

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 990
Judiciary

(Delegate Morhaim)

Judicial Proceedings and Finance

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

This bill adds disability insurers to statutory provisions under § 3-1701 of the Courts and Judicial Proceedings Article authorizing the recovery of actual damages, expenses, litigation costs, and interest in first-party claims against insurers if the insurer failed to act in good faith under certain circumstances. The bill applies to first-party claims made under individual “disability insurance” policies. The bill amends the corresponding reporting requirement by requiring the Maryland Insurance Administration (MIA) to include in its annual report the number and types of complaints to MIA and under § 3-1701 from insureds regarding first-party insurance claims under individual disability insurance policies and specified administrative and judicial dispositions of these complaints or actions.

The bill applies prospectively to a first-party claim based on an act or omission that occurs on or after the bill’s October 1, 2016 effective date.

Fiscal Summary

State Effect: The bill’s requirements can be handled with existing budgeted resources, as discussed below.

Local Effect: The bill’s requirements can be handled with existing budgeted resources.

Small Business Effect: Potential meaningful impact on small business law firms that litigate these claims.

Analysis

Bill Summary: The bill defines “disability insurance” as insurance that provides for lost income, revenue, or proceeds in the event that an illness, accident, or injury results in a disability that impairs an insured’s ability to work or otherwise generate income, revenue, or proceeds that the insurance is intended to replace. “Disability insurance” does not include payment for medical expenses, dismemberment, or accidental death.

Current Law/Background: Disability insurance is the industry name for an optional type of insurance that provides benefits in the event that an injured person is unable to work or otherwise obtain income. Generally, the insurance is designed to replace 45% to 65% of an injured person’s gross income.

With respect to first-party property and casualty claims, 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, plus interest. Actual damages recovered may not exceed the limits of the applicable 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.

This provision applies in a civil action (1) 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; (2) that alleges the insurer failed to act in good faith; and (3) that seeks to recover expenses and litigation costs in addition to actual damages under the policy. 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.

A jury trial is available at the election of any party, and the statute 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 complaint under § 27-1001 of the Insurance Article regarding the insurer’s actions if expenses and litigation costs are sought. However, a case may be filed before this date if the case is within the small claims jurisdiction of the District Court, the parties agree to waive this timing requirement, or the claim is under a commercial insurance policy exceeding \$1 million.

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

The Insurance Article specifies a variety of activities that constitute an unfair claim settlement practice if performed by an insurer, nonprofit health service plan, or health maintenance organization, including failing to act in good faith, as defined under § 27-1001 of the Insurance Article, in settling a first-party claim under a policy of property and casualty insurance.

The Insurance Article also specifies a variety of activities that, when committed frequently enough to indicate a general business practice, constitute an unfair claim settlement practice, including failing to act in good faith, as defined under § 27-1001 of the Insurance Article, in settling a first-party claim under a policy of property and casualty insurance. The Maryland Insurance Commissioner is authorized to impose penalties for unfair claim settlement practices.

State Fiscal Effect: MIA advises that the bill does not have a fiscal or operational impact on the administration. The Office of Administrative Hearings (OAH) is authorized to conduct first-party bad faith hearings from a party who receives an adverse decision from MIA in a casualty insurance or commercial insurance matter. OAH does not believe that the bill results in a significant increase in the number of hearings delegated to OAH by MIA in a fiscal year and, as such, can handle the bill's requirements with existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, Maryland Insurance Administration, Chesapeake Employer's Insurance Company, Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2016
mel/kdm Revised - House Third Reader - March 23, 2016

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510