
By: Chairman, Finance Committee (Departmental - Insurance Administration, Maryland)

Requested: October 25, 1995

Introduced and read first time: January 10, 1996

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 Insurance Commissioner - Enforcement Jurisdiction and Appeals Procedure

3 FOR the purpose of clarifying the power of the Insurance Commissioner to enforce the
4 Insurance Code against persons whose certificate of authority, certificate of
5 qualification, license, or registration is no longer in effect; conforming the appeals
6 procedures under the Insurance Code with those under the Maryland Rules;
7 providing for the effective dates of this Act; providing for the future codification of
8 certain provisions of this Act; and generally relating to the jurisdiction of the
9 Insurance Commissioner over certain persons under certain circumstances and to
10 procedural requirements for appeals under the Insurance Code.

11 BY repealing and reenacting, with amendments,
12 Article 48A - Insurance Code
13 Section 34A and 40
14 Annotated Code of Maryland
15 (1994 Replacement Volume and 1995 Supplement)

16 BY repealing and reenacting, without amendments,
17 Article 48A - Insurance Code
18 Section 35
19 Annotated Code of Maryland
20 (1994 Replacement Volume and 1995 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article - Insurance
23 Section 2-201(e) and 2-215(d), (e), (f), (g), and (j)(1)
24 Annotated Code of Maryland
25 (1995 Volume)
26 (As enacted by Chapter 36 of the Acts of the General Assembly of 1995)

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

2

1 **Article 48A - Insurance Code**

2 34A.

3 The Commissioner [shall retain the authority to] MAY enforce the provisions of,
4 and impose any penalty or remedy authorized by, this article against any person who is
5 under investigation for, or charged with, a violation of this article even if[, while the
6 investigation or charges are pending,] the person's certificate of authority, certificate of
7 qualification, license, or registration is [surrendered or lapses by operation of law] NO
8 LONGER IN EFFECT.

9 35.

10 (a) (1) The Commissioner may hold hearings for any purpose within the scope
11 of this article deemed by him to be necessary.

12 (2) The Commissioner shall hold a hearing if required by any provision, or
13 upon written demand therefor by a person aggrieved by any act, threatened act or failure
14 of the Commissioner to act, or by any report, rule, regulation or order of the
15 Commissioner (other than an order for the holding of a hearing, or an order on hearing
16 or pursuant thereto). Any such demand shall specify the grounds to be relied upon as a
17 basis for the relief to be demanded at the hearing, and unless postponed by mutual
18 consent, such hearing shall be held within thirty (30) consecutive calendar days after
19 receipt by the Commissioner of demand therefor.

20 (3) If within such thirty (30) day period the Commissioner does not either
21 (i) grant the hearing, or (ii) issue his order refusing the hearing, as to such previous
22 report, rule, regulation, or order as to which such person so claims to be aggrieved, then
23 the hearing shall thereby be deemed to have been refused.

24 (4) (i) Except as provided in subparagraph (ii) of this paragraph, a
25 hearing held under this section shall be conducted in accordance with Title 10, Subtitle 2
26 of the State Government Article (Administrative Procedure Act - Contested Cases).

27 (ii) A hearing held under this section is not subject to §10-216 of the
28 State Government Article.

29 (b) The Commissioner may delegate the responsibilities for holding hearings
30 under this section and under § 55 of this article to the Deputy Commissioner, an
31 Associate Deputy Commissioner, or an Associate Commissioner.

32 40.

33 (A) (1) An appeal from the Commissioner shall be taken only from an order or
34 hearing or with respect to a matter which the Commissioner has refused a hearing.

35 (2) Any person who was a party to such hearing, or whose pecuniary
36 interests are directly and immediately affected by any such order or refusal and who is
37 aggrieved thereby may APPEAL FROM SUCH ORDER OR HEARING OR SUCH REFUSAL
38 OF A HEARING, within 30 days [after] AFTER:

39 (i) [the] THE order has been mailed or delivered to the persons
40 entitled to receive it[, or];

3

1 (ii) [the] THE Commissioner's order denying rehearing or
2 reargument has been so mailed or delivered[, or] ; OR

3 (iii) [the] THE Commissioner's refusal to grant a hearing[, appeal
4 from such order or hearing or such refusal of a hearing].

5 (3) (I) The appeal shall be taken to the Circuit Court for Baltimore City,
6 by filing [written notice of appeal] A PETITION FOR JUDICIAL REVIEW in such court
7 [and by filing a copy of such notice with the Commissioner].

8 (II) [However,] NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS
9 PARAGRAPH, in appeals from the suspension or revocation of the certificate of authority
10 of a domestic insurer or of the certificate of qualification of an agent or broker, or the
11 license of a public adjuster, or adviser, the person taking the appeal at his option, in lieu
12 of the Circuit Court for Baltimore City, may take the appeal to the circuit court of the
13 county of Maryland in which the insurer has its principal place of business or the licensee
14 resides.

15 (4) (I) An appeal taken pursuant to this subsection shall be captioned in
16 ACCORDANCE WITH THE MARYLAND RULES [the name of the person filing the appeal,
17 as the party appellant, versus the Insurance Commissioner of the State of Maryland, as
18 the party appellee. In all such appeals, the Commissioner shall be a necessary party
19 appellee].

20 (II) In addition to the person filing the appeal and the Commissioner,
21 any other person whose pecuniary interests are or may be directly and immediately
22 affected by the matter on appeal, or who may be aggrieved thereby, upon application to
23 the court, may be deemed an additional party [appellant or appellee], as the court
24 directs.

