

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 136

(Chair, Economic Matters Committee)(By Request -
Departmental - Maryland Insurance Administration)

Economic Matters

Finance

Insurance - Public Adjusters

This departmental bill adopts the Public Adjuster Licensing Model Act (#228) that was developed by the National Association of Insurance Commissioners (NAIC). Among other things, the bill (1) redefines “public adjuster”; (2) establishes requirements and prohibitions for public adjuster service contracts; (3) requires public adjusters to keep financial and business records in a specified manner; (4) details a set of professional obligations and ethical requirements to which a public adjuster must adhere; and (5) requires a public adjuster to report to the Insurance Commissioner within 30 days in a specified manner if administrative action is taken against the adjuster in another jurisdiction or by another governmental unit in Maryland or if the adjuster is criminally prosecuted in any jurisdiction.

The bill takes effect January 1, 2018, and applies to all public adjuster licenses issued or renewed on or after that date.

Fiscal Summary

State Effect: The Maryland Insurance Administration (MIA) can handle the bill’s requirements using existing budgeted resources; many of the bill’s requirements are already in place or expected of public adjusters by MIA. Revenues are not materially affected.

Local Effect: The bill does not affect local governmental operations or finances.

Small Business Effect: MIA has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary:

Public Adjuster Definition

The bill repeals the current definition of “public adjuster” and instead specifies that a “public adjuster” is a person who, for compensation, (1) acts or aids, solely in relation to first-party claims arising under a policy of real or personal property, on behalf of the insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance policy; (2) unless marketing on behalf of a public adjuster, solicits for employment as a public adjuster for insurance claims; or (3) investigates or adjusts losses, or advises an insured about first-party claims arising out of an insurance policy that insures real or personal property for another person engaged as a public adjuster for the insured.

A person does not require a public adjuster license if the person (1) negotiates or settles claims arising under a life, health, or motor vehicle insurance policy or annuity contract; (2) is employed only to gather facts surrounding a loss or providing technical assistance to a public adjuster; (3) is a licensed health care provider, or an employee of a licensed provider, who prepares or files a health claim on behalf of a patient; or (4) settles subrogation claims between insurers.

Public Adjuster Licensing

The bill authorizes, instead of requires, the Commissioner to adopt regulations that govern the content and administration of the examination an applicant must take to become licensed. If an out-of-state applicant for a license does not meet the license waiver requirements because the state where the adjuster’s business or residence is located does not have a law that governs public adjusters and is substantively similar to Maryland’s law, then the adjuster may declare another state where the adjuster is licensed to act as the home state to obtain a waiver.

The bill also makes two technical corrections by repealing provisions that reference an applicant’s experience working as an insurance professional prior to licensure; the experience requirement was removed by Chapter 155 of 2016.

Commissions and Fees

The bill expressly authorizes a public adjuster to pay a commission, service fee, or other valuable consideration to a person if that person is required to be licensed, and is licensed, as a public adjuster. If a person is required to be licensed, but is not, then the person may not accept a commission, service fee, or any other valuable consideration.

Contract Requirements, Disclosures, and Payment for Services

Any contract for public adjuster services must be in writing, titled “Public Adjuster Contract,” and contain 10 specified pieces of information, including the adjuster’s name and license number and a description of the services to be provided to the insured. The bill also prohibits the inclusion of certain fee-related, payment, and civil remedy requirements in the contract. The contract may specify that the public adjuster be named as a co-payee on an insurer’s payment of a claim, but if the compensation is based on a share of the insurance settlement, the contract must specify the exact percentage to be paid. A compensation provision in the contract may not be redacted in any copy provided to the Commissioner. The contract must be executed in a specified manner and contain a statement about the insured’s right to rescind or cancel the contract.

A public adjuster must provide an insured with a signed, written disclosure concerning any financial interest that the adjuster or any immediate family member of the adjuster has with any party involved in any aspect of the claim. Additionally, before a contract may be signed, an insured must be provided with a separate disclosure containing information about (1) the different types of adjusters that could be involved in the processing of an insurance claim; (2) the salary, fee, or commission of the adjuster being the responsibility of the insured, not the insurer; and (3) the insured’s rights related to the public adjuster.

If an insurer, within 72 hours after the time a loss is reported, pays or commits in writing to pay the insured the policy limit of an insurance policy, the public adjuster (1) may not receive a commission based on a percentage of the total amount paid to resolve the claim; (2) must inform the insured that the loss recovery amount might not be increased by the insurer; and (3) may only be entitled to reasonable compensation from the insured based on the circumstances surrounding the services provided.

