

Chapter 100

(Senate Bill 22)

AN ACT concerning

Insurance Regulation – Third Party Administrators – Life Insurance

FOR the purpose of altering the definitions of “administrator” and “plan” to apply certain provisions of law concerning the regulation of administrators of plans to administrators of plans for life insurance and administrators that act on behalf of life insurers; making conforming changes; and generally relating to the regulation of administrators of plans for life insurance and administrators that act on behalf of life insurers.

BY repealing and reenacting, with amendments,

Article – Insurance

Section 8–301, 8–306, 8–309, 8–310, 8–312, 8–316, 8–320, and 8–321

Annotated Code of Maryland

(2017 Replacement Volume and 2018 Supplement)

BY repealing and reenacting, without amendments,

Article – Insurance

Section 8–303

Annotated Code of Maryland

(2017 Replacement Volume and 2018 Supplement)

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

Article – Insurance

8–301.

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

(b) (1) “Administrator” means a person that, to the extent that the person acting for an insurer or plan sponsor, has:

(i) control over or custody of premiums, contributions, or any other money **ON BEHALF OF A LIFE INSURER OR** with respect to a plan, for any period of time; or

(ii) discretionary authority over the adjustment, payment, or settlement of benefit claims **ON BEHALF OF A LIFE INSURER OR** under a plan or over the investment of **A LIFE INSURER’S OR** a plan’s assets.

(2) “Administrator” does not include a person that:

(i) with respect to a particular plan:

1. is, or is an employee of, the plan sponsor;

2. is, or is an employee, insurance producer, managing general agent of, an insurer or health maintenance organization that insures or administers the plan; or

3. is an insurance producer that solicits, procures, or negotiates a plan for a plan sponsor and that has no authority over the adjustment, payment, or settlement of benefit claims under the plan or over the investment or handling of the plan’s assets;

(ii) is retained by the Life and Health Insurance Guaranty Corporation to administer a plan underwritten by an impaired insurer that is subject to an order of conservation, liquidation, or rehabilitation;

(iii) is a participant or beneficiary of a plan that provides for individual accounts and allows a participant or beneficiary to exercise investment control over assets in the participant’s or beneficiary’s account, and the participant or beneficiary exercises that investment control;

(iv) administers only plans that are subject to ERISA and that do not provide benefits through insurance, unless any of the plans administered is a multiple employer welfare arrangement as defined in § 514(b)(6)(A)(ii) of ERISA;

(v) is, or is an employee of, a bank, savings bank, trust company, savings and loan association, or credit union that is regulated under the laws of this State, another state, or the United States;

(vi) is, or is an employee of, a person that is registered as:

1. an investment adviser under the Investment Advisers Act of 1940 or the Maryland Securities Act;

2. a broker–dealer or transfer agent under the Securities Exchange Act of 1934 or the Maryland Securities Act; or

3. an investment company under the Investment Company Act of 1940; or

(vii) is, or is an employee of, the Maryland Health Benefit Exchange, including the Maryland Health Benefit Exchange’s Consolidated Services Center.

(c) “Employee organization” means:

- (1) a labor union or other labor organization;
- (2) an agency or employee representation committee, association, group, or plan:
- (i) in which employees participate; and
 - (ii) that exists for the purpose, wholly or partly, of dealing with employers about a plan or other matters incidental to employment relationships; or
- (3) an employees’ beneficiary association that is organized for the purpose, wholly or partly, to establish a plan.

(d) (1) “Employer” means a person that, in relation to a plan, acts directly as an employer or indirectly in the interest of an employer.

(2) “Employer” includes a group or association of employers acting for an employer.

(e) “ERISA” means the federal Employee Retirement Income Security Act of 1974.

