

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Maryland Insurance Administration
(DLS Control No. 14-150)**

Overview and Legal and Fiscal Impact

The proposed action repeals a provision exempting, from the application of a specified unfair trade practice prohibition, insurance effectuated in accordance with Article 83A, §§ 5-1035 and 5-1037 of the Annotated Code and insurance effectuated in accordance with §§ 13-207, 13-208, 13-216, and 17-104 of the State Finance and Procurement Article.

The proposed regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Maryland Insurance Administration:

Insurance Producers and Other Insurance Professionals: Regulation Restricting Licensed Insurance Producers to Placing Maryland Risks for State Citizens with Authorized Insurers: COMAR 31.03.04.01

Legal Analysis

Background

Regulation 31.03.04.01B makes it an unfair trade practice in the business of insurance for any insurance producer licensed both in Maryland and in another state or the District of Columbia to place insurance on risks located in Maryland with insurers not authorized to do business in the State. Regulation 31.03.04.01A(6) exempts from the application of Section B insurance effectuated in accordance with §§ 5-1035 and 5-1037 of Article 83A of the Code and §§ 13-207, 13-208, 13-216, and 17-104 of the State Finance and Procurement Article. According to the Maryland Insurance Administration, this exemption was adopted in response to the enactment of Chapter 299 of 2006.

Chapter 299 amended State procurement laws to provide that acceptable bid security on a procurement contract and acceptable payment or performance security on a construction contract includes a bond provided by an individual surety if specified requirements are met, including a requirement under §§ 13-207(e)(2) and 17-104(c)(2) of the State Finance and Procurement Article that the individual surety only transacts business through an insurance agency licensed by the administration. Prior to the enactment of Chapter 299, the only acceptable security in the form of a bond was one provided by a surety company authorized to do business in the State. Since individual sureties are not licensed or otherwise authorized by the administration to engage

in the insurance business in the State, and insurance producers are prohibited under § 4-203(b)(1) of the Insurance Article from acting on behalf of an unauthorized insurer in effecting insurance, Regulation 31.03.04.01A(6) was necessary to ensure that a licensed insurance producer through which an individual surety transacts business in accordance with the requirements of §§ 13-207(e)(2) and 17-104(c)(2) of the State Finance and Procurement Article would not, as a result of that transaction, be in violation of Regulation 31.03.04.01B or § 4-203(b)(1).

Chapter 299 also amended former § 5-1035 of Article 83A of the Annotated Code to increase the maximum amount of the bonds that the Maryland Small Business Development Financing Authority is authorized to execute and perform for the benefit of eligible small businesses in connection with specified contracts. Chapter 299 was to terminate at the end of September 30, 2009, but Chapter 266 of 2008 extended this termination date to the end of September 30, 2014. Legislation introduced during the 2014 session (S.B. 377) which would have extended the termination date of Chapter 299 until the end of September 30, 2019, did not pass.

Summary of Regulation

As discussed above, the adoption of Regulation 31.04.03.01A(6) was necessitated by changes to State procurement laws made by Chapter 299 of 2006. The proposed action repeals Regulation 31.04.03.01A(6) since those changes will terminate at the end of September 30, 2014. The administration has indicated that the effective date of the proposed action will coincide with the termination date of Chapter 299, as amended by Chapter 266 of 2008. While Chapter 299 also amended former § 5-1035 of Article 83A of the Code, as discussed above, and repealed and reenacted, without amendment, former § 5-1037 of Article 83A of the Code, including references to these sections in Regulation 31.04.03.01A(6) was erroneous since they do not relate to individual sureties or licensed insurance producers.

Legal Issue

The proposed regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The administration cites §§ 2-109, 4-201, and 4-203 of the Insurance Article as authority for the proposed regulation. More specifically, authority for the proposed regulation is provided by §§ 2-109(a)(1) and 4-203(b). Section 2-109(a)(1) establishes the general authority of the Maryland Insurance Commissioner to adopt regulations to carry out the Insurance Article. Section 4-203(b) prohibits a person from directly or indirectly acting as an insurance producer for, or otherwise representing or helping on behalf of another, an unauthorized insurer to engage in specified activities, including soliciting, negotiating, or effecting insurance or transacting insurance business in any manner.

The proposed regulation complies with the legislative intent of the law.

Technical Corrections and Special Notes

The administration has revised the Statement of Purpose for the proposed regulation since it was submitted to the committee to more clearly and accurately reflect the purpose of the

proposed regulation, and has indicated that the revised statement will be published in the *Maryland Register*.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The administration advises that the regulation has minimal or no impact on State or local governments. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The administration advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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