

MARYLAND REGISTER

**Emergency Action on Regulations**

<b>TO BE COMPLETED BY AELR COMMITTEE</b>	<b>EMERGENCY Transmittal Sheet</b>	<b>TO BE COMPLETED BY DSD</b>
Date Received by AELR Committee		Date Filed with Division of State Documents
09/21/2007		10/17/2007
Emergency Status Approved		Document Number
<input checked="" type="checkbox"/> -Yes <input type="checkbox"/> -No		07-291-E
Emergency Status Begins On		Date of Publication in MD Register
10/17/2007		11/9/2007
Emergency Status Ends On		
Name of AELR Committee Counsel		
Marie H. Razulis		

**1. COMAR Codification**

**Title Subtitle Chapter Regulation**

31 08 11 01, .02, .03, .04, .05, .06, .07, .08

**2. Name of Promulgating Authority**

Maryland Insurance Administration

**3. Name of Regulations Coordinator**

Alexis E Gibson

**Telephone Number**

410-4682011

**Mailing Address**

525 St. Paul Place

**City State Zip Code**  
Baltimore MD 21202

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agibson@mdinsurance.state.md.us

**4. Name of Person to Call About this Document**

P. Randi Johnson

**Telephone No.**

(410) 468-2301

**Email Address**

prjohnson@mdinsurance.state.md.us

**5. Check applicable items:**

- New Regulations

- Amendments to Existing Regulations

- Repeal of Existing Regulations

- Incorporation by Reference of Documents Requiring DSD Approval

**6. Date Requested for Emergency Status to Begin: 10/1/2007**

**Date Requested for Emergency Status to Expire: 3/28/2008**

**7. Agency Will Take the Following Action on These Regulations**

- Promulgate them in accordance with State Government Article, §§ 10-101 -- 10-126

- Allow them to expire

**8. Is there proposed text which is identical to emergency text:**

- Yes  - No

**9. Check the following item if it is included in the attached document:**

- Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

**10. Reason for Request for Emergency Status**

To establish procedures for filing and processing civil complaints against property and casualty insurers as created by SB 389 and pursuant to § 3-1701 of the Courts and Judicial Proceedings Article and § 27-1001 of the Insurance Article, Annotated Code of Maryland by the October 1, 2007 deadline.

**11. Certificate of Authorized Officer**

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Kathleen A. Birrane, Assistant Attorney General, (telephone #(410) 468-2030) on September 21, 2007. A signed copy of the approval is on file at this agency.

**Name of Authorized Officer**

Ralph S. Tyler

**Title**

Insurance Commissioner

**Telephone No.**

(410) 468-2090

**Date**

September 21, 2007

**Title 31**  
**MARYLAND INSURANCE ADMINISTRATION**

**Subtitle 08 PROPERTY AND CASUALTY INSURANCE**

**31.08.11 Liability of Insurer – Failure to Act in Good Faith**

Authority: Insurance Article, §§ 2-109(a)(1) and 27-1001, and the Courts and Judicial Proceedings Article, §3-1701, Annotated Code of Maryland.

**Notice of Emergency Action**

[07-291-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to 31.08.11.01-.08

**Emergency status began:10/17/2007**

**Emergency status expires:4/14/2008**

**Comparison to Federal Standards**

There is no corresponding federal standard to this emergency action.

**Estimate of Economic Impact**

The emergency action has no economic impact.

**Economic Impact on Small Businesses**

The emergency action has minimal or no economic impact on small businesses.

**Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2008

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

The Administration will utilize staff already employed in order to facilitate the MIA's implementation of the process newly mandated by Chapter 150 (Laws of Maryland 2007) for the resolution of certain civil complaints that seek newly authorized categories of damages that may be awarded against a property and casualty insurers that is found to have failed to exercise good faith in denying (in whole or in part) a first party property and casualty insurance claim. The MIA intends to hire independent contractors to review the filings mandated by the statute, make the determinations required, and prepare the decision the MIA must issue under 27-1001(E).

E. If these regulations have no economic impact under Part A, indicate reason briefly:

Substantial costs will be incurred by the MIA in implementing this process. Those costs, however, are a result of obligations that are imposed by statute and not by the implementation of that statute through these regulations.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

The regulation simply sets for the process for the filing of a new cause of action that was created by the legislation.

G. Response to small business worksheet:

1a. Intended Beneficiaries. Who are the intended beneficiaries of the proposed regulation? Are these intended beneficiaries primarily households or businesses?