(f) (1) “Plan” means a fund or other arrangement that is established, maintained, or contributed to by an employer, employee organization, or both, to the extent that the fund or arrangement was established or is maintained for the purpose of:

(i) providing for participants or beneficiaries, any of whom are residents of the State, through the purchase of insurance or otherwise:

1. medical, surgical, or hospital care or benefits;
2. benefits in the event of sickness, accident, disability, death, or unemployment;
3. vacation benefits;
4. apprenticeship or other training programs;
5. child care centers;
6. scholarship funds;
7. prepaid legal services;

- 8. severance pay arrangements; [or]
- 9. supplemental retirement income payments; or

10. LIFE INSURANCE; OR

(ii) providing retirement income to or allowing the deferral of income by employees, any of whom are residents of the State, until or after the termination of covered employment.

(2) “Plan” does not include a fund or arrangement established or maintained solely for the purpose of complying with the workers’ compensation laws of the State.

(g) “Plan sponsor” means:

- (1) the employer, for a plan established or maintained by a single employer;
- (2) the employee organization, for a plan established or maintained by an employee organization; or
- (3) the association, committee, joint board of trustees, or other similar group of representatives of the parties that establish or maintain the plan, for a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations.

8–303.

(a) A person must register with the Commissioner before the person acts as or represents itself as an administrator in the State.

(b) A person that would be an administrator subject to this subtitle but for the exemption under § 8–301(b)(2)(iv) of this subtitle shall provide to the Commissioner:

- (1) written notice that the person operates in the State; and
- (2) evidence satisfactory to the Commissioner that the person is complying with any applicable bonding requirements imposed by ERISA.

8–306.

(a) The bond required for an administrator under this subtitle must:

- (1) provide protection to the plans **OR THE LIFE INSURER**, for which the administrator acts as an administrator, against loss because of acts of fraud or dishonesty

on the part of the administrator, directly or through connivance with others; and

(2) be issued by an authorized corporate surety insurer that is an acceptable surety on federal bonds under authority granted by the Secretary of the Treasury.

(b) (1) Subject to this section, the amount of the bond shall be determined at the time an application for registration or renewal of registration is filed.

(2) To determine the amount of the bond:

(i) the average amount of money that the administrator and any predecessor of the administrator handled at any one time during the immediately preceding calendar year shall be considered; and

(ii) the average amount of money that the administrator expects to handle at any one time during the current calendar year shall be considered.

(3) The amount of the bond:

(i) may not be less than 10% of the average amount of money that the administrator expects to handle at any one time for **THE LIFE INSURER OR** all the plans that the administrator expects to administer during the coming year; and

(ii) subject to paragraph (4) of this subsection, may not be less than \$5,000 or more than \$500,000.

(4) After a hearing held under Title 2 of this article, the Commissioner may set the amount of the bond to exceed \$500,000, up to 10% of the average amount of money that the administrator expects to handle at any one time for all the plans that the administrator expects to administer during the coming year.

(c) Subject to approval by the Commissioner, the bond may be an individual bond or a blanket bond that covers a group or class.

(d) (1) An applicant need not file evidence of a bond as a condition of registration or renewal of registration if:

(i) the applicant only administers plans under which benefits are paid only from the general assets of an employee organization or of an employer; or

(ii) the applicant:

1. is a corporation organized and doing business under the laws of the United States or a state;

2. is authorized under the laws of the United States or a state to exercise trust powers or to engage in business as an insurer;

3. is subject to supervision or examination by a federal or State authority; and

4. at all times has a combined capital and surplus that exceeds \$1,000,000 or any greater amount set by regulation of the Commissioner.

(2) The Commissioner may waive the requirement for an applicant to file evidence of a bond as a condition of registration or renewal of registration if the Commissioner finds that:

(i) other arrangements, including providing letters of credit or similar instruments, would be adequate to protect the interests of plan participants and beneficiaries; or

(ii) the overall financial condition of the applicant would be adequate to protect the interests of plan participants and beneficiaries.

(e) Notwithstanding any other provision of the Code, an applicant that complies with this section and is registered as an administrator under this subtitle is not subject to any other bonding requirement imposed by the law of the State for the same activities that required the applicant to be registered and bonded under this subtitle.

