

HOUSE BILL 1432

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By: **Chair, Economic Matters Committee (By Request - Departmental - Insurance Administration, Maryland)**

Rules suspended

Introduced and read first time: March 9, 2007

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Insurance - Analyses and Examination Reports - Use and Sharing of**
3 **Documents, Materials, and Information**

4 FOR the purpose of authorizing the Maryland Insurance Commissioner to conduct a
5 certain analysis and examine the financial condition of certain entities under
6 certain circumstances; repealing certain provisions of law governing the
7 disclosure of certain information by the Commissioner; establishing that certain
8 documents, materials, and information in the control or possession of the
9 Commissioner is confidential and privileged, is not subject to certain record
10 keeping and disclosure requirements, and is not subject to subpoena or
11 discovery; establishing the circumstances under which the Commissioner may
12 use, share, and receive certain documents, materials, and information;
13 prohibiting the Commissioner and certain other persons from testifying in
14 certain legal actions concerning certain documents, materials, or information;
15 authorizing the Commissioner to enter into certain agreements; defining a
16 certain term; and generally relating to the conduct of analyses and
17 examinations by the Maryland Insurance Commissioner and the use, sharing,
18 and receipt of certain documents, materials, and information.

19 BY repealing and reenacting, with amendments,
20 Article - Insurance
21 Section 2-205 and 2-209
22 Annotated Code of Maryland
23 (2003 Replacement Volume and 2006 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – Insurance**

4 2–205.

5 (a) **IN THIS SECTION, “ANALYSIS” MEANS A PROCESS BY WHICH THE**
6 **COMMISSIONER COLLECTS AND ANALYZES INFORMATION FROM FILED**
7 **SCHEDULES, SURVEYS, REQUIRED REPORTS SPECIFIED IN SUBSECTION (B) OF**
8 **THIS SECTION, AND OTHER SOURCES IN ORDER TO:**

9 **(1) DEVELOP AN UNDERSTANDING OF THE AFFAIRS,**
10 **TRANSACTIONS, ACCOUNTS, RECORDS, ASSETS, AND FINANCIAL CONDITION OF**
11 **THE ENTITIES SPECIFIED IN SUBSECTION (B) OF THIS SECTION; OR**

12 **(2) IDENTIFY OR INVESTIGATE PATTERNS OR PRACTICES OF THE**
13 **ENTITIES SPECIFIED IN SUBSECTION (B) OF THIS SECTION.**

14 **(B) (1) Whenever the Commissioner considers it advisable, the**
15 **Commissioner shall CONDUCT AN ANALYSIS OR** examine the affairs, transactions,
16 accounts, records, [and] assets, **AND FINANCIAL CONDITION** of each:

17 (i) authorized insurer;

18 (ii) management company of an authorized insurer;

19 (iii) subsidiary owned or controlled by an authorized insurer;

20 (iv) rating organization; or

21 (v) authorized health maintenance organization.

22 (2) The Commissioner shall examine each domestic insurer and health
23 maintenance organization at least once every 5 years.

24 **[(b)] (C)** The Commissioner shall examine the affairs, transactions,
25 accounts, records, and assets of:

1 (1) each insurer and each health maintenance organization that
2 applies for an original certificate of authority to do business in the State; and

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

5 [(c)] (D) When examining a reciprocal insurer, the Commissioner may
6 examine the attorney in fact of the reciprocal insurer to the extent that the
7 transactions of the attorney in fact relate to the reciprocal insurer.

8 [(d)] (E) The Commissioner may limit the examination of an alien insurer
9 to its insurance transactions and affairs in the United States.

10 [(e)] (F) Instead of conducting an examination, the Commissioner may
11 accept a full report, certified by the insurance supervisory official of another state, of
12 the most recent examination of a foreign insurer or health maintenance organization,
13 alien insurer or health maintenance organization, or an out-of-state rating
14 organization.

15 2-209.

16 (a) The Commissioner or an examiner shall make a complete report of each
17 examination made under § 2-205 of this subtitle or § 23-207, § 15-10B-19, or
18 § 15-10B-20 of this article.

