

# SENATE BILL 702

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By: **Senator Jones**

Introduced and read first time: February 1, 2008

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Injured Workers' Insurance Fund – Audit Requirement**

3 FOR the purpose of requiring the Legislative Auditor to conduct certain audits of the  
4 Injured Workers' Insurance Fund; requiring the Legislative Auditor to take into  
5 consideration certain factors when conducting certain audits of the Injured  
6 Workers' Insurance Fund; establishing that the audit requirement is in addition  
7 to and not instead of certain other audits or regulatory authority of the  
8 Maryland Insurance Commissioner; requiring the Legislative Auditor to submit  
9 the results of each audit to certain officials as provided by law and certain  
10 legislative committees; and generally relating to legislative audits of the Injured  
11 Workers' Insurance Fund.

12 BY adding to  
13 Article – Labor and Employment  
14 Section 10–124  
15 Annotated Code of Maryland  
16 (1999 Replacement Volume and 2007 Supplement)

17 BY repealing and reenacting, without amendments,  
18 Article – Labor and Employment  
19 Section 10–125(a) through (c)  
20 Annotated Code of Maryland  
21 (1999 Replacement Volume and 2007 Supplement)

22 BY repealing and reenacting, without amendments,  
23 Article – Insurance  
24 Section 2–205(a), (b), and (f) and 2–209  
25 Annotated Code of Maryland  
26 (2003 Replacement Volume and 2007 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  
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – Labor and Employment**

4 **10-124.**

5 **(A) THE LEGISLATIVE AUDITOR SHALL:**

6 **(1) CONDUCT A FISCAL/COMPLIANCE AUDIT OF THE FUND AT**  
7 **LEAST ONCE EVERY 3 YEARS; AND**

8 **(2) IN DETERMINING THE AUDIT SCOPE, TAKE INTO**  
9 **CONSIDERATION:**

10 **(I) ANY FINANCIAL STATEMENT AUDITS OF THE FUND**  
11 **CONDUCTED BY A CERTIFIED ACCOUNTING FIRM;**

12 **(II) ANY OTHER AUDITS OR REVIEWS OF THE FUND; AND**

13 **(III) THE NATURE AND EXTENT OF AUDIT FINDINGS IN THE**  
14 **PRIOR AUDIT REPORTS OF THE FUND.**

15 **(B) AN AUDIT CONDUCTED IN ACCORDANCE WITH THIS SECTION IS IN**  
16 **ADDITION TO AND NOT INSTEAD OF ANY AUDIT OR REGULATORY AUTHORITY OF**  
17 **THE MARYLAND INSURANCE COMMISSIONER.**

18 **(C) IN ADDITION TO THE REQUIREMENTS OF § 2-1224 OF THE STATE**  
19 **GOVERNMENT ARTICLE, THE LEGISLATIVE AUDITOR SHALL SUBMIT THE**  
20 **RESULTS OF ANY AUDIT CONDUCTED UNDER THIS SECTION TO THE**  
21 **LEGISLATIVE POLICY COMMITTEE, THE SENATE FINANCE COMMITTEE, AND**  
22 **THE HOUSE ECONOMIC MATTERS COMMITTEE IN ACCORDANCE WITH § 2-1246**  
23 **OF THE STATE GOVERNMENT ARTICLE.**

24 **10-125.**

25 **(a) Except as provided in subsection (b) of this section, the Fund shall be:**

26 **(1) examined by the Commissioner in accordance with §§ 2-205 and**  
27 **2-207 through 2-209 of the Insurance Article; and**

28 **(2) subject to the following provisions of the Insurance Article:**

29 **(i) Title 4, Subtitle 3 (Risk Based Capital Standards for**  
30 **Insurers) as provided in subsection (d) of this section;**

1 (ii) Title 5, Subtitles 1, 2, 4, and 9 (Assets and Liabilities,  
2 Reserves, Valuation of Assets and Reinsurance);

3 (iii) Title 9 (Impaired Entities); and

4 (iv) §§ 3–124 (Bulk Reinsurance – Stock Insurers), 4–115 (Home  
5 Office; Location of Accounting Records and Assets), 4–116 (Annual and Interim  
6 Statements; Audited Financial Reports), and 4–118 (Qualified Independent Certified  
7 Public Accountants).

