

SENATE BILL 22

C4

9lr0064

(PRE-FILED)

By: **Chair, Finance Committee (By Request – Departmental – Maryland Insurance Administration)**

Requested: October 15, 2018

Introduced and read first time: January 9, 2019

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Insurance Regulation – Third Party Administrators – Life Insurance**

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

9 BY repealing and reenacting, with amendments,
10 Article – Insurance
11 Section 8–301, 8–306, 8–309, 8–310, 8–312, 8–316, 8–320, and 8–321
12 Annotated Code of Maryland
13 (2017 Replacement Volume and 2018 Supplement)

14 BY repealing and reenacting, without amendments,
15 Article – Insurance
16 Section 8–303
17 Annotated Code of Maryland
18 (2017 Replacement Volume and 2018 Supplement)

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

21 **Article – Insurance**

22 8–301.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

9 (2) "Administrator" does not include a person that:

10 (i) with respect to a particular plan:

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

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

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

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

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

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

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

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

33 1. an investment adviser under the Investment Advisers Act

1 of 1940 or the Maryland Securities Act;

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

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

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

8 (c) “Employee organization” means:

9 (1) a labor union or other labor organization;

10 (2) an agency or employee representation committee, association, group, or
11 plan:

12 (i) in which employees participate; and

13 (ii) that exists for the purpose, wholly or partly, of dealing with
14 employers about a plan or other matters incidental to employment relationships; or

15 (3) an employees’ beneficiary association that is organized for the purpose,
16 wholly or partly, to establish a plan.

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

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

21 (e) “ERISA” means the federal Employee Retirement Income Security Act of
22 1974.

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

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

28 1. medical, surgical, or hospital care or benefits;

29 2. benefits in the event of sickness, accident, disability,
30 death, or unemployment;

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- 1 3. vacation benefits;
- 2 4. apprenticeship or other training programs;
- 3 5. child care centers;
- 4 6. scholarship funds;
- 5 7. prepaid legal services;
- 6 8. severance pay arrangements; [or]
- 7 9. supplemental retirement income payments; or

10. LIFE INSURANCE; OR

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

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

15 (g) “Plan sponsor” means:

16 (1) the employer, for a plan established or maintained by a single employer;

17 (2) the employee organization, for a plan established or maintained by an
18 employee organization; or

19 (3) the association, committee, joint board of trustees, or other similar
20 group of representatives of the parties that establish or maintain the plan, for a plan
21 established or maintained by two or more employers or jointly by one or more employers
22 and one or more employee organizations.

23 8–303.

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

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

28 (1) written notice that the person operates in the State; and

29 (2) evidence satisfactory to the Commissioner that the person is complying

1 with any applicable bonding requirements imposed by ERISA.

2 8-306.

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

4 (1) provide protection to the plans **OR THE LIFE INSURER**, for which the
5 administrator acts as an administrator, against loss because of acts of fraud or dishonesty
6 on the part of the administrator, directly or through connivance with others; and

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

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

12 (2) To determine the amount of the bond:

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

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

18 (3) The amount of the bond:

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

22 (ii) subject to paragraph (4) of this subsection, may not be less than
23 \$5,000 or more than \$500,000.

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

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

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

32 (i) the applicant only administers plans under which benefits are

1 paid only from the general assets of an employee organization or of an employer; or

2 (ii) the applicant:

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

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

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

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

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

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

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

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

23 8–309.

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

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

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

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

32 (4) in connection with the administration of a plan **OR WITH ACTIVITIES**

1 **ON BEHALF OF A LIFE INSURER**, commits fraud or engages in illegal or dishonest
2 activities; or

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

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

6 8–310.

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

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

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

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

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

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

24 8–312.

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

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

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

30 (b) Subject to any restrictions in the agreement required by § 8–311 of this
31 subtitle on the proprietary rights of the parties in the books and records, the plan sponsor
32 or insurer has the right to reasonable access to the books and records that is sufficient to

1 allow the plan sponsor or insurer to fulfill its contractual obligations to the plan
2 participants and beneficiaries.

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

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

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

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

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

14 8–316.

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

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

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

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

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

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

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

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

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

9 8-320.

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

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

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

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

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

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

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

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

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

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

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

- 1 (i) the seriousness of the violation;
- 2 (ii) the good faith of the violator;
- 3 (iii) the violator's history of previous violations;
- 4 (iv) the deleterious effect of the violation on the plan and its
5 participants and beneficiaries;
- 6 (v) the assets of the violator; and
- 7 (vi) any other factors that relate to the determination of a financial
8 penalty.

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

11 8-321.

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

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

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

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

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

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

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

32 (c) (1) An administrator is not liable under this subtitle, by reason of a breach

1 of responsibility, for a loss to a participant's or beneficiary's account if:

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

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

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

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

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