

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 586 (Senator Stone, *et al.*)

Finance

Economic Matters

Insurance - Public Adjusters - Regulation

This bill provides for the regulation of business entities as public adjusters by the Maryland Insurance Commissioner and makes various other changes to the provisions regulating public adjusters.

The bill is effective July 1, 2004. The regulation of business entities as public adjusters begins January 1, 2005.

Fiscal Summary

State Effect: Special fund revenues for the Maryland Insurance Administration (MIA) could increase minimally beginning in FY 2005. Any increased workload could be handled with existing resources.

Local Effect: The criminal penalty provisions of this bill are not expected to significantly affect local finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary: To qualify for a public adjuster license, a business entity must: (1) be trustworthy and competent to transact business as a public adjuster; (2) employ one or more individuals who are licensed as public adjusters; and (3) pay the applicable licensing fee. A business entity applicant for initial licensure, in addition to the general requirements, must include with its application: (1) the name of the individual licensed

public adjuster who is designated to act as the business entity's principal contact with MIA; and (2) the name and address of each licensed public adjuster employed by the business entity; each individual who has direct control over the entity's fiscal management; and each owner, partner, member, manager, or director of the business entity. A business entity's application must be signed by an individual who has direct control over the entity's fiscal management, an owner, partner, member, manager, or director.

A person whose public adjuster license has expired may reinstate the expired license for up to one year after the expiration date. The fee for reinstatement is \$100. The reinstatement is effective retroactively to the license's expiration date if a person applies for reinstatement within 60 days after the license expires. If a person applies for reinstatement more than 60 days after the license expires, the reinstatement is prospective with the effective date being the date of reinstatement by the Commissioner. A person who applies for reinstatement more than one year after the expiration date must apply for a new license.

A nonresident applicant for a public adjuster license may obtain a reciprocal license if the applicant's home state also offers reciprocal licensing. A nonresident applicant in a state that does not have a reciprocal licensing provision must meet the licensing requirements applicable to resident applicants.

The Commissioner is authorized to refuse to reinstate a license as an additional means of discipline for violation of one of the prohibited acts. The bill specifies that an applicant or licensee must have the opportunity for notice and a hearing before being disciplined. The bill adds to the acts for which the Commissioner may discipline a licensee or deny an application: (1) the misappropriation, conversion, or withholding of money; (2) the willful and material misrepresentation of the provisions of a policy; (3) the conviction of a felony, a crime of moral turpitude, or any criminal offense involving dishonesty or breach of trust; (4) the willful failure to comply with, or violation of, a proper order from the Commissioner; (5) the failure or refusal to pay on demand money that belongs to another; (6) the failure to carry on business in good faith; (7) the denial, suspension, or revocation of a license in another state; and (8) the knowing employment of an individual acting in a fiduciary capacity who has been convicted within the preceding 10 years of a felony or crime of moral turpitude.

The Commissioner may also discipline a business entity for the acts of specified individuals if the act is a violation of the State's insurance laws; a conviction of a felony, crime of moral turpitude, or any criminal offense involving dishonesty or breach of trust; or a suspension or revocation a professional license for a fraudulent or dishonest practice.

Under the bill, acting as a public adjuster without obtaining a license is a misdemeanor, subject to a fine of up to \$500 and/or up to six months imprisonment for each violation. In addition to, or in lieu of, suspending or revoking a license, the Commissioner may impose a civil penalty on a licensee of between \$100 and \$500 for each violation. The Commissioner may also require restitution to a citizen who has suffered financial injury.

The bill applies the use of the term “public adjuster” to contracts that insure the real or personal property, or both, of an insured.

The bill also repeals the one-year residency requirement for an individual applicant but adds a one-year employment requirement under specified conditions, limits the ability of an individual applicant who fails the required written examination to retake it, and requires the Commissioner to adopt regulations related to the written examination.

Current Law: The Commissioner does not currently issue public adjuster licenses to business entities or to nonresidents. To qualify for a public adjuster license, an applicant must be an individual who has lived in the State for at least one year immediately prior to filing the application. The individual must be trustworthy and competent to transact business as a public adjuster. An applicant must pass the Commissioner’s written examination and pay the \$25 application fee. An applicant who passes the examination must also pay the licensing fee (\$50 for a two-year license, or \$25 if the applicant obtains the initial license with less than 12 months before the renewal time). The license is renewable for a two-year term.

On or before September 30 of the renewal year, a person whose public adjuster license has expired may reinstate the expired license by filing a reinstatement application with the Commissioner and paying the required fee (\$25 during July, \$50 during August, and \$75 during September). The Commissioner may limit the reinstatement fee to the amount of the renewal fee in cases where the need for reinstatement arose because of temporary incapacity, hospitalization, or other hardship. A person who does not apply for reinstatement by September 30 of the year the license expires must reapply for a new license.

Acting as a public adjuster without obtaining a license is prohibited, but no specific penalty attaches. The Commissioner may deny a license to an applicant or suspend, revoke, or refuse to renew a license if the applicant or licensee has: (1) violated the State’s insurance laws; (2) made a material misstatement in the application for the license; (3) engaged in fraudulent or dishonest practices; or (4) demonstrated incompetency or untrustworthiness to act as a public adjuster.

A public adjuster is a person that, for a fire insurance policy or allied lines of insurance: (1) solicits business or represents itself to the public as an adjuster of claims; (2) receives compensation for giving advice to an insured in adjusting claims; or (3) for compensation, directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about claims for another person engaged in the business of adjusting losses or damages by fire or other contingency covered by a fire insurance policy or allied lines of insurance.

State Fiscal Effect: Business entities that seek licenses as public adjusters would be subject to either the \$25 or \$50 initial licensing fee and the \$50 biennial renewal fee applicable to public adjusters. While the number of potential applicants cannot be accurately estimated, fee revenues are assumed to be minimal. MIA advises that there are currently 116 individuals licensed as public adjusters and that the number of business entities that would become licensed under the bill would likely be fewer than that. For example, if 50 business entities seek licenses, special fund revenues would increase by \$2,500 in fiscal 2005 and in future odd-numbered years. Neither the higher reinstatement fee nor the civil and criminal penalty provisions of this bill are expected to significantly affect State revenues or expenditures.

Additional Information

Prior Introductions: A similar bill, HB 494, was introduced during the 2003 session and received an unfavorable report from the House Economic Matters Committee.

Cross File: HB 15 (Delegate Feldman) – Economic Matters.

Information Source(s): Maryland Insurance Administration, Department of Legislative Services

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