8 (b) (1) The Commissioner may not take any action to enforce any  
9 provision of the Insurance Article to which the Fund is subject under subsection (a) of  
10 this section except:

11 (i) the Commissioner may issue an order under Title 9  
12 (Impaired Entities) of the Insurance Article; and

13 (ii) the Commissioner may take action authorized under §§  
14 4–305, 4–306, 4–307, and 4–308 of the Insurance Article relating to risk based capital  
15 standards for insurers.

16 (2) Any order issued under this subsection:

17 (i) may not include a requirement that the Fund increase rates;  
18 and

19 (ii) shall be subject to Title 2, Subtitle 2, of the Insurance  
20 Article.

21 (3) The Commissioner shall report to the Board on the results of any  
22 examination conducted under subsection (a)(1) of this section.

23 (c) (1) The Commissioner may examine or review the Fund for compliance  
24 with:

25 (i) Title 12, Subtitle 1 of the Insurance Article (Policy Forms  
26 and Provisions);

27 (ii) except for § 19–403 (Setting Premium Rates), Title 19,  
28 Subtitle 4 of the Insurance Article (Workers' Compensation Insurance); and

29 (iii) Title 27 of the Insurance Article (Unfair Trade Practices and  
30 Other Prohibited Practices).

31 (2) The Commissioner may not take any action to enforce any  
32 provision of the Insurance Article under which the Commissioner has examined or  
33 reviewed compliance under this subsection.

1 (3) The Commissioner shall report to the Board on the results of any  
2 examination or review conducted under this subsection.

3 **Article – Insurance**

4 2–205.

5 (a) In this section, “analysis” means a process by which the Commissioner  
6 collects and analyzes information from filed schedules, surveys, required reports  
7 specified in subsection (b) of this section, and other sources in order to:

8 (1) develop an understanding of the affairs, transactions, accounts,  
9 records, assets, and financial condition of the entities specified in subsection (b) of this  
10 section; or

11 (2) identify or investigate patterns or practices of the entities specified  
12 in subsection (b) of this section.

13 (b) (1) Whenever the Commissioner considers it advisable, the  
14 Commissioner shall conduct an analysis or examine the affairs, transactions, accounts,  
15 records, assets, and financial condition of each:

16 (i) authorized insurer;

17 (ii) management company of an authorized insurer;

18 (iii) subsidiary owned or controlled by an authorized insurer;

19 (iv) rating organization; or

20 (v) authorized health maintenance organization.

21 (2) The Commissioner shall examine each domestic insurer and health  
22 maintenance organization at least once every 5 years.

23 (f) Instead of conducting an examination, the Commissioner may accept a  
24 full report, certified by the insurance supervisory official of another state, of the most  
25 recent examination of a foreign insurer or health maintenance organization, alien  
26 insurer or health maintenance organization, or an out-of-state rating organization.

27 2–209.

28 (a) The Commissioner or an examiner shall make a complete report of each  
29 examination made under § 2–205 of this subtitle or § 23–207, § 15–10B–19, or §  
30 15–10B–20 of this article.

31 (b) An examination report shall contain only facts:

1 (1) from the books, records, or documents of the person being  
2 examined; or

3 (2) determined from statements of individuals about the person's  
4 affairs.

5 (c) (1) At least 30 days before adopting a proposed examination report,  
6 the Commissioner shall provide a copy of the proposed report to the person that was  
7 examined.

8 (2) If the person requests a hearing in writing within the 30-day  
9 period, the Commissioner:

10 (i) shall grant a hearing on the proposed report; and

11 (ii) may not adopt the proposed report until after:

12 1. the hearing is held; and

13 2. any modifications of the report that the Commissioner  
14 considers proper are made.

