

HOUSE BILL 1012

C4, I3

5lr2072

By: **Delegate Rosenberg**

Introduced and read first time: February 13, 2015

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Homeowner's Insurance and Renter's Insurance – Adjustment and Settlement**
3 **Practices**

4 FOR the purpose of requiring insurers that provide homeowner's insurance or renter's
5 insurance in the State to employ adjusters in the State for certain purposes;
6 prohibiting an adjuster who is employed by an insurer from making certain
7 representations under certain circumstances; prohibiting a certain public adjuster
8 whom a certain insurer engages from making certain representations under certain
9 circumstances; prohibiting an insurer from misrepresenting, or allowing certain
10 adjusters to misrepresent, a certain relationship under certain circumstances;
11 providing that a certain violation is an unfair claim settlement practice and subject
12 to certain penalties; providing that a certain violation, when committed with a
13 certain frequency, is subject to certain other penalties; providing for the application
14 of this Act; and generally relating to adjustment and settlement practices under
15 homeowner's insurance and renter's insurance.

16 BY repealing and reenacting, without amendments,
17 Article – Insurance
18 Section 10–401(a) and (d), 10–402, and 27–305
19 Annotated Code of Maryland
20 (2011 Replacement Volume and 2014 Supplement)

21 BY adding to
22 Article – Insurance
23 Section 19–111.1
24 Annotated Code of Maryland
25 (2011 Replacement Volume and 2014 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article – Insurance
28 Section 27–303 and 27–304

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2011 Replacement Volume and 2014 Supplement)

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

5 **Article – Insurance**

6 10–401.

7 (a) In this subtitle the following words have the meanings indicated.

8 (d) (1) “Public adjuster” means a person that:

9 (i) solicits business or represents itself to the public as an adjuster
10 of first party insurance claims for losses or damages arising under insurance contracts that
11 insure the real or personal property, or both, of an insured;

12 (ii) receives compensation for investigating, appraising, evaluating,
13 or otherwise giving advice or help to an insured in the adjustment of claims for losses or
14 damages arising under insurance contracts that insure the real or personal property, or
15 both, of an insured; or

16 (iii) for compensation, directly or indirectly, solicits business,
17 investigates or adjusts losses, or advises an insured about insurance claims for losses or
18 damages arising under insurance contracts that insure the real or personal property, or
19 both, of an insured for another person engaged in the business of adjusting losses or
20 damages arising under insurance contracts that insure the real or personal property, or
21 both, of an insured.

22 (2) “Public adjuster” does not include a person that investigates, adjusts,
23 or appraises claims for loss or damage covered by a motor vehicle insurance policy.

24 10–402.

25 This subtitle does not apply to:

26 (1) an adjuster for or an insurance producer or employee of an insurer or
27 group of insurers under common control or ownership that, as representative of the insurer
28 or group, adjusts losses or damages under policies issued by the insurer or group;

29 (2) an insurance producer that acts as an adjuster without compensation
30 for an insured for whom the insurance producer is acting as an insurance producer; or

31 (3) an attorney at law who does not:

32 (i) regularly act as a public adjuster; and

1 (ii) represent to the public by sign, advertisement, or otherwise that
2 the attorney at law acts as a public adjuster.

3 **19-111.1.**

4 (A) THIS SECTION APPLIES TO AN INSURER THAT ISSUES OR DELIVERS
5 POLICIES OF HOMEOWNER'S INSURANCE OR RENTER'S INSURANCE IN THE STATE.

6 (B) AN INSURER SUBJECT TO THIS SECTION SHALL EMPLOY ADJUSTERS IN
7 THE STATE TO ASSIST IN PROCESSING CLAIMS IN THE STATE.