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

20 (1) from the books, records, or documents of the person being
21 examined; or

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

24 (c) (1) At least 30 days before adopting a proposed examination report,
25 the Commissioner shall provide a copy of the proposed report to the person that was
26 examined.

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

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

- 1 (ii) may not adopt the proposed report until after:
- 2 1. the hearing is held; and
- 3 2. any modifications of the report that the Commissioner
- 4 considers proper are made.

5 (d) (1) After an examination report is adopted by the Commissioner, the

6 examination report is admissible as evidence of the facts contained in it in any action

7 brought by the Commissioner against the person examined or an officer or insurance

8 producer of the person.

9 (2) Regardless of whether a written examination report has been

10 made, served, or adopted by the Commissioner, the Commissioner or an examiner may

11 testify and offer other proper evidence about information obtained during an

12 examination.

13 (e) The Commissioner may withhold an examination or investigation report

14 from public inspection for as long as the Commissioner considers the withholding to

15 be:

16 (1) necessary to protect the person examined from unwarranted

17 injury; or

18 (2) in the public interest.

19 (f) If the Commissioner considers it to be in the public interest, the

20 Commissioner may publish an examination report or a summary of it in a newspaper

21 in the State.

22 [(g) (1) Subject to paragraph (2) of this subsection, the Commissioner may

23 disclose a preliminary examination report, investigation report, or any other matter

24 related to an examination made under § 2–205 or § 2–206 of this subtitle or § 23–207,

25 § 15–10B–19, or § 15–10B–20 of this article only to the insurance regulatory agency of

26 another state or to a federal, State, local, or other law enforcement agency.

27 (2) A disclosure may be made under paragraph (1) of this subsection

28 only if:

29 (i) the disclosure is made for regulatory, law enforcement, or

30 prosecutorial purposes;

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

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

5 (3) Notwithstanding the provisions of this subsection, adopted reports
6 of examinations are considered public documents and may be disclosed to the public.

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

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

11 (2) of a nature that would be considered confidential under paragraph
12 (1) of this subsection if the examination had been made by this State under § 2-205 or
13 § 2-206 of this subtitle or § 23-103, § 15-10B-19, or § 15-10B-20 of this article.]

14 **(G) (1) THIS SUBSECTION APPLIES ONLY TO A DOCUMENT,**
15 **MATERIAL, OR INFORMATION OTHER THAN AN ADOPTED EXAMINATION REPORT**
16 **THAT:**

17 **(I) IS IN THE CONTROL OR POSSESSION OF THE**
18 **COMMISSIONER; AND**

19 **(II) IS OBTAINED OR GENERATED DURING AN ANALYSIS OR**
20 **EXAMINATION CONDUCTED UNDER § 2-205 OR § 2-206 OF THIS SUBTITLE OR §**
21 **23-103, § 15-10B-19, OR § 15-10B-20 OF THIS ARTICLE.**

22 **(2) A DOCUMENT, MATERIAL, OR INFORMATION THAT IS SUBJECT**
23 **TO THIS SUBSECTION:**

24 **(I) IS CONFIDENTIAL AND PRIVILEGED;**

25 **(II) IS NOT SUBJECT TO TITLE 10, SUBTITLE 6 OF THE**
26 **STATE GOVERNMENT ARTICLE;**

27 **(III) IS NOT SUBJECT TO SUBPOENA; AND**

1 (IV) IS NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN
2 EVIDENCE IN ANY PRIVATE CIVIL ACTION.

3 (3) NOTWITHSTANDING PARAGRAPH (2) OF THIS SUBSECTION,
4 THE COMMISSIONER MAY USE ANY DOCUMENT, MATERIAL, OR INFORMATION
5 THAT IS SUBJECT TO THIS SUBSECTION TO FURTHER ANY REGULATORY OR
6 LEGAL ACTION BROUGHT AS PART OF THE DUTIES OF THE COMMISSIONER.