15 (d) (1) After an examination report is adopted by the Commissioner, the  
16 examination report is admissible as evidence of the facts contained in it in any action  
17 brought by the Commissioner against the person examined or an officer or insurance  
18 producer of the person.

19 (2) Regardless of whether a written examination report has been  
20 made, served, or adopted by the Commissioner, the Commissioner or an examiner may  
21 testify and offer other proper evidence about information obtained during an  
22 examination.

23 (e) The Commissioner may withhold an examination or investigation report  
24 from public inspection for as long as the Commissioner considers the withholding to  
25 be:

26 (1) necessary to protect the person examined from unwarranted  
27 injury; or

28 (2) in the public interest.

29 (f) If the Commissioner considers it to be in the public interest, the  
30 Commissioner may publish an examination report or a summary of it in a newspaper  
31 in the State.

32 (g) (1) This subsection applies only to a document, material, or  
33 information other than an adopted examination report that:

1 (i) is in the control or possession of the Commissioner; and

2 (ii) is obtained or generated during an analysis or examination  
3 conducted under § 2-205 or § 2-206 of this subtitle or § 23-103, § 15-10B-19, or §  
4 15-10B-20 of this article.

5 (2) A document, material, or information that is subject to this  
6 subsection:

7 (i) is confidential and privileged;

8 (ii) is not subject to Title 10, Subtitle 6 of the State Government  
9 Article;

10 (iii) is not subject to subpoena; and

11 (iv) is not subject to discovery or admissible in evidence in any  
12 private civil action.

13 (3) Notwithstanding paragraph (2) of this subsection, the  
14 Commissioner may use any document, material, or information that is subject to this  
15 subsection to further any regulatory or legal action brought as part of the duties of the  
16 Commissioner.

17 (4) The Commissioner and any person that receives a document,  
18 material, or information that is subject to this subsection while acting under the  
19 authority of the Commissioner may not be allowed or required to testify in any private  
20 civil action concerning the document, material, or information.

21 (h) (1) Provided that the recipient agrees to maintain the confidentiality  
22 and privileged status of the document, material, or information, the Commissioner  
23 may share a document, material, or information, including a document, material, or  
24 information that is confidential and privileged under subsection (g) of this section,  
25 with:

26 (i) other State, federal, or international regulatory agencies;

27 (ii) the National Association of Insurance Commissioners or its  
28 affiliates or subsidiaries; or

29 (iii) State, federal, or international law enforcement authorities.

30 (2) (i) The Commissioner may receive a document, material, or  
31 information, including a document, material, or information that is confidential and  
32 privileged, from:

- 1                                   1.    other State, federal, or international regulatory  
2 agencies;
- 3                                   2.    the National Association of Insurance Commissioners  
4 or its affiliates or subsidiaries; or
- 5                                   3.    State, federal, or international law enforcement  
6 authorities.

7                                   (ii)   The Commissioner shall maintain as confidential and  
8 privileged any document, material, or information received under this paragraph with  
9 notice or the understanding that it is confidential or privileged under the laws of the  
10 jurisdiction that is the source of the document, material, or information.

11                                 (3)   The Commissioner may enter into agreements governing the  
12 sharing and use of information consistent with this subsection.

13                                 (4)   There is no waiver of any applicable privilege or claim of  
14 confidentiality with regard to a document, material, or information as a result of:

15                                   (i)   disclosure of the document, material, or information to the  
16 Commissioner under this subsection; or

17                                   (ii)   sharing of the document, material, or information by the  
18 Commissioner under paragraph (1) of this subsection.

19                                 (i)   (1)   The Commissioner shall provide a copy of the adopted examination  
20 report to the person that was examined.

21                                   (2)   The person examined shall present the adopted examination report  
22 to its board of directors at the next regularly scheduled meeting of the board.

23                                 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
24 October 1, 2008.