8-309.

(a) Subject to the hearing provisions of Title 2 of this article, the Commissioner may deny a registration to an applicant or refuse to renew, suspend, or revoke the registration of a registrant if the applicant or registrant:

(1) makes a material misstatement in an application for registration;

(2) fraudulently or deceptively obtains or attempts to obtain a registration for the applicant or registrant or for another;

(3) has been convicted of a felony or of a misdemeanor involving moral turpitude;

(4) in connection with the administration of a plan **OR WITH ACTIVITIES ON BEHALF OF A LIFE INSURER**, commits fraud or engages in illegal or dishonest activities; or

(5) violates any provision of this subtitle or a regulation adopted under it.

(b) This section does not limit any regulatory power of the Commissioner under

Title 2 of this article.

8–310.

An administrator shall discharge the administrator's duties with respect to a plan **OR A LIFE INSURER:**

(1) solely in the interest of providing to the plan's participants and beneficiaries the benefits to which they are entitled under the plan **OR ON BEHALF OF A LIFE INSURER;**

(2) for the exclusive purpose of providing benefits to the plan's participants and beneficiaries and defraying reasonable expenses of administering the plan **OR ON BEHALF OF A LIFE INSURER;**

(3) with the care, skill, prudence, and diligence that a prudent person acting in a similar capacity and under similar circumstances would use to conduct an enterprise of similar character and with similar aims;

(4) if applicable, by diversifying the investments of the plan **OR THE LIFE INSURER** to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(5) in accordance with the documents and instruments governing the plan **OR THE LIFE INSURER** to the extent that the documents and instruments are not inconsistent with this subtitle.

8–312.

(a) An administrator shall maintain adequate books and records about each plan administered by the administrator **OR ABOUT ACTIVITIES OF THE ADMINISTRATOR ON BEHALF OF A LIFE INSURER:**

(1) in accordance with prudent standards of record keeping; and

(2) for the duration of the agreement required by § 8–311 of this subtitle.

(b) Subject to any restrictions in the agreement required by § 8–311 of this subtitle on the proprietary rights of the parties in the books and records, the plan sponsor or insurer has the right to reasonable access to the books and records that is sufficient to allow the plan sponsor or insurer to fulfill its contractual obligations to the plan participants and beneficiaries.

(c) If an administrator ceases to administer a plan **OR CEASES TO ACT ON BEHALF OF A LIFE INSURER**, the administrator:

(1) shall deliver the books and records about the plan **OR ABOUT ACTIVITIES ON BEHALF OF THE LIFE INSURER** that are in the administrator's possession to the administrator's successor [or to], the plan sponsor, **OR THE INSURER**; or

(2) for 3 years after the administrator ceases to administer the plan **OR ACT ON BEHALF OF THE LIFE INSURER**:

(i) shall retain the books and records about the plan **OR ABOUT ACTIVITIES ON BEHALF OF THE LIFE INSURER**; and

(ii) shall provide access to the plan sponsor and insurer as provided under subsection (b) of this section.

8-316.

(a) With respect to a plan **OR THE LIFE INSURER**, an administrator, directly or indirectly:

(1) may not deal with the assets of the plan **OR THE LIFE INSURER** in the administrator's own interest or for the administrator's own account;

(2) in a transaction involving the plan **OR THE LIFE INSURER**, may not act in any capacity on behalf of or represent in any capacity a party whose interests are adverse to the interests of **THE LIFE INSURER**, the plan, or [its] **THE PLAN'S** participants or beneficiaries;

(3) other than commissions or service fees received from an insurer, may not receive consideration for the administrator's own personal account from a party dealing with the plan **OR THE LIFE INSURER** in connection with a transaction involving the assets of the plan **OR THE LIFE INSURER**; or

(4) may not knowingly participate in or attempt to conceal an act or omission of another administrator involved in the administration of that plan **OR IN ACTIVITIES ON BEHALF OF THE LIFE INSURER**, knowing that the act or omission of the other administrator would be a violation of this subtitle.

