

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 431

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

Economic Matters

Finance

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Insurance - Maryland Insurance Acquisitions Disclosure and Control Act -  
Revisions

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This departmental bill makes various changes to the Maryland Insurance Acquisitions Disclosure and Control Act. The bill also authorizes the Insurance Commissioner to participate in supervisory colleges, which are meetings of state, federal, and international regulatory agencies supervising insurers or their affiliates.

The bill takes effect January 1, 2014.

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Fiscal Summary

**State Effect:** Special fund revenues for the Maryland Insurance Administration (MIA) increase due to the imposition of new and existing civil penalty provisions. Imposition of new and existing criminal penalty provisions does not have a material impact on State finances or operations. Enforcement by MIA can be handled within existing resources.

**Local Effect:** The bill's imposition of new and existing criminal penalty provisions does not have a material impact on local government finances or operations.

**Small Business Effect:** MIA has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

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## Analysis

### **Bill Summary:**

#### *Supervisory Colleges*

The bill authorizes the Insurance Commissioner to participate in supervisory colleges, which are meetings of state, federal, and international insurance regulatory agencies. The bill enumerates the powers the Commissioner holds with respect to the supervisory college. Insurers are responsible for reimbursement of reasonable expenses for the Commissioner's participation.

#### *Confidentiality*

All information and documents filed with the Commissioner in compliance with the Act are not subject to discovery or evidence in any civil action. The bill clarifies that a person filing a transaction with the Commissioner must provide consent before the Commissioner can make public confidential filing documents.

#### *Preacquisition Notification and Accompanying Filed Statement*

The bill requires the person seeking to acquire control of a domestic insurer, rather than the insurer, to file a preacquisition notification and a statement regarding the acquisition with the Commissioner. The bill also requires that prior notice of a proposed divestiture of control of a domestic insurer by a controlling person be filed with the Commissioner. Any information regarding the divestiture remains confidential until the conclusion of the transaction, unless the Commissioner determines that confidential treatment will interfere with enforcement.

The bill requires a person seeking to acquire control of a domestic insurer, in a statement filed with the Commissioner, to agree to provide the Commissioner with an annual enterprise risk report and any information deemed necessary by the Commissioner to evaluate the insurer's enterprise risk. If a material change occurs in the facts detailed in the statement, an amendment and other materials necessary to describe the amendment must be filed with the Commissioner and provided to the insurer within two business days of either the change or when the person learns of the change.

The bill makes it a violation of the Act for a person seeking to acquire control to divest, or attempt to divest, actual or presumed control of a domestic insurer either without the approval of or the disapproval by the Commissioner.

### *Registration Statement of Insurers in Insurance Holding Company Systems*

The bill requires an insurer that is a member of a insurance holding company system to file statements that the insurer's board of directors oversees corporate governance and internal controls and the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures. The insurer must also file specified financial statements upon the Commissioner's request.

Beginning in 2015, the ultimate controlling person of an insurer that is a member of an insurance holding company system must also file with the Commissioner an annual enterprise risk report identifying material risks within the holding company system that could pose enterprise risk to the insurer. The report also must be filed with the lead state commissioner of the insurance holding company system. The bill authorizes the Commissioner to conduct an examination to verify the reported information and to share the enterprise risk report with a specified insurance agency in another state.

### *Disclaimers of Affiliation*

The bill sets the amount of time before a disclaimer of affiliation with domestic insurers becomes effective at 60 days after the time of filing if not disallowed by the Commissioner. If the disclaimer is disallowed, the disclaiming party has the right to an administrative hearing, upon request.

### *Standards for Transactions*

The bill authorizes the Commissioner to specify provisions, by regulation, that must be included in management agreements, service contracts, tax allocation agreements, or cost-sharing agreements.

### *Regulation of Transactions*

The bill clarifies the intercompany agreements, as well as modifications and terminations of those agreements, which must be filed with the Commissioner for prior approval.

### *Enforcement*

The bill establishes penalties for an insurer that does not file a registration statement or summary by May 1 or a specified date set by the Commissioner. A violation is punishable by a maximum penalty of \$500 for each day from May 1 through May 10, \$1,000 for each day from May 11 through May 31, and \$5,000 for each day after May 31.

The bill authorizes the Commissioner to use a violation of the bill's requirement to file an enterprise risk report in such a way that prevents a fuller understanding of the enterprise risk as an independent basis for disapproving dividends or distributions and placing the insurer under supervision.

The bill increases the maximum amount of a fine due to a violation of the Act from \$1,000 to \$10,000 for the first day of violation and from \$100 to \$1,000 for each additional day that the violation continues. The bill also establishes these same penalties for a director or an officer of an insurance holding company system who knowingly participates in, assents to, or allows any of the officers or agents of an insurer to engage in improperly reported or submitted transactions. A person charged with such a violation has the right to notice and an opportunity for a hearing before the Commissioner. After notice and an opportunity for hearing has occurred, the bill authorizes the Commissioner to order the insurer to void any contracts and restore the status quo if, in the Commissioner's judgment, the action is in the best interest of the policyholders, the creditors, or the public.

In determining the amount of any financial penalty for any of the above violations, the Commissioner must consider (1) the seriousness of the violation; (2) the good faith of the violator; (3) the violator's history of previous violations; (4) the deleterious effect of the violation on the public and the insurance industry; and (5) the assets of the violator.

