

# **Final SB 229 - MIA - FAV.pdf**

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Position: FAV

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**Date:** January 24, 2024

**Bill # / Title:** Senate Bill 229 - Insurance - Penalties - Unauthorized Insurers, Insurance Producers, and Public Adjusters

**Committee:** Senate Finance Committee

**Position:** Support

The Maryland Insurance Administration (MIA) appreciates the opportunity to share its support of Senate Bill 229, which is a Departmental bill.

Senate Bill 229 would increase the maximum civil penalty that can be assessed against (i) an insurance producer or public adjuster for violations of the Insurance article, and (ii) an unlicensed person engaged in the business of insurance in the State in violation of the State's licensing requirements. In both instances, the minimum penalty will remain the same.

Currently, insurance producers and public adjusters who violate the obligations or standards imposed by the insurance article are currently subject to a minimum penalty of \$100 and a maximum penalty of \$500 per violation. Md. Ann. Code, Ins. §§10-126 and 10-410.<sup>1</sup> The maximum penalty amount has not been changed since 1963 and is no longer sufficient to serve as a deterrent. SB 229 proposes to increase the maximum penalty from \$500 to \$5,000, a maximum that is consistent with the maximum penalties for violations by this category of licensees in adjacent states: Washington DC (\$5,000), West Virginia (\$5,000), Virginia (\$5,000), Pennsylvania (\$10,000), and Delaware (\$20,000).

With certain statutory exceptions, persons engaged in the business of insurance in the State are required to be licensed. Currently, a person who operates in violation of licensing laws is subject to a minimum penalty of \$1,000 and a maximum penalty of \$50,000 per violation. §4-212. The maximum penalty amount has not been changed since 1987 and is no longer sufficient to serve as a deterrent. Additionally, the maximum penalty is out of sync with the maximum penalty of \$135,000 that can be imposed on an actual licensee of the MIA. SB 229 proposes to increase the maximum penalty from \$50,000 to \$125,000. There have been instances where the Insurance Commissioner was limited in the penalty that was able to be assessed against an unauthorized insurance operation due to the cap currently in statute. To ensure appropriate deterrence of unlicensed (and often fraudulent) actors, the MIA proposes that the penalty cap be raised to \$125,000.

In both instances, SB 229 only proposes increases to the maximum penalty. The minimum penalty remains the same. There are times when it is appropriate to impose only a *de minimis* penalty, and that option is preserved in SB 229.

For these reasons, the MIA urges a favorable committee report on Senate Bill 229 and thanks the Committee for the opportunity to share its support.

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<sup>1</sup> Unless otherwise indicated, all citations are to the Insurance Article.

## **MIA Answers to FIN Questions**

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**Question 1: How many penalties have been levied on insurance producers or public adjusters who violated provisions of the Insurance Article over the last number of years?**

In keeping with current statutory requirements, a minimum penalty of \$100.00 or a maximum penalty of \$500.00 can be applied. Not having been increased since 1963, it appears to be an inadequate deterrent/preventative measure for individual licensees to resist engaging in nefarious conduct and violating among other statutes, 10-126 of the Insurance Article, which includes violations such as misrepresenting material facts and misappropriating money belonging to an insured.

In the last three Fiscal Years, between FY21 and FY23, the Maryland Insurance Administration (MIA) assessed \$635,000 in administrative penalties for multiple violations of the Insurance Article committed by 78 producers. Each investigation, wherein an Order is issued normally identifies multiple violations of the Insurance Article and may identify multiple producers and producer agencies.

The current statute provides that the MIA may impose a minimum penalty of \$100 or a maximum penalty of \$500 per violation. The maximum penalty, having been increased since 1963, is an inadequate deterrent and preventative measure for individual licensees to resist engaging in nefarious conduct and violating among other statutes, 10-126 of the Insurance Article, which includes violations such as misrepresenting material facts and misappropriating money belonging to an insured.

**Financial Penalties Assessed Against Licensed Entities**

Fiscal Year	Amount	# of Licensees
2023	\$54,000	23
2022	\$66,300	21
2021	\$515,200	34

As an example of criminal conduct perpetrated by unlicensed insurance producers, the Administration received a complaint that a previously licensed insurance producer, whose license was revoked by the Administration was portraying herself as a licensed producer, and selling fictitious, non-existent insurance policies to Maryland consumers. The unlicensed producer collected insurance premium payments from the innocent consumers and diverted the funds for her personal use. In total, the producer illegally collected over \$282,000 from Maryland consumers.

**Question 2: How often do we find someone who is operating as an agent that is unlicensed? How many penalties have been levied on unauthorized/unlicensed insurers engaging in the business of insurance over the last number of years?**

The sampling below is listed in chronological order based on the MIA Order Number. For example, MIA-2011-03-09 means the matter was opened on March 9, 2011.

Given the capabilities of the MIA's current computer system, we are unable to track matters issued specifically under 4-212, however, this is something the MIA will be able to do with the new system that is being developed.