25 [(2)] (B) Upon filing of the [notice of appeal] PETITION FOR JUDICIAL
26 REVIEW therein the court shall have full jurisdiction, and shall determine whether such
27 filing shall operate as a stay of the order or action from which an appeal is taken.

28 [(3)] (C) (1) [Within 30 days after filing of the copy of the notice of
29 appeal in his office] AFTER RECEIVING A COPY OF A PETITION FOR JUDICIAL
30 REVIEW, the Commissioner, WITHIN THE TIME SPECIFIED IN THE MARYLAND RULES,
31 shall make and return to the court in which the appeal is pending a copy of his order
32 appealed from and a full and complete transcript, duly certified by the Commissioner, of
33 the record upon which the order was issued, together with all exhibits and documentary
34 evidence introduced thereat.

35 (2) If the appeal is from an action of the Commissioner with respect to
36 which a hearing was refused, the Commissioner, WITHIN THE TIME SPECIFIED IN THE
37 MARYLAND RULES, shall [within such 30 day period] make and return to the court a
38 full and complete transcript, duly certified by him, of all documents on file in his office
39 directly relating to the matter as to which such appeal is taken.

40 [(4)] (D) (1) The court may affirm the decision of the Commissioner or
41 remand the case for further proceedings; or it may reverse or modify the decision if the
42 substantial rights of the petitioners may have been prejudiced because the administrative
43 findings, inferences, conclusions, or decisions are:

4

- 1 (i) In violation of constitutional provisions; or
- 2 (ii) In excess of the statutory authority or jurisdiction of the
- 3 Commissioner; or
- 4 (iii) Made upon unlawful procedure; or
- 5 (iv) Affected by other error of law; or
- 6 (v) Unsupported by competent, material, and substantial evidence in
- 7 view of the entire record as submitted; or
- 8 (vi) Arbitrary or capricious.

9 [(5)] (2) Costs shall be awarded as in civil actions.

10 [(6)] (E) (1) Appeal by any party [appellant or party appellee including],
11 INCLUDING the [Commissioner] COMMISSIONER, may be taken to the Court of Special
12 Appeals from the judgment of the Circuit Court for Baltimore City or circuit court of the
13 county, as in other civil cases.

14 (2) A stay of the effectiveness of any such judgment may be made only by
15 order of court upon the giving of such security as the court deems proper.

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

18 **Article - Insurance**

19 2-201.

20 (e) The Commissioner may enforce the provisions of this article, and may impose
21 any penalty or remedy authorized by this article, against a person that is under
22 investigation for or charged with a violation of this article even if [while the investigation
23 or charges are pending,] the person's certificate of authority, certificate of qualification,
24 license, or registration is [surrendered or lapses by operation of law] NO LONGER IN
25 EFFECT.

26 2-215.

27 (d) To take an appeal, a person shall file a [written notice of appeal] PETITION
28 FOR JUDICIAL REVIEW with the appropriate circuit court [and a copy of the notice of
29 appeal with the Commissioner] within 30 days after:

30 (1) the order resulting from the hearing was served on the persons entitled
31 to receive it;

32 (2) the order of the Commissioner denying rehearing or reargument was
33 served on the persons entitled to receive it; or

34 (3) the refusal of the Commissioner to grant a hearing.

35 (e) (1) An appeal under this subtitle shall be captioned in ACCORDANCE WITH
36 THE MARYLAND RULES [the name of the person filing the appeal, as appellant, versus
37 the Maryland Insurance Commissioner, as appellee].

5

1 (2) [In all appeals under this subtitle, the Commissioner shall be a
2 necessary appellee.

3 (3) On application to the court, any [other] person may be added as [an
4 appellant or appellee] A PARTY, as the court directs, if:

5 (i) the financial interests of the person are or may be directly affected
6 by the matter on appeal; or

7 (ii) the person may be aggrieved by the matter on appeal.

8 (f) When a [notice of appeal] PETITION FOR JUDICIAL REVIEW is filed with
9 the appropriate court, the court has jurisdiction over the case and shall determine
10 whether the filing operates as a stay of the order or action from which the appeal is taken.

11 (g) (1) In an appeal of an order resulting from a hearing, [within 30 days after
12 a copy of the notice of appeal is filed with the Commissioner] AFTER RECEIVING A
13 COPY OF THE PETITION FOR JUDICIAL REVIEW AND WITHIN THE TIME SPECIFIED IN
14 THE MARYLAND RULES, the Commissioner shall file in the court in which the appeal is
15 pending:

16 (i) a copy of the order of the Commissioner from which the appeal is
17 taken;

18 (ii) a complete transcript, certified by the Commissioner, of the record
19 on which the order was issued; and

20 (iii) all exhibits and documentary evidence introduced at the hearing.

21 (2) In an appeal of a refusal by the Commissioner to grant a hearing, within
22 [30 days after a copy of the notice of appeal is filed with the Commissioner] THE TIME
23 SPECIFIED IN THE MARYLAND RULES, the Commissioner shall file in the court in which
24 the appeal is pending certified copies of all documents on file with the Commissioner that
25 directly relate to the matter on appeal.

26 (j) (1) Any [appellant or appellee] PARTY, including the Commissioner, may
27 appeal from the judgment of the circuit court to the Court of Special Appeals as in other
28 civil cases.

29 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
30 take effect June 1, 1996, and remain in effect until October 1, 1997.

31 SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
32 take effect October 1, 1997.