

Final - HB 90 - MIA - FAV.pdf

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Date: February 1, 2024

Bill # / Title: House Bill 90 - Insurance - Hearing Representation

Committee: House Economic Matters Committee

Position: Support

The Maryland Insurance Administration (MIA) appreciates the opportunity to share its support for House Bill 90, which is a Departmental bill.

House Bill 90 would eliminate the need for certain small businesses to engage an attorney to represent the business in administrative proceedings before the MIA or hearings at the Office of Administrative Hearings (OAH) on behalf of the MIA. The small businesses which would be impacted by this bill are businesses that meet the definition of a "small employer" in § 31–101 of the Insurance Article (employers of not more than 50 employees). In drafting HB 90, the MIA relied upon Md. Ann. Code, Bus. Occ. & Prof., § 10-206(b)(4) which identifies individuals who are authorized to act on behalf of certain business entities when appearing before the District Courts of Maryland. Importantly, HB 90 places the owners of small businesses on equal footing with insurance companies, which are currently permitted under § 2-213(b)(ii)(2) to be represented by an employee of the insurer who is not an attorney.

For some small businesses, the cost of hiring an attorney is a significant economic barrier to exercising its right to pursue an evidentiary hearing on an administrative complaint with respect to which the MIA has not found a statutory violation. Rather than being represented by its owner or an officer of the company, small businesses are required to hire an attorney because, representing a person (including a business entity) before a unit of state government is deemed to be practicing law and an individual must be a member of the Maryland Bar to practice law, except as otherwise permitted by statute.

The inability of small businesses to incur the expense of counsel is a basis on which the MIA has seen small business owners abandon their hearing request and a basis on which either the MIA or the OAH have been forced to dismiss the case on motion of the insurer.

House Bill 90 proposes an amendment to §2–213 of the Insurance Article to permit small businesses, 50 employees or fewer, to designate an employee to represent them in such hearings mentioned above. The language used in this Departmental bill to define the scope of individuals who may represent a small business in administrative hearings is similar language used in enacted legislation that allows representatives of small businesses to appear without counsel to represent the business in the Maryland small claims court. And, as noted, this places Maryland small businesses on equal footing with insurers, which are not required to be represented by attorneys in evidentiary hearings before the Administration.

For these reasons, the MIA urges a favorable committee report on House Bill 90 and thanks the Committee for the opportunity to share its support.

HB0090 - Maryland State Bar Association Support FW

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To: Members of the House Economic Matters Committee
From: Maryland State Bar Association (MSBA)
Subject: HB 90 – Insurance – Hearing Representation
Date: January 30, 2024
Position: **Favorable with Amendment**

The Maryland State Bar Association (MSBA) supports with amendment **House Bill 90 – Insurance – Hearing Representation**. HB 90 requires the Maryland Insurance Commissioner to allow corporations, partnerships, limited liability companies, and sole proprietorships that are small employers to be represented by certain authorized individuals rather than an attorney in certain hearings held by the Commissioner.

MSBA represents more attorneys than any other organization across the state in all practice areas. Through its advocacy committees and various practice-specific sections, MSBA monitors and takes positions on legislation that protects the legal profession, preserves the integrity of the judicial system, and ensures access to justice for Marylanders.

The bill raises concerns about the unauthorized practice of law by non-attorneys representing a business, particularly in the case where the business is the responding party in actions related to the Maryland Insurance Administration (MIA). Attorneys, through education and training, have a better understanding than a non-attorney representative of the impact of an adverse ruling and the financial consequences on a business entity.

MSBA suggests the following amendment on page 2, line 20:

- Delete “;”
- Add “*solely in matters where the business entity is the complaining party and not the respondent in an action brought against them;*”

For these reasons, MSBA urges a **favorable report with the proposed amendment on HB90**.

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