

# SENATE BILL 801

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By: **Senator Reilly**

Introduced and read first time: February 3, 2020

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Civil Action – Surety Insurance – Failure to Act in Good Faith**

3 FOR the purpose of authorizing the recovery of actual damages, expenses, litigation costs,  
4 and interest in obligee claims against surety insurance providers under certain  
5 circumstances; applying certain provisions of law on unfair claim settlement  
6 practices to surety insurance; requiring an obligee to comply with certain procedures  
7 before the obligee brings a certain claim against a surety insurance provider;  
8 requiring the Maryland Insurance Administrator to include certain information in a  
9 report that the Administrator provides annually to the General Assembly; making  
10 conforming changes; defining certain terms; providing for the application of this Act;  
11 and generally relating to proceedings concerning surety insurers who fail to act in  
12 good faith in settling obligees' claims under certain circumstances.

13 BY repealing and reenacting, with amendments,  
14 Article – Courts and Judicial Proceedings  
15 Section 3–1701  
16 Annotated Code of Maryland  
17 (2013 Replacement Volume and 2019 Supplement)

18 BY repealing and reenacting, without amendments,  
19 Article – Insurance  
20 Section 1–101(a) and (oo)  
21 Annotated Code of Maryland  
22 (2017 Replacement Volume and 2019 Supplement)

23 BY repealing and reenacting, with amendments,  
24 Article – Insurance  
25 Section 27–302 through 27–304 and 27–1001  
26 Annotated Code of Maryland  
27 (2017 Replacement Volume and 2019 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 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” means insurance that provides for lost  
11 income, revenue, or proceeds in the event that an illness, accident, or injury results in a  
12 disability that impairs an insured’s ability to work or otherwise generate income, revenue,  
13 or proceeds that the insurance is intended to replace.

14 (ii) “Disability insurance” does not include payment for medical  
15 expenses, dismemberment, or accidental death.

16 (5) “Good faith” means an informed judgment based on honesty and  
17 diligence supported by evidence the insurer knew or should have known at the time the  
18 insurer made a decision on a claim.

19 (6) “Insurer” has the meaning stated in § 1–101 of the Insurance Article.

20 (7) **“OBLIGEE” MEANS A PERSON WHO IS THE RECIPIENT OF AN**  
21 **OBLIGATION UNDER A SURETY INSURANCE POLICY.**

22 (8) “Property insurance” has the meaning stated in § 1–101 of the  
23 Insurance Article.

24 (9) **“SURETY INSURANCE” HAS THE MEANING STATED IN § 1–101 OF**  
25 **THE INSURANCE ARTICLE.**

26 (b) This subtitle applies only to [first–party]:

27 (1) **FIRST–PARTY** claims under property and casualty insurance policies  
28 or individual disability insurance policies issued, sold, or delivered in the State; **AND**

29 (2) **OBLIGEE CLAIMS UNDER SURETY INSURANCE POLICIES ISSUED,**  
30 **SOLD, OR DELIVERED IN THE STATE.**

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

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

5 (i) Within the small claim jurisdiction of the District Court under §  
6 4–405 of this article;

7 (ii) If the insured, **OR OBLIGEE**, and the insurer agree to waive the  
8 requirement under paragraph (1) of this subsection; or

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

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

12 (1) (i) To determine the coverage that exists under the insurer's  
13 insurance policy, **OR SURETY POLICY**; or

14 (ii) To determine the extent to which the insured, **OR OBLIGEE**, is  
15 entitled to receive payment from the insurer for a covered loss;

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

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

20 (e) Notwithstanding any other provision of law, if the trier of fact in an action  
21 under this section finds in favor of the insured, **OR OBLIGEE**, and finds that the insurer  
22 failed to act in good faith, the insured, **OR OBLIGEE**, may recover from the insurer:

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

25 (2) Expenses and litigation costs incurred by the insured, **OR OBLIGEE**, in  
26 an action under this section or under § 27–1001 of the Insurance Article or both, including  
27 reasonable attorney's fees; and

28 (3) Interest on all actual damages, expenses, and litigation costs incurred  
29 by the insured, **OR OBLIGEE**, computed:

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

31 (ii) From the date on which the insured's, **OR OBLIGEE'S**, claim

1 would have been paid if the insurer acted in good faith.

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

6 (g) The amount of attorney's fees recovered from an insurer under subsection (e)  
7 of this section may not exceed one-third of the actual damages recovered.

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

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

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

#### 14 **Article – Insurance**

15 1–101.

16 (a) In this article the following words have the meanings indicated.