<b>MIA Order #</b>	<b>Respondent(s)</b>	<b>Type / situation / other notes</b>	<b>Penalty as authorized by 4-212</b>
MIA-2010-05-036 through MIA-2010-05-046	Real Benefits Association, Serve America Assurance, Ltd., and related entities	Final Order, after hearing requested and held	\$50,000 PER RESPONDENT
MIA-2011-03-009	International Medical Group	Order	\$50,000
MIA-2014-06-028	Reliamax Surety	Order, eventually negotiated into Consent Order with identical penalty	\$31,000
MIA-2019-044	Kanuga Conferences, Inc.	Order, became Final Order after no hearing request received	\$250
MIA-2019-06-008 MIA-2019-08-026	First Advance Benefits	Orders, eventually became Final Orders after hearing requests were dismissed	\$1,000 each
MIA-2019-11-018	Student Resources, administered by United Healthcare	Consent Order	\$25,000
MIA-2020-02-005	Christian Healthcare Ministries	Order (but later reduced to C.O. with no penalty under 4-212)	\$10,000 per year of operation, in original Order
MIA-2020-03-008	American Healthcare Benefits Cooperative	Order, became Final Order after hearing req. was withdrawn	\$1,000
MIA-2020-06-019	CCM d/b/a Medi-Share	Order (but later reduced to C.O. with no penalty under 4-212)	\$10,000 per year of operation, in original Order
MIA-2020-06-022	Gospel Light Ministries	Order (but later reduced to C.O. with no penalty under 4-212)	\$10,000 per year of operation, in original Order
MIA-2020-06-023	Samaritan Ministries International	Order (but later reduced to C.O. with no penalty under 4-212)	\$10,000 per year of operation, in original Order
MIA-2020-07-001	Altrua Ministries	Order (but later reduced to C.O. with no penalty under 4-212)	\$10,000 per year of operation, in original Order
MIA-2020-07-010	Christian Mutual Med-Aid	Order (still subject to ongoing litigation)	\$10,000 per year of operation
MIA-2021-02-022 MIA-2021-02-022	Cornerstone and David Dallmer	Order, subsequently negotiated to two Consent Orders	\$23,000 total in two Consent Orders

MIA-2021-06-022	Alliance for Shared Health	Consent Order	\$30,000
MIA-2021-10-019	Hawaii Mainland Administrators	Consent Order	\$24,000
MIA-2022-06-016	Carter Center, Inc.	Consent Order	\$4,000
MIA-2023-02-015 MIA-2023-02-016	AWC and Brian McLane	Consent Order	\$3,000, jointly and severally
MIA-2023-03-038	Pomona	Consent Order	\$2,500
Unclear (no copy of actual Order in our file system)	J. Miller and Smartroof, LLC	Consent Order	\$3,500 in total
Unclear (no copy of actual Order in our file system)	Homeland Healthcare	Order, seemingly became Final Order after no hearing request received	\$10,000

### **Question 3: How often do we find someone who is operating as an agent that is unlicensed?**

As a point of clarity on the question, the MIA would like to note that there is a distinction between the unlicensed activities of a person acting as an insurance producer, public adjuster, or an agent, as posed in the question, and the three people/entities that SB 229 is seeking to increase the maximum penalties for:

1. Unauthorized insurers or persons §4-212 – increasing only the maximum penalty from \$50,000 to \$125,000;
2. An insurance producer, §10-126(b)(2)(i) – increasing only the maximum penalty from \$500 to \$5,000; and,
3. A public adjuster §10-410(b)(2)(i) – increasing only the maximum penalty from \$500 to \$5,000.

An individual who engages in the illegal practice of conducting the business of insurance without a license to do so is routinely investigated by the Fraud and Enforcement Division Criminal or Civil Units. In 2023, The Civil Fraud Unit issued 13 Civil Fraud Orders against persons/businesses who acted as public adjusters, without a license to do so [thereby engaging in the business of insurance]. Total assessed penalties for those violations was \$25,250.00

As far as selling insurance without a license to do so, as asked by the committee, the Civil Fraud Unit investigated one such case in 2019, resulting in a \$2,000.00 penalty. The person investigated was selling life insurance policies without having a license to do so.

In 2022, the Criminal Fraud Unit investigated a person who portraying herself as a licensed producer, and was selling fictitious, non-existent insurance policies to Maryland consumers. The unlicensed producer collected insurance premium payments from the innocent consumers and diverted the funds

for her personal use. In total, the producer illegally collected over \$282,000 from Maryland consumers.

The following statutory provision is applied:  
Insurance - Article § 27-405.

- (a) It is a fraudulent insurance act for a person to act as or represent to the public that the person is:
  - (1) an insurance producer or a public adjuster in the State if the person has not received the appropriate license under or otherwise complied with Title 10 of this article;...
- (b) It is a fraudulent insurance act for an insurance producer:
  - (1) to solicit or take application for, procure, or place for others insurance for which the insurance producer has not obtained an appropriate license;