

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 1432

(Chair, Economic Matters Committee) (By Request –
Departmental – Insurance Administration, Maryland)

Economic Matters

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

This departmental bill authorizes the Maryland Insurance Commissioner to conduct an “analysis” of insurance entities and adds an entity’s “financial condition” to the list of items that the Commissioner may examine or analyze. The bill also revises requirements for the disclosure of a preliminary examination report, investigation report, or any other matter related to an examination.

Fiscal Summary

State Effect: Any change in the operations of the Maryland Insurance Administration (MIA) would not affect MIA’s finances.

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: A document, material, or information that is obtained during specified examinations or analyses by the Insurance Commissioner is confidential and privileged. These documents, materials, or information are not subject to the public records provisions of the Public Information Act or a subpoena. They are also not subject to discovery or admissible in evidence in any private civil action.

The Commissioner may use any document, material, or information obtained during an examination or analysis to further any regulatory or legal action brought as part of the Commissioner's duties. The Commissioner and any person that received such a document, material, or information while acting under the Commissioner's authority may not be allowed or required to testify in any private civil action concerning the document, material, or information.

If the recipient agrees to maintain its confidentiality and privileged status, the Commissioner may share a document, material, or information obtained during an examination or analysis with:

- other State, federal, or international regulatory agencies;
- the National Association of Insurance Commissioners (NAIC) or its affiliates or subsidiaries; or
- State, federal, or international law enforcement authorities.

The Commissioner may also receive a document, material, or information from the entities listed above. The Commissioner is required to maintain as confidential and privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is its source.

The Commissioner may enter into agreements governing the sharing and use of information consistent with the bill. There is no waiver of any applicable privilege or claim of confidentiality regarding a document, material, or information as a result of its disclosure to the Commissioner under the bill or sharing a document, material, or information by the Commissioner under the bill.

Current Law: When the Insurance Commissioner considers it advisable, the Commissioner must examine the affairs, transactions, accounts, records, and assets of each authorized insurer, insurer management company, subsidiary owned or controlled by an authorized insurer, rating organization, or authorized HMO. The Commissioner is required to examine each domestic insurer and HMO at least once every five years. The Commissioner is also required to examine an insurer, HMO, or rating organization that applies for a certificate of authority or license. 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 HMO, alien insurer or HMO, or out-of-state rating organization.

The Commissioner or an examiner must make a complete report of an examination containing specified information. The Commissioner must provide a copy of the report to the person examined at least 30 days before adopting a proposed report and is required to hold a hearing if one is requested by the person examined.

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

The Commissioner may withhold an examination or investigation from public inspection for as long as the Commissioner considers it to be necessary to protect the person examined from unwarranted injury or in the public interest. If the Commissioner considers it in the public interest, the Commissioner may publish an examination report or summary of it in a newspaper.

The Commissioner may disclose a preliminary examination report, investigation report, or any other matter related to an examination only to the insurance regulatory agency of another state or to a federal, State, local, or other law enforcement agency. The disclosure may be made only under specified conditions. Adopted reports are considered public documents and may be disclosed to the public. The Commissioner may not disclose any information obtained from another state if it is related to an examination made by the other state on a domestic insurer and of a nature that would be considered confidential if the examination had been made by Maryland.

Background: MIA advises that confidentiality and limited disclosure of examination materials are the intent of the statutes and MIA's practice. Several states and NAIC have expressed concern about disclosure of these documents and the information contained in them. Recently, litigants in other states, most notably Texas, have argued that the interstate sharing of regulatory information constituted a waiver of any statutory privilege. In response, NAIC has urged states to strengthen and clarify their examination laws. MIA further advises that an analysis, as recognized under the bill, is a regular part of its regulatory oversight.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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