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Bill # / Title: Senate Bill 231 - Insurance – Protections After Loss or Damage to Property

Committee: Senate Finance Committee

Position: Support with Amendments

The Maryland Insurance Administration (MIA) appreciates the opportunity to share its support, with amendments, of Senate Bill 231, which is a Departmental bill.

SB 231 seeks to protect Maryland consumers from predatory business practices that often occur after severe weather or other catastrophic events that give rise to insurance claims. The bill places certain limitations on solicitation by public adjusters (including a prohibition from soliciting an insured during the progress of a loss-producing occurrence); allows additional time for the cancellation or rescission of a public adjuster contract if the consumer entering into the contract is 65 years old or older; and broadens an existing protection against a fraudulent insurance act by contractors offering home repairs for damages to a private residence.

Public adjusters are hired and paid by policyholders to negotiate insurance claims. Public adjusters are often engaged when the policyholder's claim is large and complex and the policyholder requires specialized and expert assistance in negotiating with the insurer. However, a policyholder may not be able to accurately assess their need for the paid services of a public adjuster at the time of loss and as the loss is occurring.

As such, the NAIC's Public Adjuster Licensing Modeling Act, which was adopted by the National Association of Insurance Commissioners in 2006, limits the times during which public adjusters can solicit business from policyholders by prohibiting solicitation during the course of a loss or by designating time frames during which solicitation is prohibited. Maryland did not alter its public adjuster laws when the model was adopted, but other states have, and in light of investigations undertaken by the agency in response to our experience with consumer complaints, the MIA believes that it is appropriate for the State to adopt protections at this time.

As filed, SB 231 incorporates both forms of moratorium from the NAIC model. However, certain licensees have challenged the constitutionality of a ban on solicitation during the 24 hours immediately following a loss. While the MIA does not concede the merits of the position, in the interest of working to advance this important consumer protection, the MIA is working with the Committee to replace that moratorium with: (1) a provision that prohibits a public adjuster from soliciting during the progress of a loss-producing occurrence, and (2) a requirement that, for each public adjuster contract that is executed within 72 hours of the loss-producing event, the licensed public adjuster must submit a notice of the contract to the MIA within 24 hours of signing on a form to be adopted by the Commissioner. The 72-hour time frame was selected because Maryland law limits the compensation that can be paid to a public adjuster where the insurer has agreed to certain payments within 72 hours of the loss.

During its investigations, the MIA has found that it is not unusual for public adjusters to arrive and solicit business from policyholders/homeowners during and immediately following a catastrophic event, such as a house fire or

severe storm. For example, last year, during a multiple-dwelling fire in Baltimore City, consumers reported to the MIA that a public adjuster was on the scene soliciting business, introducing himself as a “claim handler,” and soliciting business *while the fire department was still actively putting out the fire*. In this particular case, the complainants indicated that, in the moment, they believed that this individual was an adjuster for their insurance company and assumed it was in their best interest to sign with him. They did not realize until after they and their neighbors had already signed with him, that he was not actually an adjuster for the insurance company. This is one of many examples of complaints that the MIA regularly receives from consumers, local fire departments, local governments, and legislators regarding concerns about public adjuster solicitation in the wake of loss-occurring events, which demonstrate the need for additional protections.

During and in the immediate aftermath of disasters such as these, consumers are the most vulnerable and may not have the capacity to think clearly. They may not appreciate the extent of their loss or claim, and may not even have reported the claim or had initial communications with their insurer. Therefore, they are not in a position to accurately assess their need to pay a third-party to assist them with their claim. By requiring public adjusters to wait until after the loss-producing event has concluded and to submit contracts that are executed by consumers within 72 hours immediately following a loss, the MIA will be in a position to assure that consumers have been provided with statutory notices and disclosures and that the contract’s payment terms comport with statutory law.

SB 231 further protects consumers from solicitations between 8 p.m. and 8 a.m., which is outside of normal business hours. Of course, an individual may reach out to a public adjuster during these non-business hours. This provision addresses the time frames within which a licensee may not contact consumers to solicit business. It does not prohibit a consumer from initiating an inquiry. The constitutionality of this provision has not been challenged.

In addition to implementing important consumer protections, it is also important to note that SB 231 will better align Maryland’s law around public adjuster solicitation with measures that have been adopted in other states, including Rhode Island, New Jersey, Virginia, Delaware, and others.

In addition, the MIA has agreed to add a provision to SB 231 to offer qualified immunity from suit to persons who report violations of the Insurance Article by public adjusters or those acting illegally as public adjusters to the MIA. Qualified immunity provisions are authorized in many instances within the Insurance Article, including with respect to the reporting of insurance fraud. The language to be added to SB 231 will incorporate similar language.

In addition, this bill expands the scope of an existing statutory protection against insurance fraud. Maryland has long prohibited contractors from fraudulently inflating the costs of post-storm repair or restoration services to cover the amount that an insured would otherwise have to pay as part of any deductible under their insurance policy. Inflating damages inflates claims costs and results in higher insurance costs for everyone. The current prohibition only applies to losses caused by weather. While weather related events and “storm chasing” are circumstances in which this activity occurs, they are not the only circumstances in which it occurs. By expanding this prohibition to include home repairs for damages caused by *any* loss-producing occurrence, the Maryland market is more fully protected against individuals attempting to defraud insurers by inflating claims by the amount of the deductible.

The MIA is confident that Maryland consumers are best served by the protections included in this bill. For these reasons, the MIA urges a favorable committee report on SB 231 and thanks the Committee for the opportunity to share its support.