8 (C) IN HANDLING A CLAIM BY AN INSURED OF AN INSURER SUBJECT TO THIS
9 SECTION:

10 (1) AN ADJUSTER WHO IS AN EMPLOYEE OF AN INSURER SUBJECT TO
11 THIS SECTION MAY NOT REPRESENT TO THE INSURED THAT THE ADJUSTER IS NOT
12 ACTING ON BEHALF OF THE INSURER;

13 (2) A PUBLIC ADJUSTER WHOM AN INSURER SUBJECT TO THIS
14 SECTION ENGAGES MAY NOT REPRESENT THAT THE PUBLIC ADJUSTER IS AN
15 EMPLOYEE OF THE INSURER IF THAT IS NOT THE CASE; AND

16 (3) THE INSURER MAY NOT MISREPRESENT OR ALLOW AN ADJUSTER
17 WHO IS ADJUSTING THE CLAIM UNDER THE AUTHORITY OF THE INSURER TO
18 MISREPRESENT THE RELATIONSHIP BETWEEN THE INSURER AND THE ADJUSTER,
19 WHETHER THE ADJUSTER IS AN EMPLOYEE OF THE INSURER OR A PUBLIC ADJUSTER
20 ENGAGED FOR THE CLAIM.

21 27-303.

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

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

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

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

30 (4) fail to include with each claim paid to an insured or beneficiary a
31 statement of the coverage under which payment is being made;

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

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

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

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

8 (9) fail to act in good faith, as defined under § 27–1001 of this title, in
9 settling a first–party claim under a policy of property and casualty insurance; [or]

10 (10) fail to comply with the provisions of § 16–118 of this article; **OR**

11 **(11) FAIL TO COMPLY WITH § 19–111.1 OF THIS ARTICLE.**

12 27–304.

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

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

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

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

22 (4) refuse to pay a claim without conducting a reasonable investigation
23 based on all available information;

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

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

28 (7) compel insureds to institute litigation to recover amounts due under
29 policies by offering substantially less than the amounts ultimately recovered in actions
30 brought by the insureds;

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

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

6 (10) fail to include with each claim paid to an insured or beneficiary a
7 statement of the coverage under which the payment is being made;

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

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

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

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

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

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

23 (17) fail to comply with the provisions of Title 15, Subtitle 10A of this article;
24 [or]

25 (18) fail to act in good faith, as defined under § 27–1001 of this title, in
26 settling a first-party claim under a policy of property and casualty insurance; **OR**

27 **(19) FAIL TO COMPLY WITH § 19–111.1 OF THIS ARTICLE.**

28 27–305.

29 (a) The Commissioner may impose a penalty:

30 (1) not exceeding \$2,500 for each violation of § 27–303 of this subtitle or a
31 regulation adopted under § 27–303 of this subtitle; and

1 (2) not exceeding \$125,000 for each violation of § 27–303(9) of this subtitle
2 or a regulation adopted under § 27–303(9) of this subtitle.

3 (b) The penalty for a violation of § 27–304 of this subtitle is as provided in §§
4 1–301, 4–113, and 4–114 of this article and § 27–103 of this title.

5 (c) (1) On finding a violation of this subtitle, the Commissioner may require
6 an insurer, nonprofit health service plan, or health maintenance organization to make
7 restitution to each claimant who has suffered actual economic damage because of the
8 violation.

9 (2) Subject to paragraph (3) of this subsection, restitution may not exceed
10 the amount of actual economic damage sustained, subject to the limits of any applicable
11 policy.

12 (3) For a violation of § 27–303(9) of this subtitle, the Commissioner may
13 require restitution to an insured for the following:

14 (i) actual damages, which actual damages may not exceed the limits
15 of any applicable policy;

16 (ii) expenses and litigation costs incurred by the insured in pursuing
17 an administrative complaint under § 27–303(9) of this subtitle, including reasonable
18 attorney’s fees; and

19 (iii) interest on all actual damages, expenses, and litigation costs
20 incurred by the insured computed:

21 1. at the rate allowed under § 11–107(a) of the Courts Article;
22 and

23 2. from the date on which the insured’s claim would have
24 been paid if the insurer acted in good faith.

25 (4) The amount of attorney’s fees recovered from an insurer under
26 paragraph (3) of this subsection may not exceed one–third of the actual damages recovered.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all
28 policies and contracts of homeowner’s insurance and renter’s insurance issued, delivered,
29 or renewed in the State on or after October 1, 2015.

30 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2015.