The intended beneficiaries are those plaintiffs who are entitled to seek enhanced damages in those civil actions against certain insurers that must be submitted to the MIA for review and decision before being filed in the circuit court.

1b. Intended Beneficiaries: Households. If households are the primary intended beneficiaries, will the proposal affect their income or purchasing power such that the volume or patterns of their consumer spending will change? If so, what directions of change would you anticipate? Will these expected spending changes have a disproportionate impact on small businesses? Can you descriptively identify the industries or types of business activities that are impacted?

The regulations will not effect household purchasing power or income.

1c. Intended Beneficiaries: Businesses. If businesses are the intended beneficiaries, identify the businesses by industry or by types of business activities. How will businesses be impacted? Are these Maryland establishments disproportionately small businesses? If so, how will these Maryland small businesses be affected? Can you identify or estimate

the present number of small businesses affected? Can you estimate the present total payroll or total employment of small businesses affected?

See response to 1a.

2a. Other Direct or Indirect Impacts: Adverse. Businesses may not be the intended beneficiaries of the proposal. Instead, the proposal may direct or otherwise cause businesses to incur additional expenses of doing business in Maryland. Does this proposal require Maryland businesses to respond in such a fashion that they will incur additional work-time costs or monetary costs in order to comply? Describe how Maryland establishments may be adversely affected. Will Maryland small businesses bear a disproportionate financial burden or suffer consequences that affect their ability to compete? Can you estimate the possible number of Maryland small businesses adversely affected? (Note that small business compliance costs in the area of regulation are the sum of out-of-pocket (cash) costs plus time costs — usually expressed as payroll, akin to calculations for legislative fiscal notes. Precise compliance costs may be difficult to estimate, but the general nature of procedures that businesses must accomplish to comply can be described.)

There is no response required by small businesses.

2b. Other Direct or Indirect Impacts: Positive. Maryland businesses may positively benefit by means other than or in addition to changed consumer spending patterns. How may Maryland businesses be positively impacted by this initiative? Will Maryland small businesses share proportionately or disproportionately in these gains? Can you estimate the possible number of Maryland small businesses positively affected?

See response 1a.

3. Long-Term Impacts. There are instances where the longer run economic impact effect from regulations differ significantly from immediate impact. For example, regulations may impose immediate burdens on Maryland small businesses to comply, but the overall restructuring of the industry as a consequence of monitoring and compliance may provide offsetting benefits to the affected small businesses in subsequent years. Can you identify any long run economic impact effects on Maryland small businesses that over time (a) may compound or further aggravate the initial economic impact described above, or (b) may mitigate or offset the initial economic impact described above?

These regulations have no identifiable long term impact on small businesses.

4. Estimates of Economic Impact. State Government Article, §2-1505.2 requires that an agency include estimates, as appropriate, directly relating to: (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation, competition, and economic

development; and (6) consumer choice.

- 1) Small businesses will not be providing goods or services associated with these regulations.
- 2) The work force employed by small business will not be effected by these regulations.
- 3) There is no effect on the cost of housing due to these regulations.
- 4) These regulations have no effect on the production and marketing for small businesses.
- 5) These regulations have no effect on capital investment, taxation, competition, and economic development.
- 6) These regulations have no effect on consumer choice with regards to small businesses.

Attached Document:

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**Title 31 MARYLAND INSURANCE ADMINISTRATION**

**Subtitle 08 PROPERTY AND CASUALTY INSURANCE**

**Chapter 11 Liability of Insurer – Failure to Act in Good Faith**

.01 Purpose

The purpose of this Chapter is to:

- A. Establish the procedures for filing and processing civil complaints against property and casualty insurers that are required to be filed with the Administration pursuant to § 27-1001 of the Insurance Article, Annotated Code of Maryland; and
- B. Require property and casualty insurers which are the subject of a civil action described in § 3-1701(d) of the Courts and Judicial Proceedings Article, Annotated Code of Maryland, to report to the Administration certain information that the Administration is required to submit to the General Assembly pursuant to § 27-1001(h) of the Insurance Article, Annotated Code of Maryland.

.02 Authority

This Chapter is deemed necessary for the effectuation of the Insurance Article, Title 27, subtitle 10, Annotated Code of Maryland.

.03 Applicability and Scope

A. This Chapter is applicable to all insurers which issue, sell, or deliver a policy of property and casualty insurance that includes first-party coverage in this State.

B. This Chapter applies to:

(1) all civil complaints purporting to state a cause of action under § 3-1701 of the Courts and Judicial Proceedings Article, Annotated Code of Maryland, that are required to be filed with the Administration pursuant to § 27-1001 of the Insurance Article, Annotated Code of Maryland; and

(2) all civil complaints that are to be reported to the General Assembly pursuant to § 27-1001 of the Insurance Article, Annotated Code of Maryland.

.04 Definitions

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “27-1001 Filing” means the Complaint and supporting documentation filed by the Plaintiff that are submitted to the Administration pursuant to § 27-1001(d)(1) and (2) of the Insurance Article, Annotated Code of Maryland.

(2) “Complaint” means a written document that purports to state a cause of action under § 3-1701 of the Courts and Judicial Proceedings Article, Annotated Code of Maryland.

(3) “Defendant Insurer” means the insurer who is the subject of the Complaint.

(4) “Good Cause” means a privilege or doctrine recognized by statute or other law in the State as a basis on which to refuse to produce a document in response to civil discovery requests.

(5) “Plaintiff” means the person who is asserting the cause of action set forth in a Complaint.

(6) “Responsive Filing” means the response to the Complaint filed by the Defendant Insurer with the supporting documentation that meets the requirements of § 27-1001 (d)(4) of the Insurance Article, Annotated Code of Maryland.

#### .05 Filing the Complaint

##### A. Plaintiff filing a Complaint.

(1) A Plaintiff filing a Complaint that is required to be filed with the Administration in accordance with § 27-1001 of the Insurance Article, Annotated Code of Maryland, shall submit the Complaint to the Administration in accordance with the following procedures:

(a) The Complaint shall include the information and be accompanied by the documents identified in § 27-1001(d)(2) of the Insurance Article, Annotated Code of Maryland;

(b) The Plaintiff shall file an original and 2 copies of the 27-1001 Filing; and

(c) The 27-1001 Filing shall be accompanied by a Civil Cover Sheet. The form of the Civil Cover Sheet shall be determined by the Administration and published by Bulletin.

The Civil Cover Sheet shall be available:

(i) on the Administration's website;

(ii) at the Administration's offices; and

(iii) by mail on request of the Plaintiff.

B. The 27-1001 Filing and Civil Cover Sheet shall be filed by sending them:

(1) via first class mail addressed to the Appeals Clerk, Maryland Insurance Administration, Post Office Box 388, Baltimore, Maryland 21203;

(2) via a commercial overnight delivery service addressed to the Appeals Clerk at the Administration's official street address; or

(3) via hand delivery addressed to the Appeals Clerk between the hours of 8 a.m. and 4 p.m. at the official street address of the Administration.

C. The 27-1001 Filing and Civil Cover Sheet shall be filed in an envelope marked in bold print in the lower left corner "27-1001 Filing."

#### .06 Defendant Insurer's Responsive Filing

A. No later than 30 days after the Administration forwards the 27-1001 Filing to the Defendant Insurer, the Defendant Insurer shall file a Responsive Filing with the Administration and mail a copy of same to the Plaintiff.

B. The Defendant Insurer may, for Good Cause, withhold any document that is required to be filed under § 27-1001(d)(4) of the Insurance Article, Annotated Code of Maryland.

C. If the Defendant Insurer elects to withhold any document from its Responsive Filing, the Defendant Insurer shall submit, along with its Responsive Filing, an index listing each document that is being withheld in a manner sufficient to identify the document and the basis for withholding the document.

D. If the Defendant Insurer elects to withhold any document from its Responsive Filing, the Defendant Insurer shall submit, along with its Responsive Filing and the index required under § C of this regulation, a copy of each document listed on the index for in camera inspection by the Administration.

(a) Each copy of each document submitted to the Administration for in camera inspection shall be clearly stamped: "Withheld for Good Cause."

(b) All copies submitted to the Administration for in camera inspection shall be placed in a separate, sealed envelope that includes the case name and MIA filing number and that is marked: "Documents Withheld by Defendant Insurer [Name of Insurer] for Good Cause."

E. The Defendant Insurer shall file an original and 2 copies of its Responsive Filing and the index required under § C of this regulation, along with an electronic copy of the Responsive Filing and the index on a CD-ROM formatted in PDF (Portable Document Format). The CD-ROM submitted by the Defendant Insurer shall not include the documents submitted to the Administration for in camera inspection under Section D of this regulation.

