judicial dispositions of the regulatory enforcement actions for unfair claim settlement practices described under item [(3)] (4) or this subsection.
12 13 14 15	SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any first–party claim based on an act or omission that occurs before the effective date of this Act.
16 17	SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2016.
	Approved:
	Governor.
	Speaker of the House of Delegates.
	President of the Senate.