The bill authorizes the Commissioner to petition a court of competent jurisdiction in the State for an order to enjoin an insurer or its employees from violating or continuing to violate the Act, including voting, or other specified shareholder actions, on a security that is the subject of an unlawful acquisition agreement or arrangement.

The bill also authorizes the Commissioner to institute criminal proceedings in a court of competent jurisdiction against the insurer or the responsible director, officer, employee, or agent at the appearance of a willful violation by an insurer or an insurer's employee. Any officer, director, employee, or agent of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statement with the intent to deceive the Commissioner in the performance of the Commissioner's duties is guilty of a misdemeanor and subject to a fine of up to \$100,000 and/or imprisonment for five years. Any such fine must be paid by the officer, director, employee, or agent in his or her individual capacity.

## **Current Law:**

### *Confidentiality*

Generally, any information or documents filed with the Commissioner in compliance under the Act or that are reported to, obtained by, or otherwise disclosed to the Commissioner or any other person in an examination or investigation are confidential and are not subject to a subpoena. The Commissioner, the National Association of Insurance Commissioners (NAIC), or any other person may not make the information or documents public unless the person has received prior written consent.

### *Preacquisition Notification and Accompanying Financial Statement*

A domestic insurer or a person controlling a domestic insurer must file a preacquisition notification with the Commissioner at least 30 days before a specified transaction becomes effective. Failure to file the notification is punishable by sanctions.

A domestic insurer or a person that is primarily engaged directly or indirectly in the insurance business and that controls a domestic insurer must file a statement with the Commissioner at least 60 days before a specified transaction becomes effective. The statement must include contact information for specified individuals, fully audited financial information, and other relevant information.

### *Registration Statement of Insurers in Insurance Holding Company Systems*

Each insurer subject to registration must file a registration statement on a form provided by the Commissioner. The statement must contain current information on the (1) corporate and capital structure, general financial condition, ownership, and management of the insurer and of any person controlling the insurer; (2) the identity and relationship of each member of the insurance holding company system; (3) any pledge of the insurer's stock for a loan made to any member of the system; (4) the specified agreements in force and transactions currently outstanding, or that have occurred during the previous calendar year, between the insurer and the insurer's affiliates; (5) any other matters about transactions between the insurer and its affiliates that the registration statement form requires; and (6) a summary outlining all items in the current registration statement that represents changes from the prior registration statement.

### *Disclaimer of Affiliation*

An insurer, a member of an insurance holding company system, or any other person may file with the Commissioner a disclaimer of affiliation with an authorized insurer that fully discloses all material relationships and bases for affiliation between the person filing the

disclaimer and the authorized insurer, as well as the basis for disclaiming the affiliation. The Commissioner must give all interested parties notice and an opportunity to be heard and may disallow a disclaimer based on specific findings of fact.

An insurer is relieved of any duty to register or report under the Act that arises out of the insurer's relationship with the person filing the disclaimer from the date the disclaimer is filed until the Commissioner disallows the disclaimer.

### *Standards for Transaction*

Each transaction within an insurance holding company system to which an insurer subject to a registration under the Act is a party must have fair and reasonable terms, clearly and accurately disclosed records, reasonable charges or fees, and appropriately allocated expenses incurred and payments received. After the transaction, the insurer must have assets and a surplus that bear a reasonable relation to the insurer's outstanding liabilities and are adequate to meet the insurer's financial needs.

### *Regulation of Transactions*

Before a domestic insurer and another member of the same insurance holding company system enter into a specified transaction, the domestic insurer must notify the Commissioner in writing of its intention to enter into the transaction at least 30 days before the transaction is to be entered into. The Commissioner may allow for a shorter notice period.

In reviewing transactions, the Commissioner must consider whether the transaction meets the aforementioned standards for transactions or potentially adversely affects policyholder interests. The Commissioner may set aside and rescind a nonconforming transaction.

A domestic insurer and another member of the same insurance holding company system may not enter into a transaction that is a part of a plan or series of like transactions if the purpose of making separate transactions is to avoid exceeding limitations. The Commissioner may sanction the domestic insurer and other member for such transactions.

### *Enforcement*

A violation of the Act is a misdemeanor and punishable by a fine of up to \$10,000 and/or imprisonment for up to five years.

**Background:** MIA advises that the Act is one of the cornerstones of insurance regulation. Many U.S. insurer solvency failures have resulted from matters covered in the Act. Regulatory controls included in the Act, such as ensuring that persons proposing to acquire control of insurers are fit to do so and ensuring that transactions between insurers and affiliates are fair and reasonable, are designed to address the causes of insurer failures.

The Act is based on NAIC model language and, thus, includes safeguards similar to those in other states. Adopting the NAIC model revisions will ensure that Maryland has the latest regulatory tools in place. Though not yet an accreditation standard, the changes to the NAIC model will become a new accreditation standard within the next few years, and states will be required to amend their laws to be consistent with the NAIC model in order to maintain NAIC accreditation.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 13, 2013  
ncs/ljm Revised - House Third Reader - March 29, 2013

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Analysis by: Michael F. Bender

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510





ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Insurance – Maryland Insurance Acquisitions Disclosure and Control Act  
- Revisions

BILL NUMBER: HB 431

PREPARED BY: Maryland Insurance Administration

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL  
BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL  
BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.