

SENATE BILL 798
EMERGENCY BILL

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2000 Regular Session
0lr2936
CF 0lr2415

By: **Senator Bromwell**

Introduced and read first time: February 14, 2000

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Private Review Agents - Market Conduct Examinations**

3 FOR the purpose of requiring private review agents to undergo certain examinations;

4 requiring private review agents to pay for the expense of certain examinations;

5 requiring examinations of health maintenance organizations to be conducted in

6 the same manner as examinations of insurers and nonprofit health service

7 plans; making this Act an emergency measure; and generally relating to

8 examinations conducted by the Insurance Commissioner.

9 BY repealing

10 Article - Health - General

11 Section 19-718

12 Annotated Code of Maryland

13 (1996 Replacement Volume and 1999 Supplement)

14 BY adding to

15 Article - Health - General

16 Section 19-706(nn)

17 Annotated Code of Maryland

18 (1996 Replacement Volume and 1999 Supplement)

19 BY repealing and reenacting, with amendments,

20 Article - Insurance

21 Section 2-205, 2-207(a), 2-208, and 2-209

22 Annotated Code of Maryland

23 (1997 Volume and 1999 Supplement)

24 BY adding to

25 Article - Insurance

26 Section 15-10B-19

27 Annotated Code of Maryland

28 (1997 Volume and 1999 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That Section(s) 19-718 of Article - Health - General of the Annotated
3 Code of Maryland be repealed.

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

6 **Article - Health - General**

7 19-706.

8 (NN) THE PROVISIONS OF §§ 2-205, 2-207, 2-208, AND 2-209 OF THE INSURANCE
9 ARTICLE APPLY TO HEALTH MAINTENANCE ORGANIZATIONS.

10 **Article - Insurance**

11 2-205.

12 (a) (1) Whenever the Commissioner considers it advisable, the
13 Commissioner shall examine the affairs, transactions, accounts, records, and assets of
14 each:

15 (i) authorized insurer;

16 (ii) management company of an authorized insurer;

17 (iii) subsidiary owned or controlled by an authorized insurer; [or]

18 (iv) rating organization; OR

19 (V) AUTHORIZED HEALTH MAINTENANCE ORGANIZATION.

20 (2) The Commissioner shall examine each domestic insurer AND
21 HEALTH MAINTENANCE ORGANIZATION at least once every 5 years.

22 (b) The Commissioner shall examine the affairs, transactions, accounts,
23 records, and assets of:

24 (1) each insurer AND EACH HEALTH MAINTENANCE ORGANIZATION that
25 applies for an original certificate of authority to do business in the State; and

26 (2) each rating organization that applies for a license to do business in
27 the State.

28 (c) When examining a reciprocal insurer, the Commissioner may examine the
29 attorney in fact of the reciprocal insurer to the extent that the transactions of the
30 attorney in fact relate to the reciprocal insurer.

31 (d) The Commissioner may limit the examination of an alien insurer to its
32 insurance transactions and affairs in the United States.

1 (e) Instead of conducting an examination, the Commissioner may accept a full
2 report, certified by the insurance supervisory official of another state, of the most
3 recent examination of a foreign insurer OR HEALTH MAINTENANCE ORGANIZATION,
4 alien insurer OR HEALTH MAINTENANCE ORGANIZATION, or an out-of-state rating
5 organization.

6 2-207.

7 (a) (1) The Commissioner shall conduct an examination of an insurer,
8 HEALTH MAINTENANCE ORGANIZATION, OR PRIVATE REVIEW AGENT at:

9 (i) the home office of a [domestic insurer or foreign insurer]
10 DOMESTIC INSURER, FOREIGN INSURER, HEALTH MAINTENANCE ORGANIZATION, OR
11 PRIVATE REVIEW AGENT;

12 (ii) the United States branch office of an alien insurer, HEALTH
13 MAINTENANCE ORGANIZATION, OR PRIVATE REVIEW AGENT; or

14 (iii) a branch or agency office of the insurer, HEALTH MAINTENANCE
15 ORGANIZATION, OR PRIVATE REVIEW AGENT.

16 (2) The Commissioner shall conduct an examination of a person other
17 than an insurer, HEALTH MAINTENANCE ORGANIZATION, OR PRIVATE REVIEW
18 AGENT at:

19 (i) the place of business of the person; or

20 (ii) any place where records of the person are kept.

21 2-208.