17 (oo) “Surety insurance” includes:

18 (1) fidelity insurance, which is insurance that guarantees the fidelity of  
19 persons that hold positions of public or private trust;

20 (2) insurance that guarantees the performance of contracts other than  
21 insurance contracts;

22 (3) insurance that guarantees the execution of bonds, undertakings, and  
23 contracts of suretyship; and

24 (4) insurance that indemnifies banks, bankers, brokers, or financial  
25 corporations or associations against loss from any cause of bills of exchange, notes, bonds,  
26 securities, evidences of debt, deeds, mortgages, warehouse receipts, other valuable papers,  
27 documents, money, precious metals, articles made from precious metals, jewelry, watches,  
28 necklaces, bracelets, gems, and precious and semi-precious stones, including loss during  
29 transportation by messenger or in armored motor vehicles, but not against other risks of  
30 transportation or navigation, and insurance against loss or damage to a bank's, banker's,  
31 broker's, or financial corporation's or association's premises or furniture, fixtures,  
32 equipment, safes, and vaults on the premises caused by burglary, robbery, theft, vandalism,  
33 or malicious mischief, or attempted burglary, robbery, theft, vandalism, or malicious  
34 mischief.

1 27–302.

2 (a) This subtitle applies to each individual or group policy, contract, or certificate  
3 of an insurer, nonprofit health service plan, or health maintenance organization that:

4 (1) is delivered or issued in the State;

5 (2) is issued to a group that has a main office in the State; or

6 (3) covers individuals who reside or work in the State.

7 (b) This subtitle does not apply to:

8 (1) reinsurance; **OR**

9 (2) workers' compensation insurance]; or

10 (3) surety insurance].

11 27–303.

12 It is an unfair claim settlement practice and a violation of this subtitle for an insurer,  
13 nonprofit health service plan, or health maintenance organization to:

14 (1) misrepresent pertinent facts or policy provisions that relate to the claim  
15 or coverage at issue;

16 (2) refuse to pay a claim for an arbitrary or capricious reason based on all  
17 available information;

18 (3) attempt to settle a claim based on an application that is altered without  
19 notice to, or the knowledge or consent of, the insured;

20 (4) fail to include with each claim paid to an insured [or], beneficiary, **OR**  
21 **OBLIGEE** a statement of the coverage under which payment is being made;

22 (5) fail to settle a claim promptly whenever liability is reasonably clear  
23 under one part of a policy, in order to influence settlements under other parts of the policy;

24 (6) fail to provide promptly on request a reasonable explanation of the basis  
25 for a denial of a claim;

26 (7) fail to meet the requirements of Title 15, Subtitle 10B of this article for  
27 preauthorization for a health care service;

28 (8) fail to comply with the provisions of Title 15, Subtitle 10A of this article;

1 (9) fail to act in good faith, as defined under § 27–1001 of this title, in  
2 settling:

3 (I) a first–party claim under a policy of property and casualty  
4 insurance; **OR**

5 (II) **AN OBLIGEE CLAIM UNDER A POLICY OF SURETY**  
6 **INSURANCE**; or

7 (10) fail to comply with the provisions of § 16–118 of this article.  
8 27–304.

9 It is an unfair claim settlement practice and a violation of this subtitle for an insurer,  
10 nonprofit health service plan, or health maintenance organization, when committed with  
11 the frequency to indicate a general business practice, to:

12 (1) misrepresent pertinent facts or policy provisions that relate to the claim  
13 or coverage at issue;

14 (2) fail to acknowledge and act with reasonable promptness on  
15 communications about claims that arise under policies;

16 (3) fail to adopt and implement reasonable standards for the prompt  
17 investigation of claims that arise under policies;

18 (4) refuse to pay a claim, **OR TO PERFORM UNDER A SURETY**  
19 **INSURANCE POLICY**, without conducting a reasonable investigation based on all available  
20 information;

21 (5) fail to affirm or deny coverage of claims within a reasonable time after  
22 proof of loss statements have been completed;

23 (6) fail to make a prompt, fair, and equitable good faith attempt, to settle  
24 claims for which liability has become reasonably clear;

25 (7) compel insureds, **OR OBLIGEES**, to institute litigation to recover  
26 amounts due under policies by offering substantially less than the amounts ultimately  
27 recovered in actions brought by the insureds;

28 (8) attempt to settle a claim for less than the amount to which a reasonable  
29 person would expect to be entitled after studying written or printed advertising material  
30 accompanying, or made part of, an application;

31 (9) attempt to settle a claim based on an application that is altered without

1 notice to, or the knowledge or consent of, the insured, **OR OBLIGEE**;

2 (10) fail to include with each claim paid to an insured [or], beneficiary, **OR**  
3 **OBLIGEE** a statement of the coverage under which the payment is being made;

4 (11) make known to insureds or claimants a policy of appealing from  
5 arbitration awards in order to compel insureds or claimants to accept a settlement or  
6 compromise less than the amount awarded in arbitration;

7 (12) delay an investigation or payment of a claim by requiring a claimant or  
8 a claimant's licensed health care provider to submit a preliminary claim report and  
9 subsequently to submit formal proof of loss forms that contain substantially the same  
10 information;