F. The Defendant Insurer's Responsive Filing and the index and documents required under §§ C and D of this regulation shall be filed with the Administration by sending them:

(1) via first class mail addressed to the Appeals Clerk, Maryland Insurance Administration, Post Office Box 388, Baltimore, Maryland 21203;

(2) via a commercial overnight delivery service addressed to the Appeals Clerk at the Administration's official street address; or

(3) via hand delivery addressed to the Appeals Clerk between the hours of 8 a.m. and 4 p.m. at the official street address of the Administration.

G. The Responsive Filing and the index required under § C of this regulation shall be filed in an envelope marked in bold print in the lower left corner "27-1001 Responsive Filing."

H. The documents submitted to the Administration for in camera inspection under Section D of this regulation are not required to be included in the materials sent to the Insured under § 27-1001(d)(4)(ii).

#### 07. Administration's Review

A. The Administration will review each document that the Defendant Insurer has submitted to the Administration for in camera inspection under § 06.D of this regulation. If the Administration determines that any document withheld for Good Cause is not subject to a privilege or doctrine recognized by statute or other law in the State and the reason asserted for its withholding is not consistent with §27-1001 of the Insurance Article, Annotated Code of Maryland or this regulation, the Administration shall find that Good Cause has not been shown as to that document and shall require the Defendant Insurer to promptly release that document to the insured.

B. In making the decisions required of the Administration under § 27-1001(e)(1)(i), the Administration shall consider the failure by a Defendant Insurer to produce documents that are within the scope of §27-1001(d)(4)(i) without having shown good cause.

#### .08 Duties of Defendant Insurers

A. Each property and casualty insurer which issues, sells or delivers policies including first-party coverage in the State shall designate a person authorized to receive 27-1001 Filings from the Administration.

B. Each insurer to which this chapter applies shall notify the Administration of the name and address of the Defendant Insurer's 27-1001 Filing designee.

(1) Any insurer which fails to notify the Administration of its designation will be deemed to have appointed the person previously identified by the insurer to receive process that

has been served on the Commissioner as Attorney-in-fact as the insurer's 27-1001 Filing designee until such time as the insurer has notified the Administration of its 27-1001 Filing designee.

C. Each Defendant Insurer shall advise the Administration, in writing, as to a disposition by the Office of Administrative Hearings or any court of law of any Complaint filed against the Defendant Insurer under § 3-1701 of the Courts and Judicial Proceedings Article, Annotated Code of Maryland.

(1) The notice of disposition shall be on the form determined by the Administration and published by Bulletin and shall be sent to the Appeals Clerk at the Administration within 30 days of the disposition.

(2) The notice of disposition shall identify:

(a) the adjudicatory body which issued the disposition;

(b) the case name and number before that adjudicatory body, as well as the case name and number of any underlying or prior dispositions with respect to that Complaint;

(c) whether the Complaint sought a determination as to coverage and/or alleged a failure by the Defendant Insurer to adequately value and/or pay the underlying insurance claim;

(d) the type of coverage at issue in the Complaint, such AutoUM/UIM, Homeowner's, Commercial General Liability, etc.;

(e) the amount sought as damages in the Complaint, itemized by:

(i) the amount sought as actual damages; and

(ii) the amount sought as expenses and litigation costs, including attorney's fees;

(f) the disposition of each count of the Complaint;

(g) a summary of any determinations made;

- (h) a listing of any amounts awarded by the adjudicatory body; and
- (i) whether any further proceedings before that body or another tribunal have been filed or are expected to be filed.

D. Each Defendant Insurer shall advise the Administration, in writing, when it is served with a Complaint that was not originally filed with the Administration.

(1) The notice of the pending Complaint shall be on the form determined by the Administration and published by bulletin and shall be sent to the Appeals Clerk at the Administration within 30 days of service of process.

(2) The notice of the pending Complaint shall identify:

- (a) the court in which the Complaint was filed;
- (b) the case name and number assigned to the Complaint;
- (c) the parties to the Complaint;
- (d) the reason why the Complaint was not required to be filed with the Administration prior to being filed with the court;
- (e) whether the Complaint sought a determination as to coverage and/or alleged a failure by the Defendant Insurer to adequately value and/or pay the underlying insurance claim;
- (f) the type of coverage at issue in the Complaint, such AutoUM/UIM, Homeowner's, Commercial General Liability, etc.; and
- (g) the amount sought as damages in the Complaint, itemized by:
  - (i) the amount sought as actual damages; and
  - (ii) the amount sought as expenses and litigation costs, including attorney's fees.