

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

Re-referred to: Finance, February 18, 2000

Committee Report: Favorable

Senate action: Adopted

Read second time: March 21, 2000

CHAPTER _____

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

1 (1997 Volume and 1999 Supplement)

2 BY adding to

3 Article - Insurance

4 Section 15-10B-19

5 Annotated Code of Maryland

6 (1997 Volume and 1999 Supplement)

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9 Code of Maryland be repealed.

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

12 **Article - Health - General**

13 19-706.

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

16 **Article - Insurance**

17 2-205.

18 (a) (1) Whenever the Commissioner considers it advisable, the
19 Commissioner shall examine the affairs, transactions, accounts, records, and assets of
20 each:

21 (i) authorized insurer;

22 (ii) management company of an authorized insurer;

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

24 (iv) rating organization; OR

25 (V) AUTHORIZED HEALTH MAINTENANCE ORGANIZATION.

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

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

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

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

3 (c) When examining a reciprocal insurer, the Commissioner may examine the
4 attorney in fact of the reciprocal insurer to the extent that the transactions of the
5 attorney in fact relate to the reciprocal insurer.

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

8 (e) Instead of conducting an examination, the Commissioner may accept a full
9 report, certified by the insurance supervisory official of another state, of the most
10 recent examination of a foreign insurer OR HEALTH MAINTENANCE ORGANIZATION,
11 alien insurer OR HEALTH MAINTENANCE ORGANIZATION, or an out-of-state rating
12 organization.

13 2-207.

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

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

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

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

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

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

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

28 2-208.

29 The expense incurred in an examination made under § 2-205 of this subtitle, §
30 2-206 of this subtitle for surplus lines brokers and insurance holding corporations,
31 [or] § 23-207 of this article for premium finance companies, OR § 15-10B-19 OF THIS
32 ARTICLE FOR PRIVATE REVIEW AGENTS shall be paid by the person examined in the
33 following manner:

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

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

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

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

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

9 2-209.

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

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

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

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

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

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

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

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

24 1. the hearing is held; and

25 2. any modifications of the report that the Commissioner
26 considers proper are made.

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

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

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

4 (1) necessary to protect the person examined from unwarranted injury;
5 or

6 (2) in the public interest.

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

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

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

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

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

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

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

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

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

29 (2) of a nature that would be considered confidential under paragraph
30 (1) of this subsection if the examination had been made by this State under § 2-205 or
31 § 2-206 of this subtitle or § 23-103 OR § 15-10B-19 of this article.

32 15-10B-19.

33 (A) WHENEVER THE COMMISSIONER CONSIDERS IT ADVISABLE, THE
34 COMMISSIONER SHALL EXAMINE THE AFFAIRS, TRANSACTIONS, ACCOUNTS,
35 RECORDS, AND ASSETS OF EACH PRIVATE REVIEW AGENT AT LEAST ONCE EVERY 5
36 YEARS.

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

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

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

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

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