

Chapter 513

(House Bill 1078)

AN ACT concerning

Commercial Insurance – Insurance Producers – Commissions

FOR the purpose of providing that an insurer is not prohibited from paying certain commissions ~~under commercial insurance policies~~ to licensed insurance producers under commercial insurance policies issued to certain exempt commercial policyholders in a certain manner under certain circumstances; making a technical change; providing for the application of this Act; and generally relating to commissions paid to insurance producers under commercial insurance policies.

BY repealing and reenacting, without amendments,

Article – Insurance

Section 27–212(e), 27–216(a) and (b)(1), and 27–601(a) and (b)

Annotated Code of Maryland

(2017 Replacement Volume)

BY repealing and reenacting, with amendments,

Article – Insurance

Section 27–212(f) and 27–216(b)(2)

Annotated Code of Maryland

(2017 Replacement Volume)

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

Article – Insurance

27–212.

(e) (1) An insurer may not make or allow unfair discrimination between insureds or properties having like insuring or risk characteristics in:

- (i) the premium or rates charged for insurance;
- (ii) the dividends or other benefits payable on the insurance; or
- (iii) any of the other terms or conditions of the insurance.

(2) Notwithstanding any other provision of this section, an insurer may not make or allow a differential in ratings, premium payments, or dividends for a reason based on the sex, physical handicap, or disability of an applicant or policyholder unless there is actuarial justification for the differential.

(f) This section does not prohibit an insurer from:

(1) paying commissions or other compensation to licensed insurance producers;

~~(2) PAYING COMMISSIONS UNDER POLICIES OF COMMERCIAL INSURANCE, AS DEFINED IN § 27-601 OF THIS TITLE, TO LICENSED INSURANCE PRODUCERS ON A VARIABLE BASIS IF:~~

~~(i) THE PAYMENT IS MADE UNDER THE TERMS OF A COMMISSION EXPENSE REDUCTION PLAN FILED WITH AND APPROVED BY THE COMMISSIONER UNDER THE APPLICABLE RATING MANUAL; AND~~

~~(ii) THE INSURANCE PRODUCER HAS AGREED TO THE PARTICULAR LEVEL OF COMMISSION TO BE PAID UNDER THE POLICY; or~~

(2) PAYING COMMISSIONS TO LICENSED INSURANCE PRODUCERS ON A VARIABLE BASIS ON POLICIES ISSUED TO QUALIFIED EXEMPT COMMERCIAL POLICYHOLDERS, AS DEFINED IN § 11-206 OF THIS ARTICLE, IF:

(i) THE PAYMENT OF THE COMMISSION TO THE INSURANCE PRODUCER ON A VARIABLE BASIS RESULTS IN A LOWER TOTAL COST OF THE POLICY TO THE QUALIFIED EXEMPT COMMERCIAL POLICYHOLDER; AND

(ii) THE INSURANCE PRODUCER RECEIVING THE COMMISSION HAS AGREED TO THE SPECIFIC LEVEL OF COMMISSION TO BE PAID ON THE POLICY;
or

~~[(2)] (3) allowing or returning to its participating policyholders, members, or subscribers lawful dividends, savings, or unabsorbed premium deposits.~~

27-216.

(a) A person may not willfully collect a premium or charge for insurance if the insurance is not then provided, or is not in due course to be provided subject to acceptance of the risk by the insurer, in a policy issued by an insurer as authorized by this article.

(b) (1) A person may not willfully collect a premium or charge for insurance that:

(i) exceeds or is less than the premium or charge applicable to that insurance under the applicable classifications and rates as filed with and approved by the Commissioner; or

(ii) if classifications, premiums, or rates are not required by this article to be filed with and approved by the Commissioner, exceeds or is less than the premium or charge specified in the policy and set by the insurer.

(2) Paragraph (1) of this subsection does not prohibit:

(i) a surplus lines broker that holds a certificate of qualification under Title 3, Subtitle 3 of this article from charging and collecting applicable State and federal taxes in addition to the required premium;

(ii) a life insurer from charging and collecting the amount actually expended for a medical examination of an applicant for life insurance or reinstatement of a policy of life insurance;

(iii) an insurance producer from charging a fee, not exceeding 15% of the premium, for services rendered in [replacing] PLACING insurance in an insurer if commissions are not payable by the insurer;

~~(iv) AN INSURER FROM PAYING COMMISSIONS UNDER POLICIES OF COMMERCIAL INSURANCE, AS DEFINED IN § 27-601 OF THIS TITLE, TO LICENSED INSURANCE PRODUCERS ON A VARIABLE BASIS IF:~~

~~1. THE PAYMENT IS MADE UNDER THE TERMS OF A COMMISSION EXPENSE REDUCTION PLAN FILED WITH AND APPROVED BY THE COMMISSIONER UNDER THE APPLICABLE RATING MANUAL; AND~~

~~2. THE INSURANCE PRODUCER HAS AGREED TO THE PARTICULAR LEVEL OF COMMISSION TO BE PAID UNDER THE POLICY; or~~

(iv) AN INSURER FROM PAYING COMMISSIONS TO LICENSED INSURANCE PRODUCERS ON A VARIABLE BASIS ON POLICIES ISSUED TO QUALIFIED EXEMPT COMMERCIAL POLICYHOLDERS, AS DEFINED IN § 11-206 OF THIS ARTICLE, IF:

1. THE PAYMENT OF THE COMMISSION TO THE INSURANCE PRODUCER ON A VARIABLE BASIS RESULTS IN A LOWER TOTAL COST OF THE POLICY TO THE QUALIFIED EXEMPT POLICYHOLDER; AND

2. THE INSURANCE PRODUCER RECEIVING THE COMMISSION HAS AGREED TO THE SPECIFIC LEVEL OF COMMISSION TO BE PAID ON THE POLICY; or

[(iv)] (v) a fund producer from charging and collecting, as actual expenses incurred in placing automobile insurance with the Maryland Automobile Insurance Fund:

1. a maximum charge of \$25 plus \$1 more than the actual charge by the Motor Vehicle Administration for a driving record required to be presented with the application, unless otherwise provided by the Fund; or

2. the amount provided in subsection (e) of this section.

27-601.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) “Commercial insurance” means property insurance or casualty insurance issued to an individual, a sole proprietor, partnership, corporation, limited liability company, or similar entity and intended to insure against loss arising from the business pursuits of the insured entity.

(2) “Commercial insurance” does not include:

- (i) policies issued by the Maryland Automobile Insurance Fund;
- (ii) policies issued by the Joint Insurance Association;
- (iii) workers’ compensation insurance; or
- (iv) title insurance.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all policies of commercial insurance offered, sold, or issued in the State on or after October 1, 2018.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2018.

Approved by the Governor, May 8, 2018.