

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 161 (Chairman, Finance Committee)
(By Request – Departmental – Insurance Administration, Maryland)

Finance

Maryland Insurance Administration - Enforcement of Subpoenas

This departmental bill alters the manner in which subpoenas issued by the Maryland Insurance Commissioner are enforced.

Fiscal Summary

State Effect: None. The change is procedural in nature and would not directly affect the finances of the Maryland Insurance Administration (MIA) or the Judiciary.

Local Effect: None.

Small Business Effect: MIA has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: If a person fails to comply with a lawfully served subpoena, the Commissioner may commence an enforcement action in the Baltimore City Circuit Court or, at the Commissioner's discretion, in the circuit court where the person was required to appear or produce evidence. The enforcement action is commenced by filing a petition together with a copy of the subpoena and proof that the petition was served as required for personal service of process for circuit court civil cases under the Maryland Rules.

On receipt of a petition to enforce by the Commissioner or a motion to quash by the person to whom a subpoena was directed, the court must: (1) within 10 days after

receiving the petition or motion, issue an order directing compliance or compelling testimony within five business days after the date of the court's order; and (2) impose penalties as if the person had failed to comply with the court's subpoena.

In making its ruling, the court may not quash or otherwise fail to enforce the subpoena for any reason other than a determination that: (1) the Commissioner lacked subject matter jurisdiction; or (2) the materials or subject matter requested is subject to a privilege that protects them from the Commissioner.

Current Law: In an examination, investigation, or hearing conducted by the Commissioner, the Commissioner, deputy commissioner, or an authorized examiner may administer oaths, examine individuals under oath, and issue subpoenas for the attendance of witnesses to testify or the production of evidence.

A subpoena issued must be served in the same manner as a circuit court subpoena or in the same manner as service of process in a civil action in circuit court. If a person fails to comply with a lawfully served subpoena, the Commissioner must immediately file a complaint, with a copy of the subpoena and proof of service, in the circuit court for the county where the person was required to appear or produce evidence. After these are filed, the circuit court must issue an order directing compliance with the subpoena or compelling testimony and impose penalties as if the person had failed to comply with the court's subpoena.

Background: Under Rule 2-121 of the Maryland Rules, personal service of process for circuit court civil cases may be made in the State or outside the State, if authorized, by delivering to the person to be served a copy of the summons, complaint, and all other papers filed with it. If the person is an individual, service may be made by leaving a copy of the summons, complaint, and all other papers filed at the individual's dwelling or usual place of abode with a resident of suitable age and discretion. Service may also be made by certified mail, requesting restricted delivery. Such service by certified mail is complete on delivery.

MIA advises that delays enforcing a subpoena during a recent investigation raised a concern that possible delays in enforcing subpoenas during future investigations could compromise an investigation or lead to additional harm.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland Insurance Administration, Department of Legislative Services

Fiscal Note History: First Reader - February 4, 2005
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