

SENATE BILL 102

D3
SB 124/18 – JPR

9lr0475

By: **Senator Zirkin**

Introduced and read first time: January 14, 2019

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 13, 2019

CHAPTER _____

1 AN ACT concerning

2 **Courts – Direct Action Against Automobile Insurer**

3 FOR the purpose of requiring ~~a certain~~ an automobile insurance policy issued, sold, or
4 delivered in the State to be construed to make the insurer directly liable, within the
5 terms and limits of the policy, to certain third-party claimants; providing that a
6 third-party claimant has a right of direct action against a certain insurer subject to
7 certain requirements; authorizing a third-party claimant to bring an action against
8 ~~certain parties under certain circumstances~~ an insurer alone if the third-party
9 claimant agrees to cap recovery at applicable policy limits; providing that,
10 notwithstanding certain joint and several liability, a certain insurer is not liable for
11 more than a certain policy limit; establishing that an action brought by a third-party
12 claimant is subject to certain defenses; defining certain terms; making certain
13 technical and conforming changes; altering the applicability of certain provisions of
14 law; providing for the application of this Act; and generally relating to direct actions
15 by third-party claimants against automobile insurers.

16 BY renumbering

17 Article – Courts and Judicial Proceedings

18 Section 3–1701

19 to be Section 3–1702

20 Annotated Code of Maryland

21 (2013 Replacement Volume and 2018 Supplement)

22 BY adding to

23 Article – Courts and Judicial Proceedings

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

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



1 Section 3–1701 and 3–1703
2 Annotated Code of Maryland
3 (2013 Replacement Volume and 2018 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article – Courts and Judicial Proceedings
6 Section 3–1702(a) through (c)
7 Annotated Code of Maryland
8 (2013 Replacement Volume and 2018 Supplement)
9 (As enacted by Section 1 of this Act)

10 BY repealing and reenacting, with amendments,
11 Article – Courts and Judicial Proceedings
12 Section 5–118
13 Annotated Code of Maryland
14 (2013 Replacement Volume and 2018 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article – Insurance
17 Section 27–1001(b), (c)(1), (d)(1), and (h)(1) and (2)
18 Annotated Code of Maryland
19 (2017 Replacement Volume and 2018 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
21 That Section(s) 3–1701 of Article – Courts and Judicial Proceedings of the Annotated Code
22 of Maryland be renumbered to be Section(s) 3–1702.

23 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
24 as follows:

25 **Article – Courts and Judicial Proceedings**

26 **3–1701.**

27 **IN THIS SUBTITLE, “INSURER” HAS THE MEANING STATED IN § 1–101 OF THE**
28 **INSURANCE ARTICLE.**

29 3–1702.

30 (a) (1) In this [subtitle] SECTION the following words have the meanings
31 indicated.

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

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

1 (4) (i) “Disability insurance” means insurance that provides for lost
2 income, revenue, or proceeds in the event that an illness, accident, or injury results in a
3 disability that impairs an insured’s ability to work or otherwise generate income, revenue,
4 or proceeds that the insurance is intended to replace.

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

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

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

13 (b) This [subtitle] SECTION applies only to first–party claims under property and
14 casualty insurance policies or individual disability insurance policies issued, sold, or
15 delivered in the State.

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

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

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

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

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

26 **3–1703.**

27 (A) IN THIS SECTION, “THIRD–PARTY CLAIMANT” MEANS ANY PERSON
28 ASSERTING A CLAIM AGAINST A PERSON INSURED UNDER AN AUTOMOBILE
29 INSURANCE POLICY, ~~A HOMEOWNER’S INSURANCE POLICY, OR A RENTER’S~~
30 ~~INSURANCE POLICY.~~

31 (B) ANY AUTOMOBILE INSURANCE POLICY, ~~HOMEOWNER’S INSURANCE~~
32 ~~POLICY, OR RENTER’S INSURANCE POLICY~~ ISSUED, SOLD, OR DELIVERED IN THE

1 STATE SHALL BE CONSTRUED TO MAKE THE INSURER DIRECTLY LIABLE, WITHIN
2 THE TERMS AND LIMITS OF THE POLICY, TO THIRD-PARTY CLAIMANTS.

3 (C) (1) SUBJECT TO PARAGRAPHS (2) ~~AND (3)~~ THROUGH (4) OF THIS
4 SUBSECTION, A THIRD-PARTY CLAIMANT HAS A RIGHT OF DIRECT ACTION AGAINST
5 THE INSURER THAT ISSUED THE AUTOMOBILE INSURANCE POLICY, ~~HOMEOWNER'S~~
6 ~~INSURANCE POLICY, OR RENTER'S INSURANCE POLICY.~~

7 (2) A THIRD-PARTY CLAIMANT MAY BRING AN ACTION AGAINST:

8 (I) ~~THE~~ THE INSURER ALONE, IF THE THIRD-PARTY CLAIMANT
9 AGREES TO CAP RECOVERY AT APPLICABLE POLICY LIMITS; ~~OR~~

10 (II) ~~THE INSURER AND THE INSURED JOINTLY.~~

11 (3) NOTWITHSTANDING ANY JOINT AND SEVERAL LIABILITY OF AN
12 INSURER, THE INSURER IS NOT LIABLE FOR MORE THAN THE APPLICABLE POLICY
13 LIMIT.

14 (4) AN ACTION BROUGHT BY A THIRD-PARTY CLAIMANT UNDER THIS
15 SUBSECTION IS SUBJECT TO THE SAME DEFENSES THAT COULD BE RAISED BY THE
16 INSURER TO AN ACTION BROUGHT BY THE INSURED.

17 5-118.

18 For the purposes of this subtitle, the filing of a complaint with the Maryland
19 Insurance Administration in accordance with § 27-1001 of the Insurance Article shall be
20 deemed the filing of an action under § [3-1701] **3-1702** of this article.

21 Article - Insurance

22 27-1001.

23 (b) This section applies only to actions under § [3-1701] **3-1702** of the Courts
24 Article.

25 (c) (1) Except as provided in paragraph (2) of this subsection, a person may
26 not bring or pursue an action under § [3-1701] **3-1702** of the Courts Article in a court
27 unless the person complies with this section.

28 (d) (1) A complaint stating a cause of action under § [3-1701] **3-1702** of the
29 Courts Article shall first be filed with the Administration.

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

4 (1) the number and types of complaints under this section or § [3-1701]
5 3-1702 of the Courts Article from insureds regarding first-party insurance claims under
6 property and casualty insurance policies;

7 (2) the number and types of complaints under this section or § [3-1701]
8 3-1702 of the Courts Article from insureds regarding first-party insurance claims under
9 individual disability insurance policies;

10 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to
11 apply only prospectively and may not be applied or interpreted to have any effect on or
12 application to any insurance policy issued or delivered in the State before the effective date
13 of this Act.

14 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2019.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.