11 (13) fail to settle a claim promptly whenever liability is reasonably clear  
12 under one part of a policy, in order to influence settlements under other parts of the policy;

13 (14) fail to provide promptly a reasonable explanation of the basis for denial  
14 of a claim or the offer of a compromise settlement;

15 (15) refuse to pay a claim for an arbitrary or capricious reason based on all  
16 available information;

17 (16) fail to meet the requirements of Title 15, Subtitle 10B of this article for  
18 preauthorization for a health care service;

19 (17) fail to comply with the provisions of Title 15, Subtitle 10A of this article;  
20 or

21 (18) fail to act in good faith, as defined under § 27–1001 of this title, in  
22 settling:

23 (I) a first-party claim under a policy of property and casualty  
24 insurance; **OR**

25 (II) **AN OBLIGEE CLAIM UNDER A POLICY OF SURETY**  
26 **INSURANCE.**

27 27–1001.

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

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

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

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

5 (i) within the small claim jurisdiction of the District Court under §  
6 4–405 of the Courts Article;

7 (ii) if the insured, **OR OBLIGEE**, and the insurer agree to waive the  
8 requirement under paragraph (1) of this subsection; or

9 (iii) under a commercial insurance policy, **OR SURETY INSURANCE**  
10 **POLICY**, on a claim with respect to which the applicable limit of liability exceeds  
11 \$1,000,000.

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

14 (2) The complaint shall:

15 (i) be accompanied by each document that the insured, **OR**  
16 **OBLIGEE**, has submitted to the insurer for proof of loss;

17 (ii) specify the applicable insurance coverage and the amount of the  
18 claim under the applicable coverage; and

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

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

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

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

29 (ii) mail to the insured, **OR OBLIGEE**, a copy of the response and,  
30 except for good cause shown, each document from the insurer's claim file that enables  
31 reconstruction of the insurer's activities relative to the insured's, **OR OBLIGEE'S**, claim,  
32 including documentation of each pertinent communication, transaction, note, work paper,  
33 claim form, bill, and explanation of benefits form relative to the claim.



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

3 1. whether the insurer is obligated under the applicable  
4 policy to cover the underlying first-party claim, **OR THE UNDERLYING CLAIM OF THE**  
5 **OBLIGEE;**

6 2. the amount the insured, **OR OBLIGEE**, was entitled to  
7 receive from the insurer under the applicable policy on the underlying covered first-party  
8 claim, **OR THE UNDERLYING COVERED CLAIM OF THE OBLIGEE;**

9 3. whether the insurer breached its obligation under the  
10 applicable policy to cover and pay the underlying covered first-party claim, **OR THE**  
11 **UNDERLYING COVERED CLAIM OF THE OBLIGEE**, as determined by the Administration;

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

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

16 (ii) The failure of the Administration to issue a decision within the  
17 time specified in subparagraph (i) of this paragraph shall be considered a determination  
18 that the insurer did not breach any obligation to the insured, **OR OBLIGEE**.

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

21 (i) if the Administration finds that the insurer breached an  
22 obligation to the insured, the Administration shall determine the obligation of the insurer  
23 to pay:

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

26 2. interest on all actual damages incurred by the insured, **OR**  
27 **OBLIGEE**, computed:

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

30 B. from the date on which the insured's, **OR OBLIGEE'S**,  
31 claim should have been paid; and

32 (ii) if the Administration also finds that the insurer failed to act in

1 good faith, the Administration shall also determine the obligation of the insurer to pay:

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

5 2. interest on all expenses and litigation costs incurred by  
6 the insured, **OR OBLIGEE**, 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, **OR OBLIGEE**, is entitled if the insurer acted within the time period  
14 specified by 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, **OR OBLIGEE**, under paragraph (2) of this subsection may not exceed one-third of  
17 the actual damages payable to the insured, **OR OBLIGEE**.

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 2–1257 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:

21 (I) insureds regarding first–party insurance claims under property  
22 and casualty insurance policies; AND

23 (II) **OBLIGEES REGARDING CLAIMS UNDER SURETY INSURANCE**  
24 **POLICIES;**

25 (2) the number and types of complaints under this section or § 3–1701 of  
26 the Courts Article from insureds regarding first–party insurance claims under individual  
27 disability insurance policies;

28 (3) the administrative and judicial dispositions of the complaints described  
29 in items (1) and (2) of this subsection;

30 (4) the number and types of regulatory enforcement actions instituted by  
31 the Administration for unfair claim settlement practices under § 27–303(9) or § 27–304(18)  
32 of this title; and

1                   (5) the administrative and judicial dispositions of the regulatory  
2 enforcement actions for unfair claim settlement practices described under item (4) of this  
3 subsection.

4           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to  
5 apply only prospectively and may not be applied or interpreted to have any effect on or  
6 application to any claims by an obligee under a surety insurance policy alleged to have  
7 occurred before the effective date of this Act.

8           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
9 October 1, 2020.