

## **CHAPTER 110**

**(House Bill 1432)**

AN ACT concerning

### **Insurance – Analyses and Examination Reports – Use and Sharing of Documents, Materials, and Information**

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

BY repealing and reenacting, with amendments,  
Article – Insurance  
Section 2–205 and 2–209  
Annotated Code of Maryland  
(2003 Replacement Volume and 2006 Supplement)

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

#### **Article – Insurance**

2–205.

(a) **IN THIS SECTION, “ANALYSIS” MEANS A PROCESS BY WHICH THE COMMISSIONER COLLECTS AND ANALYZES INFORMATION FROM FILED**

**SCHEDULES, SURVEYS, REQUIRED REPORTS SPECIFIED IN SUBSECTION (B) OF THIS SECTION, AND OTHER SOURCES IN ORDER TO:**

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

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

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

- (i) authorized insurer;
- (ii) management company of an authorized insurer;
- (iii) subsidiary owned or controlled by an authorized insurer;
- (iv) rating organization; or
- (v) authorized health maintenance organization.

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

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

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

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

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

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

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

2-209.

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

(b) An examination report shall contain only facts:

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

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

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

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

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

(ii) may not adopt the proposed report until after:

1. the hearing is held; and

2. any modifications of the report that the Commissioner considers proper are made.

(d) (1) After an examination report is adopted by the Commissioner, the examination report is admissible as evidence of the facts contained in it in any action

brought by the Commissioner against the person examined or an officer or insurance producer of the person.

(2) Regardless of whether a written examination report has been made, served, or adopted by the Commissioner, the Commissioner or an examiner may testify and offer other proper evidence about information obtained during an examination.

(e) The Commissioner may withhold an examination or investigation report from public inspection for as long as the Commissioner considers the withholding to be:

(1) necessary to protect the person examined from unwarranted injury; or

(2) in the public interest.

(f) If the Commissioner considers it to be in the public interest, the Commissioner may publish an examination report or a summary of it in a newspaper in the State.

[(g) (1) Subject to paragraph (2) of this subsection, the Commissioner may disclose a preliminary examination report, investigation report, or any other matter related to an examination made under § 2–205 or § 2–206 of this subtitle or § 23–207, § 15–10B–19, or § 15–10B–20 of this article only to the insurance regulatory agency of another state or to a federal, State, local, or other law enforcement agency.

(2) A disclosure may be made under paragraph (1) of this subsection only if:

(i) the disclosure is made for regulatory, law enforcement, or prosecutorial purposes;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**1. OTHER STATE, FEDERAL, OR INTERNATIONAL REGULATORY AGENCIES;**

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

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

**(II) THE COMMISSIONER SHALL MAINTAIN AS CONFIDENTIAL AND PRIVILEGED ANY DOCUMENT, MATERIAL, OR INFORMATION RECEIVED UNDER THIS PARAGRAPH WITH NOTICE OR THE UNDERSTANDING THAT IT IS CONFIDENTIAL OR PRIVILEGED UNDER THE LAWS OF THE**

**JURISDICTION THAT IS THE SOURCE OF THE DOCUMENT, MATERIAL, OR INFORMATION.**

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

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

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

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

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

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

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

**Approved by the Governor, April 10, 2007.**