

**Department of Legislative Services**  
Maryland General Assembly  
2018 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

Senate Bill 792

Finance

(Senator Feldman)

Economic Matters

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**Commercial Insurance – Insurance Producers – Commissions**

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This bill expressly authorizes a property and casualty insurer to pay commissions to a licensed insurance producer on a variable basis on policies issued to a qualified exempt commercial policyholder if (1) doing so results in a lower total cost of the policy to the qualified exempt commercial policyholder and (2) the insurance producer has agreed to the specific level of commission to be paid under the policy. The bill applies to all policies of commercial insurance offered, sold, or issued in the State on or after October 1, 2018.

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**Fiscal Summary**

**State Effect:** Minimal special fund revenue increase for the Maryland Insurance Administration (MIA) from the \$125 rate and form filing fee in FY 2019; review of the filings can likely be handled using existing resources.

**Local Effect:** Any municipal corporation or local public body that qualifies as an exempt commercial policyholder is not likely materially affected.

**Small Business Effect:** Minimal.

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**Analysis**

**Current Law/Background:**

*Commercial Insurance and Exempt Commercial Policyholders*

Commercial insurance is a type of property and casualty insurance that insures against loss arising from the business pursuits of the insured entity. State law does not consider the following types of insurance as commercial insurance: (1) policies issued by the Maryland

Automobile Insurance Fund; (2) policies issued by the Joint Insurance Association; (3) workers' compensation insurance; and (4) title insurance.

Generally, under current law, each insurer in the State must file with the Commissioner all rates, supplementary rate information, policy forms, and endorsements as well as all modifications of rates, supplementary rate information, policy forms, and endorsements that the insurer proposes to use. However, an insurer is not required to file its policy forms and endorsements (but is still required to file its rates and supplementary rate information) for an insurance policy that is issued to an exempt commercial policyholder. An "exempt commercial policyholder" means a person that pays at least \$25,000 in premiums for commercial insurance policies in the State and meets other specified criteria; some municipal corporations and local public bodies qualify as exempt commercial policyholders.

### *Insurance Producers*

An insurance producer is a person licensed by MIA to sell insurance in the State on behalf of an insurer. A producer can be a captive agent, only selling insurance for one insurer, or an independent agent, able to sell insurance for more than one insurer. An individual applying for the license must be of good character and trustworthy and meet any education requirements specified by law and set by the Commissioner. An insurer is authorized to pay commissions or other compensation to licensed insurance producers.

### *Commission Expense Reduction Plans*

The type of commission being authorized by the bill is more commonly known as a commission expense reduction plan (CERP). A CERP gives a producer the discretion to lower the producer's commission in order to lower an insured's premium payment by an equal amount. When a producer accepts a reduced commission from an insurance company and the insured pays a lower premium as a result, a CERP has been applied.

In June 2017, MIA issued a [draft bulletin](#) for public comment regarding CERPs. The bulletin notes that a CERP is prohibited by law under the prohibition against an insurer making or allowing unfair discrimination between insureds having like insuring or risk characteristics. However, if the following conditions are met, a producer may determine the level of commission to collect from an insured: (1) the insurer's rate filing must contemplate zero dollars of commission expense; (2) the fee charged by the producer may not exceed 15% of the total premium; (3) the fee must be assessed by the producer in a nondiscriminatory manner so that insureds with like insuring or risk characteristics are charged the same fee; and (4) the fee must be "for services rendered in replacing insurance with an insurer."

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 1078 (Delegate Frick) - Economic Matters.

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

**Fiscal Note History:** First Reader - February 21, 2018  
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