Department of Legislative Services

Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 223 (Chairman, Finance Committee)
(By Request – Departmental – Insurance Administration, Maryland)

Finance Economic Matters

Insurance - Regulation of Premium Finance Companies

This departmental bill makes various changes to the laws regulating premium finance companies.

Fiscal Summary

State Effect: Special fund revenues would increase to the extent the Maryland Insurance Administration (MIA) receives applications for new registration as a premium finance company. General fund revenues would increase to the extent that the Maryland Insurance Commissioner imposes higher penalties on premium finance companies. Any increase may be offset by the deterrent effect of the increased penalty. The number or amount of any penalties that would be imposed cannot be accurately estimated, but both are assumed to be minimal. Expenditures would not be affected.

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. The attached assessment does not reflect amendments to the bill.

Analysis

Bill Summary: The bill increases the fee for an initial application from $50 to $250 and requires a limited liability company (LLC) to provide a certificate of good standing issued by the State Department of Assessments and Taxation (SDAT). Renewal fees are unchanged. The registration form must also include evidence of compliance with the financial requirements of a premium finance company.

The registration form may require the applicant to file, in addition to the other required information to: (1) file the finance charges, initial service fee, and all other fees and charges to be applied for prior approval; and (2) disclose to the Commissioner, an insurer, or the Maryland Automobile Insurance Fund (MAIF), upon written request the method or formula used to calculate the finance charges and the amount of refund on cancellation of the insurance contract.

For a registration renewal, the registrant must file a renewal application in the form required by the Commissioner. The renewal registration form must include a certificate of good standing from SDAT for a corporation or LLC and evidence of compliance with the financial requirements of a premium finance company.

The bill specifies the timeframe, within 30 days after the changes occur, by which the Commissioner must require a premium finance company to report changes about specified information. A premium finance company must file for approval prior to their use: (1) all changes to the form of the premium finance agreement; and (2) all changes to finance charges and fees under the agreement. The premium finance company must disclose to the Commissioner, insurer, or MAIF, upon written request, the method or formula used to calculate the finance charges and the amount of the refund on cancellation of the insurance contract.

The bill increases the range of the civil penalties that the Commissioner may impose on a premium finance company for a violation of the laws governing premium finance companies from a minimum of $25 and a maximum of $500 to a minimum of $100 and a maximum of $5,000. The bill also repeals the restriction that the penalty may be imposed only for a first or second violation. The bill holds a premium finance company that delegates the administration of a premium finance agreement to a third party responsible for a violation of the provisions governing premium finance companies by the third party.

The bill specifies that the comparison a personal lines automobile insurance producer must offer between premium financing and the insurer’s alternative payment plan must state the total amount to be paid by the insured under each plan. For the premium finance agreement, the total amount includes the premium, any down payment, interest, fees, and charges.

Current Law: An applicant for registration must file an application with the Commissioner and pay the required $50 application fee. The registration form must include: (1) the name, business address, and telephone number of the premium finance company; (2) the name and business address of each officer, director, principal, and partner; and (3) a certificate of good standing from SDAT for a corporation. In practice, an LLC must also provide a certificate of good standing.

The registration form may also require the applicant to: (1) file the form of the premium finance agreement and the service charges; and (2) disclose the identity, trade names, and names of managers and owners of the applicant.

A registration lasts one year and expires on July 1. Before a registration expires, the registrant may renew it for another one-year term if the registrant is otherwise entitled to be registered and pays the $50 renewal fee. The Commissioner must renew the registration if the registrant meets these requirements.

The Commissioner must require a premium finance company to report changes in officers, directors, owners, trade names, principals, partners, business addresses, and telephone numbers.

Subject to applicable hearing requirements, the Commissioner may deny a registration to an applicant or suspend, revoke, or refuse to renew the registration of a premium finance company if the Commissioner finds that the applicant or registrant: (1) failed to comply with a lawful requirement of the Commissioner; (2) violated applicable law; (3) made a material misstatement in the application for registration; (4) engaged in fraudulent or dishonest practices; or (5) demonstrated incompetency or untrustworthiness to engage in the business of a premium finance company.

Instead of or in addition to suspending, revoking, or refusing to renew a registration, the Commissioner may: (1) impose on the registrant, for a first or second violation, a penalty ranging from $25 to $500; or (2) require the registrant to make restitution to a person that had suffered financial injury as a result of a violation of the applicable law.

An insurer that markets through independent insurance producers may not discriminate, intimidate, or retaliate against an insurance producer or insured that uses premium financing by denying the same rights accorded to insurance producers or insureds who pay premiums in a different manner. For personal lines automobile insurance, an insurance producer who has an ownership interest in a premium finance company must disclose this to the insured. The disclosure must be signed by the insured and must compare the costs and terms of premium financing with the insurer's alternative payment plan.

Background: A premium finance company is a person that engages in the business of entering into or accepting premium finance agreements. Under a premium finance agreement, a premium finance company pays the premium, in whole, to the insurer on behalf of the insured. The insured then pays the premium finance company in payments, with interest and a service fee. The agreement contains an assignment of or is otherwise secured by unearned premium or refund obtainable from the insurer on cancellation of the policy. MIA advises that there are 96 premium finance companies operating in Maryland. Very few financial penalties have been assessed.

MIA advises that many registered premium finance companies are owned by insurers. Penalties that the Commissioner may impose on insurers range from $100 to $125,000 for each violation. Penalties for insurance producers range from $100 to $500 for each violation. Penalties for managing general agents of insurers range from $100 to $50,000.

By regulation, in deciding whether to impose a financial penalty, the Commissioner must consider: (1) the seriousness of the violation; (2) the good faith of the violator; (3) the violator's history of previous violations; (4) the harmful effect of the violation on the public and the insurance industry; and (5) the assets of the violator.

Additional Information

Prior Introductions: A bill with similar penalty provisions, HB 535, was introduced during the 2004 session and received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

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

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