7 (4) THE COMMISSIONER AND ANY PERSON THAT RECEIVES A
8 DOCUMENT, MATERIAL, OR INFORMATION THAT IS SUBJECT TO THIS
9 SUBSECTION WHILE ACTING UNDER THE AUTHORITY OF THE COMMISSIONER
10 MAY NOT BE ALLOWED OR REQUIRED TO TESTIFY IN ANY PRIVATE CIVIL ACTION
11 CONCERNING THE DOCUMENT, MATERIAL, OR INFORMATION.

12 (H) (1) PROVIDED THAT THE RECIPIENT AGREES TO MAINTAIN THE
13 CONFIDENTIALITY AND PRIVILEGED STATUS OF THE DOCUMENT, MATERIAL, OR
14 INFORMATION, THE COMMISSIONER MAY SHARE A DOCUMENT, MATERIAL, OR
15 INFORMATION, INCLUDING A DOCUMENT, MATERIAL, OR INFORMATION THAT IS
16 CONFIDENTIAL AND PRIVILEGED UNDER SUBSECTION (G) OF THIS SECTION,
17 WITH:

18 (I) OTHER STATE, FEDERAL, OR INTERNATIONAL
19 REGULATORY AGENCIES;

20 (II) THE NATIONAL ASSOCIATION OF INSURANCE
21 COMMISSIONERS OR ITS AFFILIATES OR SUBSIDIARIES; OR

22 (III) STATE, FEDERAL, OR INTERNATIONAL LAW
23 ENFORCEMENT AUTHORITIES.

24 (2) (I) THE COMMISSIONER MAY RECEIVE A DOCUMENT,
25 MATERIAL, OR INFORMATION, INCLUDING A DOCUMENT, MATERIAL, OR
26 INFORMATION THAT IS CONFIDENTIAL AND PRIVILEGED, FROM:

27 1. OTHER STATE, FEDERAL, OR INTERNATIONAL
28 REGULATORY AGENCIES;

29 2. THE NATIONAL ASSOCIATION OF INSURANCE
30 COMMISSIONERS OR ITS AFFILIATES OR SUBSIDIARIES; OR

1 **3. STATE, FEDERAL, OR INTERNATIONAL LAW**
2 **ENFORCEMENT AUTHORITIES.**

3 **(II) THE COMMISSIONER SHALL MAINTAIN AS**
4 **CONFIDENTIAL AND PRIVILEGED ANY DOCUMENT, MATERIAL, OR INFORMATION**
5 **RECEIVED UNDER THIS PARAGRAPH WITH NOTICE OR THE UNDERSTANDING**
6 **THAT IT IS CONFIDENTIAL OR PRIVILEGED UNDER THE LAWS OF THE**
7 **JURISDICTION THAT IS THE SOURCE OF THE DOCUMENT, MATERIAL, OR**
8 **INFORMATION.**

9 **(3) THE COMMISSIONER MAY ENTER INTO AGREEMENTS**
10 **GOVERNING THE SHARING AND USE OF INFORMATION CONSISTENT WITH THIS**
11 **SUBSECTION.**

12 **(4) THERE IS NO WAIVER OF ANY APPLICABLE PRIVILEGE OR**
13 **CLAIM OF CONFIDENTIALITY WITH REGARD TO A DOCUMENT, MATERIAL, OR**
14 **INFORMATION AS A RESULT OF:**

15 **(I) DISCLOSURE OF THE DOCUMENT, MATERIAL, OR**
16 **INFORMATION TO THE COMMISSIONER UNDER THIS SUBSECTION; OR**

17 **(II) SHARING OF THE DOCUMENT, MATERIAL, OR**
18 **INFORMATION BY THE COMMISSIONER UNDER PARAGRAPH (1) OF THIS**
19 **SUBSECTION.**

20 (i) (1) The Commissioner shall provide a copy of the adopted examination
21 report to the person that was examined.

22 (2) The person examined shall present the adopted examination report
23 to its board of directors at the next regularly scheduled meeting of the board.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2007.