22 The expense incurred in an examination made under § 2-205 of this subtitle, §
23 2-206 of this subtitle for surplus lines brokers and insurance holding corporations,
24 [or] § 23-207 of this article for premium finance companies, OR § 15-10B-19 OF THIS
25 ARTICLE FOR PRIVATE REVIEW AGENTS shall be paid by the person examined in the
26 following manner:

27 (1) the person examined shall pay to the Commissioner the travel
28 expenses, a living expense allowance, and a per diem as compensation for examiners,
29 actuaries, and typists:

30 (i) to the extent incurred for the examination; and

31 (ii) at reasonable rates set by the Commissioner;

32 (2) the Commissioner may present a detailed account of expenses
33 incurred to the person examined periodically during the examination or at the end of
34 the examination, as the Commissioner considers proper; and

1 (3) a person may not pay and an examiner may not accept any
2 compensation for an examination in addition to the compensation under paragraph
3 (1) of this section.

4 2-209.

5 (a) The Commissioner or an examiner shall make a complete report of each
6 examination made under § 2-205 of this [subtitle and] SUBTITLE, § 23-207 of this
7 article, OR § 15-10B-19 OF THIS ARTICLE.

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

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

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

12 (c) (1) At least 30 days before filing a proposed examination report with the
13 Commissioner, the Commissioner shall give a copy of the proposed report to the
14 person that was examined.

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

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

18 (ii) may not file the proposed report until after:

19 1. the hearing is held; and

20 2. any modifications of the report that the Commissioner
21 considers proper are made.

22 (d) (1) After an examination report is filed with the Commissioner, the
23 examination report is admissible as evidence of the facts contained in it in any action
24 brought by the Commissioner against the person examined or an officer or agent of
25 the person.

26 (2) Regardless of whether a written examination report has been made,
27 served, or filed with the Commissioner, the Commissioner or an examiner may testify
28 and offer other proper evidence about information obtained during an examination.

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

32 (1) necessary to protect the person examined from unwarranted injury;
33 or

34 (2) in the public interest.

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

4 (g) (1) Subject to paragraph (2) of this subsection, the Commissioner may
5 disclose a preliminary examination report, investigation report, or any other matter
6 related to an examination made under § 2-205 or § 2-206 of this subtitle or § 23-207
7 OR § 15-10B-19 of this article only to the insurance regulatory agency of another state
8 or to a federal, State, local, or other law enforcement agency.

9 (2) A disclosure may be made under paragraph (1) of this subsection only
10 if:

11 (i) the disclosure is made for regulatory, law enforcement, or
12 prosecutorial purposes;

13 (ii) the agency receiving the disclosure agrees in writing to keep the
14 disclosure confidential and in a manner consistent with this section; and

15 (iii) the Commissioner is satisfied that the agency will preserve the
16 confidential nature of the information.

17 (3) Notwithstanding the provisions of this subsection, final reports of
18 examinations are considered public documents and may be disclosed to the public.

19 (h) The Commissioner may not disclose any information obtained from
20 another state if the information is:

21 (1) related to an examination made by the other state on an insurer
22 domiciled in that state; and

23 (2) of a nature that would be considered confidential under paragraph
24 (1) of this subsection if the examination had been made by this State under § 2-205 or
25 § 2-206 of this subtitle or § 23-103 OR § 15-10B-19 of this article.

26 15-10B-19.

27 (A) WHENEVER THE COMMISSIONER CONSIDERS IT ADVISABLE, THE
28 COMMISSIONER SHALL EXAMINE THE AFFAIRS, TRANSACTIONS, ACCOUNTS,
29 RECORDS, AND ASSETS OF EACH PRIVATE REVIEW AGENT AT LEAST ONCE EVERY 5
30 YEARS.

31 (B) THE COMMISSIONER SHALL EXAMINE THE AFFAIRS, TRANSACTIONS,
32 ACCOUNTS, RECORDS, AND ASSETS OF EACH PRIVATE REVIEW AGENT THAT APPLIES
33 FOR A CERTIFICATE OF REGISTRATION UNDER § 15-10B-03 OF THIS SUBTITLE.

34 (C) THE EXAMINATION SHALL BE CONDUCTED IN ACCORDANCE WITH § 2-207
35 OF THIS ARTICLE.

1 (D) THE EXPENSE OF THE EXAMINATION SHALL BE PAID IN ACCORDANCE
2 WITH § 2-208 OF THIS ARTICLE.

3 (E) THE REPORTS OF THE EXAMINATION AND INVESTIGATION SHALL BE
4 ISSUED IN ACCORDANCE WITH § 2-209 OF THIS ARTICLE.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency
6 measure, is necessary for the immediate preservation of the public health and safety,
7 has been passed by a yea and nay vote supported by three-fifths of all the members
8 elected to each of the two Houses of the General Assembly, and shall take effect from
9 the date it is enacted.