(b) An administrator may not procure the bond required by this subtitle from a surety insurer or other company or through an insurance producer in whose business operations the administrator has direct or indirect control or significant financial interest.

(c) Notwithstanding subsection (a)(1) of this section, an administrator is not considered to have dealt with the assets of a plan in the administrator's own interest or for the administrator's own account solely because:

(1) the administrator held the assets, at interest for the benefit of the administrator, for an administratively reasonable period of time before remitting the assets to an insurer or other payee; or

(2) the compensation that the administrator receives for services necessary for establishing or operating the plan does not exceed reasonable compensation.

8–320.

(a) To enforce this subtitle and any regulation adopted under it, the Commissioner may issue an order that requires the violator to:

(1) cease and desist from the violation and further similar violations; and

(2) take specific affirmative action to correct the violation, including:

(i) the restitution of money, property, or other assets to a person aggrieved by the violation;

(ii) the restoration to the plan **OR THE LIFE INSURER** of profits realized by the administrator that have been made through use of assets of the plan **OR THE LIFE INSURER** by the administrator; and

(iii) the removal of the administrator that committed the violation.

(b) (1) The Commissioner may file a petition in the circuit court of any county to enforce an order issued under this section.

(2) In an action brought by the Commissioner under this section, the Commissioner may recover for the use of the State reasonable attorney's fees and the costs of the action.

(c) (1) In addition to any other enforcement action taken by the Commissioner under this section, the Commissioner may impose a civil penalty of not more than \$10,000 for each violation of this subtitle.

(2) Notwithstanding paragraph (1) of this subsection, the Commissioner may impose a civil penalty of not more than \$1,000 per day for each day that a person is in violation of § 8–303(a) of this subtitle.

(3) In determining the amount of the civil penalty imposed under this subsection, the Commissioner shall consider:

(i) the seriousness of the violation;

(ii) the good faith of the violator;

- (iii) the violator's history of previous violations;
- (iv) the deleterious effect of the violation on the plan and its participants and beneficiaries;
- (v) the assets of the violator; and
- (vi) any other factors that relate to the determination of a financial penalty.

(d) This section does not limit any regulatory power of the Commissioner under Title 2 of this article.

8-321.

(a) With respect to a plan **OR ACTIVITIES ON BEHALF OF A LIFE INSURER**, an administrator who breaches a responsibility imposed on the administrator by this subtitle:

(1) is personally liable for the restitution of money, property, or other assets to a person aggrieved by the violation and for the restoration to the plan of any profits realized by the administrator that have been made through use of assets of the plan by the administrator; and

(2) is subject to any other equitable or remedial relief that a court considers appropriate, including removal of the administrator.

(b) In addition to any liability that an administrator may have under subsection (a) of this section, the administrator is liable for a breach of responsibility under this subtitle by another administrator with respect to the same plan if the administrator:

(1) knowingly participates in or knowingly attempts to conceal an act or omission of the other administrator involved in the administration of the same plan, knowing that the act or omission of the other administrator would be a violation of this subtitle;

(2) by the administrator's failure to comply with § 8-310 of this subtitle, has enabled the other administrator to violate this subtitle; or

(3) knows of a violation of this subtitle by the other administrator, unless the administrator makes reasonable efforts under the circumstances to remedy the violation.

(c) (1) An administrator is not liable under this subtitle, by reason of a breach of responsibility, for a loss to a participant's or beneficiary's account if:

(i) the plan provides for individual accounts and allows a participant or beneficiary to exercise investment control over assets in the participant's or beneficiary's account;

(ii) the participant or beneficiary exercises that control; and

(iii) the loss or breach results from the participant's or beneficiary's exercise of that investment control.

(2) An administrator is not liable for a violation of this subtitle if the violation was committed before the administrator became an administrator or after the administrator ceased to be an administrator.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2019.

Approved by the Governor, April 18, 2019.