

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

House Bill 788
Economic Matters

(Delegate D. Davis)

Finance

Commercial Law - Antitrust - Business of Insurance

This bill narrows the State antitrust exemption for the insurance business. The bill exempts from application of the Maryland Antitrust Act a person engaged in the business of insurance, as the term is used under federal antitrust law, including joint underwriting or joint reinsurance agreements, for conduct that is: (1) regulated by the Maryland Insurance Commissioner; and (2) authorized by State law. Unless otherwise authorized, the exemption does not cover a person who: (1) agrees to rig bids, allocate customers or territories, boycott, coerce, or intimidate; or (2) engages in an act of bid rigging, customer or territorial allocation, boycott, or intimidation.

Fiscal Summary

State Effect: Enforcement could be handled with the existing resources of the Antitrust Division in the Office of the Attorney General.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: Generally, the Maryland Antitrust Act prohibits a person from engaging in various activities intended to restrain trade or competition in commerce. However, some activities that would otherwise violate the Act are exempt. Among these exemptions, the Act does not apply to the activity of an insurer, insurance producer, public adjuster, insurance advisor, or rating organization, to the extent that the activity is subject to regulation by the Insurance Commissioner or is authorized by State law,

including the making of or participation in joint underwriting or joint reinsurance arrangements.

Background: Whereas the State insurance antitrust exemption is focused on insurance industry actors, the federal exemption is focused on specific acts. The federal antitrust laws generally prohibit conduct that restrains interstate commerce. Under the exemption to the federal antitrust laws, the laws do not apply to the business of insurance to the extent that the practice is regulated by state law. However, the exemption does not apply to acts or agreements of boycott, coercion, or intimidation.

Although the federal statute does not define the business of insurance, the Supreme Court, in *Group Life & Health Ins. Co. v. Royal Drug Co.*, 440 U.S. 205 (1979) and *Union Life Ins. Co. v. Pireno*, 458 U.S. 119 (1982), has identified three criteria for determining whether an activity is the business of insurance. To determine whether an act falls within the federal exemption, a court must consider whether the practice is: (1) related to transferring or spreading a policy holder's risk; (2) an integral part of the policy relationship between the insurer and the insured; and (3) limited to entities within the insurance industry. No one criterion is determinative.

The purpose of the State Antitrust Act is to complement federal antitrust laws. In construing the Act, courts are directed to follow the guidance of federal courts in interpreting federal law dealing with the same or similar matters. The bill tracks the federal antitrust exemption.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Antitrust Division),
Department of Legislative Services

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