

Department of Legislative Services
 Maryland General Assembly
 2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1094
 Economic Matters

(Delegate Rudolph)

Finance

Insurance - Fraud Violations - Fines and Administrative Penalties

This bill requires the Maryland Insurance Administration (MIA) to investigate allegations of civil fraud and, on a showing by clear and convincing evidence that a fraudulent insurance act has occurred, to impose an administrative penalty of up to \$25,000 for each act of insurance fraud and order restitution to an insurer or self-insured employer of any insurance proceeds paid relating to a fraudulent insurance claim. The bill does not affect an insurer’s right to take any independent action to seek recovery against a person that commits a fraudulent insurance act.

Fiscal Summary

State Effect: Special fund expenditures increase by at least \$126,500 in FY 2013 due to MIA hiring one additional investigator to handle investigations into potential civil violations and one assistant Attorney General to assist at any administrative hearings and handle any appeals. Out-year expenditures reflect annualization and inflation. Potentially significant increase in general fund revenues due to the bill’s imposition of new administrative penalties.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
GF Revenue	-	-	-	-	-
SF Expenditure	\$126,500	\$152,000	\$162,400	\$170,000	\$177,900
Net Effect	(\$126,500)	(\$152,000)	(\$162,400)	(\$170,000)	(\$177,900)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: In determining the amount of an administrative penalty, the Commissioner must consider (1) the nature, circumstances, extent, gravity, and number of violations; (2) the degree of culpability of the violator; (3) prior offenses and repeated violations of the violator; and (4) any other matter that the Commissioner considers appropriate and relevant.

If an administrative penalty is not paid after all rights of appeal have been waived or exhausted, the Commissioner may bring a civil action in a court of competent jurisdiction to collect the administrative penalty, including expenses and litigation costs, reasonable attorney's fees, and interest.

Current Law: A person that commits a fraudulent insurance act with a value of \$300 or more is guilty of a felony and on conviction subject to a fine of up to three times the value of the claim and \$10,000 and/or imprisonment for up to 15 years. If the value of the claim is less than \$300, a person is guilty of a misdemeanor and on conviction subject to restitution, a fine of up to three times the value of the claim and \$10,000, and/or imprisonment for up to 18 months.

The Fraud Division within MIA has the authority to investigate each person suspected of engaging in insurance fraud. The division has numerous duties it must perform, if appropriate, after an investigation, including referring a suspected case of insurance fraud to the Office of the Attorney General or the appropriate local State's Attorney to prosecute a person criminally for insurance fraud.

State Fiscal Effect: Special fund expenditures increase by at least \$126,490 in fiscal 2013, which accounts for the bill's October 1, 2012 effective date. This estimate reflects the cost of MIA hiring one additional investigator to handle investigations into potential civil violations and one assistant Attorney General to assist at any administrative hearings and handle any appeals.

According to MIA, its Fraud Division receives approximately 3,600 annual referrals each year. Currently, only 400 to 500 referrals are opened for criminal investigation and 160 are referred to criminal prosecution a year. A criminal investigation may take up to six months to complete. The Fraud Division currently has nine investigators with an additional two investigators working exclusively with the Attorney General's Office. Only a small percentage are referred for criminal prosecution due to both the low threshold for referral to the Fraud Division and the high burden of proof for criminal cases. The bill imposes a lower burden of proof than that required for criminal prosecution. Therefore, it is likely that a larger percentage of these referrals will require an investigator to determine whether a potential *civil* violation has occurred and,

subsequently, an additional assistant Attorney General to assist at any administrative hearings and appeals. The estimate includes salaries, fringe benefits, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$111,875
Other Operating Expenses	<u>14,615</u>
Total State Expenditures	\$126,490

Future year expenditures reflect full salaries with annual increases, employee turnover, and annual increases in ongoing operating expenses.

If the number of cases referred for an investigation exceeds expectations, an additional investigator may be requested through the budget process.

Additionally, general fund revenues may increase significantly to account for the imposition of administrative penalties imposed by the bill. As noted above, approximately 160 cases are referred for criminal prosecution a year. Because the burden of proof is lower for a civil violation, a significantly higher number of cases may be referred for an administrative hearing. The bill authorizes the Commissioner to impose an administrative penalty of up to \$25,000 for each act of insurance fraud. Thus, general fund revenues may increase significantly; however, any increase is not quantifiable due to the unknown number of civil violations.

Additional Information

Prior Introductions: None.

Cross File: SB 811 (Senator Astle) - Finance.

Information Source(s): Maryland Insurance Administration, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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