Finances and Recordkeeping

A public adjuster who receives, accepts, or holds any funds on behalf of an insured toward the settlement of a claim must deposit the funds in a noninterest-bearing escrow or trust account in a federally insured financial institution in the adjuster’s home state or where the loss occurred.

A public adjuster must maintain a complete record of all transactions entered into as a public adjuster. The records must include specified information and must be (1) maintained for at least five years after the termination of the transaction and (2) open to examination by the Commissioner at all times. The records may be stored in an electronic format and must be treated as confidential by the Commissioner. The records are not subject to the Maryland Public Information Act.

Professional and Ethical Obligations

The bill specifies numerous professional obligations and ethical requirements that must be followed by a public adjuster. For example, a public adjuster (1) is obligated to serve with objectivity and complete loyalty to the interest of the client alone; (2) may not allow an unlicensed employee or representative to conduct business for which a license is required; (3) may not undertake the adjustment of a claim if the adjuster is not competent and knowledgeable as to the terms and conditions of the insurance coverage; and (4) may not agree to any loss settlement without the insured's knowledge and consent.

Current Law: Chapter 155 of 2016 began the process of conforming the licensing of public adjusters with the Public Adjuster Licensing Model Act (#228) by, among other things, (1) spreading out license renewal dates; (2) repealing a one-year experience requirement that was needed to obtain a license; and (3) requiring 24 credit hours of approved continuing education every two years as a condition for renewing or reinstating a license.

A "public adjuster" is a person who solicits business or represents himself or herself to the public as an adjuster of first-party insurance claims for losses or damages that arise under contracts of insurance that insure the personal or real property of an insured. A public adjuster receives compensation from the insured, directly or indirectly, for adjusting losses, investigating, appraising, evaluating, or otherwise giving advice or help to an insured in the adjustment of claims. The definition does not include a person who investigates, adjusts, or appraises claims that cover a motor vehicle insurance policy.

In order to act as a public adjuster in the State, an individual or business must obtain a public adjuster license from MIA. The Insurance Commissioner must waive the license requirements for an applicant who is not a State resident if the applicant has a valid public adjuster license from his or her home state and that state awards nonresident public adjuster licenses to Maryland residents on the same basis. To acquire a license from MIA, an applicant must pass a written examination, pay an application fee, and then pay the license fee if he or she passes the examination. The Commissioner must adopt regulations that specify the scope, type, conduct, and grading of the examination; when, where, and how often the examination will be held; and the experience requirements needed for an applicant to take the examination.

A public adjuster license expires every two years (1) for a business entity, on the date specified on the license and (2) for an individual, on the last day of his or her birth month. At least one month before the license expires, MIA must send the holder a renewal application form and a specified notice with instructions for renewal. The license fee is \$50 at the time of application and the renewal fee is \$50.

An individual public adjuster must complete 24 credit hours of approved continuing education for each two-year license period, of which 3 credit hours must directly relate to ethics; this requirement does not apply to an applicant who has not been licensed for one full year before the end of a continuing education period. The Commissioner has broad authority to waive this requirement.

Unless otherwise authorized, a person may not pay, allow, or give (or offer to pay, allow, or give) any valuable consideration to an insured as an inducement to use the services of a public adjuster.

The Commissioner may deny a license to an applicant or suspend, revoke, or refuse to renew or reinstate a license for numerous reasons, including violating the Insurance Article, engaging in fraudulent or dishonest practices, or demonstrating incompetency or untrustworthiness to act as a public adjuster. The Commissioner may also impose sanctions or penalties in a specified manner instead of or in addition to taking any other punitive action.

Background: MIA advises that the Public Adjuster Licensing Model Act (#228) was developed by NAIC to govern the qualifications and procedures for the licensing of public adjusters. Fully adopting the model law ensures that consumers engaging a public adjuster are better informed. Additionally, the bill's various recordkeeping and written disclosure requirements ensure that MIA has more tools to protect consumers in case of dispute. MIA advises that many of the bill's requirements are already in place or expected of public adjusters, and the bill is conforming State law with these existing practices and expectations.

NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators in each state, the District of Columbia, and the five U.S. territories. MIA achieved accredited status with NAIC in September 1994 and has maintained its accreditation since that time. The NAIC Accreditation Program is a voluntary program among state insurance regulators that emphasizes the importance of adequate solvency laws, the use of effective and efficient financial analysis and examination procedures, and appropriate organizational and personnel practices. NAIC regularly develops model legislation concerning new and existing insurance issues and encourages its member regulators to adopt this legislation.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division);
Maryland Insurance Administration; Department of Legislative Services

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Insurance – Public Adjuster Licensing Act

BILL NUMBER: HB 136

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PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS