

(PRE-FILED)

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

Requested: October 25, 1995

Introduced and read first time: January 10, 1996

Assigned to: Finance

Committee Report: Favorable

Senate action: Adopted

Read second time: January 25, 1996

CHAPTER ____

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5 qualification, license, or registration is no longer in effect; conforming the appeals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

2

1 Section 2-201(e) and 2-215(d), (e), (f), (g), and (j)(1)
2 Annotated Code of Maryland
3 (1995 Volume)
4 (As enacted by Chapter 36 of the Acts of the General Assembly of 1995)

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

7 **Article 48A - Insurance Code**

8 34A.

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

15 35.

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

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

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

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

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

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

38 40.

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

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

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

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

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

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

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

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

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

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

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

41 (2) If the appeal is from an action of the Commissioner with respect to
42 which a hearing was refused, the Commissioner, WITHIN THE TIME SPECIFIED IN THE

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1 MARYLAND RULES, shall [within such 30 day period] make and return to the court a
2 full and complete transcript, duly certified by him, of all documents on file in his office
3 directly relating to the matter as to which such appeal is taken.

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

8 (i) In violation of constitutional provisions; or

9 (ii) In excess of the statutory authority or jurisdiction of the
10 Commissioner; or

11 (iii) Made upon unlawful procedure; or

12 (iv) Affected by other error of law; or

13 (v) Unsupported by competent, material, and substantial evidence in
14 view of the entire record as submitted; or

15 (vi) Arbitrary or capricious.

16 [(5)] (2) Costs shall be awarded as in civil actions.

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

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

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

25 **Article - Insurance**

26 2-201.

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

33 2-215.

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

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

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

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

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

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

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

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

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

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

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

22 (i) a copy of the order of the Commissioner from which the appeal is
23 taken;

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

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

27 (2) In an appeal of a refusal by the Commissioner to grant a hearing, within
28 [30 days after a copy of the notice of appeal is filed with the Commissioner] THE TIME
29 SPECIFIED IN THE MARYLAND RULES, the Commissioner shall file in the court in which
30 the appeal is pending certified copies of all documents on file with the Commissioner that
31 directly relate to the matter on appeal.

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

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

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

