

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 372 (Senator Reilly)
 Finance

Civil Action - Surety Insurance - Failure to Act in Good Faith

This bill adds obligee claims under surety insurance policies 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 also expands the application of provisions regarding unfair claim settlement practices to surety insurance and obligee claims. The bill applies prospectively to claims by an obligee under a surety insurance policy alleged to have occurred on or after the bill’s October 1, 2021 effective date.

Fiscal Summary

State Effect: Special fund expenditures for the Maryland Insurance Administration (MIA) increase by \$140,100 in FY 2022. Future year expenditures reflect annualization and ongoing costs. Any effect on court caseloads can be handled with the existing budgeted resources of the Judiciary. No anticipated material effect on revenues.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	140,100	165,300	170,300	176,400	182,600
Net Effect	(\$140,100)	(\$165,300)	(\$170,300)	(\$176,400)	(\$182,600)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill does not materially affect local finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law:

Failure to Act in Good Faith – § 3-1701 of the Courts and Judicial Proceedings Article

Under the bill, an “obligee” is a person who is the recipient of an obligation under a surety insurance policy. The bill expands the application of § 3-1701 to authorize the recovery of actual damages, expenses, litigation costs and interest in obligee claims against surety insurance providers when the policy was issued, sold, or delivered in the State.

Currently, under § 3-1701, with respect to first-party property and casualty claims or individual disability insurance 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 if the insurer acted 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 Annual Report

Currently, MIA is required to report annually to the General Assembly on, among other items, the number and types of complaints filed under § 27-1001 of the Insurance Article and § 3-1701 of the Courts and Judicial Proceedings Article from insureds regarding

first-party insurance claims under property and casualty insurance policies and individual disability insurance policies and the administrative and judicial dispositions of these complaints.

The bill expands this reporting requirement to include complaints from obligees regarding surety insurance policies and their dispositions at the administrative and judicial levels.

Unfair Claims Settlement Practices – Title 27, Subtitle 3 of the Insurance Article

The Insurance Article specifies a variety of activities that constitute an unfair claims settlement practice if performed by an insurer, nonprofit health service plan, or health maintenance organization. They include (1) misrepresenting facts or policy provisions related to the claim or coverage at issue; (2) refusing to pay a claim for an arbitrary or capricious reason based on all available information; (3) attempting to settle a claim based on an application that is altered without notice to, or the knowledge or consent of, the insured; (4) failing to include with each claim paid to an insured or beneficiary a statement of the coverage under which the payment is being made; and (5) failing to act in good faith in settling specified types of claims.

The Insurance Article also grants the Insurance Commissioner the authority to impose a specified penalty against insurers, nonprofit health service plans, or health maintenance organizations that commit unfair claims settlement practices. In addition to such a penalty, the Commissioner may require such an insurer, nonprofit health service plan, or health maintenance organization to make restitution to each claimant who has suffered actual economic damages because of the violation. The bill expands application of unfair claims settlement practices provisions to surety insurance and alters various provisions to apply to obligee claims.

State Expenditures: Special fund expenditures for MIA increase by \$140,137 in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects the cost of hiring one investigator and one hearing officer to address unfair claims settlement practices complaints involving surety insurance. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. MIA advises that these additional personnel are needed to implement the bill given the complexity of surety insurance complaints, the lack of involvement by MIA in these types of complaints currently, and existing MIA workloads.

Positions	2
Salaries and Fringe Benefits	\$128,974
Operating Expenses	<u>11,163</u>
Total FY 2022 State Expenditures	\$140,137

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

Small Business Effect: The bill may have a meaningful effect on small business obligees who experience added protections and recourse under the bill.

Additional Information

Prior Introductions: SB 801 of 2020 received a hearing in the Senate Finance Committee, but no further action was taken.

Designated Cross File: None.

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

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