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**Bulletin 18-13**

**Date: July 9, 2018**

**To: All Property & Casualty Insurers  
All Property & Casualty Producers**

**Re: Variable Commissions on Commercial Policies**

**Chapter 513, Acts of 2018 (House Bill 1078) / Commercial Insurance – Insurance Producers – Commissions; and,**

**Chapter 193, Acts of 2018 (House Bill 1127) / Insurance – Commercial Lines – Exemptions From Filings**

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This Bulletin supersedes Bulletin # 06-23 and Bulletin # 08-12 and provides important information for all Property & Casualty insurers and producers with respect to the enactment of the above-captioned Chapter laws, both of which take effect on October 1, 2018. Chapter 513 allows for the payment of commissions to a licensed insurance producer on a variable basis for policies issued to qualified **Exempt Commercial Policyholders**, as defined in § 11-206 of the Insurance Article, provided that the commission results in a lower total cost of the policy to the policyholder and the producer has agreed to the specific level of commission to be paid. Chapter 193 provides updated qualifying criteria for Exempt Commercial Policyholder status and specifies that rates and forms for policies issued to Exempt Commercial Policyholders do not have to be filed with the Maryland Insurance Administration (“Administration”).

Commercial insurance applicants wishing to purchase a policy as an Exempt Commercial Policyholder must first execute a “Certificate of Qualification as an Exempt Commercial Policyholder.” A copy of the form is attached to this Bulletin. The payment of commissions on a variable basis for policies issued to insureds that do not meet the qualifying criteria for Exempt Commercial Policyholder status is prohibited under Maryland law.

In an effort to provide insurers and producers with important additional information, we are posting the following list of questions and answers for your convenience.

1. What steps should an insurer take if it is presently using a rate filing that incorporates a variable commission payment basis for policies issued to insureds that do not qualify as Exempt Commercial Policyholders?

***No variable commissions may be paid for any policy issued or sold prior to October 1, 2018 to a commercial policyholder, or for a policy issued or sold on or after October 1, 2018 to an insured that does not qualify as an Exempt Commercial Policyholders. An insurer that is presently using a rate filing that incorporates a variable commission payment basis should send an email notification to [Ronald.Coleman@Maryland.gov](mailto:Ronald.Coleman@Maryland.gov) providing the SERFF filing number and a projected submission date for a corrective filing. Such filings***

*can be corrected by filing a rule that limits the use of variable commission payments to policies issued on or after October 1, 2018 to exempt commercial policyholders only.*

2. What steps should an insurer take if it has a pending filing that does not limit the use of variable commission payments to Exempt Commercial Policyholders?

*The Administration will notify the filer via an objection in SERFF that the use of variable commission payments must be limited to policies issued on or after October 1, 2018 to qualified Exempt Commercial Policyholders. At the filer's option, the insurer may either submit a revision to the pending filing incorporating the limitation to qualified Exempt Commercial Policyholders, or the insurer may withdraw the filing and submit a new filing accompanied by a new filing fee.*

3. How often must the insured complete the "Certificate of Qualification as an Exempt Commercial Policyholder" form?

*The "Certificate of Qualification as an Exempt Commercial Policyholder" form must be completed by the applicant in advance of the binding/issuance of a policy. A new form does not need to be completed at each policy renewal. However, a new form should be completed if the producer moves the policy from one insurer to another (including an affiliated insurer in the same group).*

4. Are there any circumstances under which a producer can accept a reduced commission that results in a lower total premium cost to the insured if the insured is not a qualified Exempt Commercial Policyholder?

*No. However, pursuant to § 27-216(b)(2)(iii), as amended by Chapter 513, Acts of 2018, a producer may charge the insured a fee not exceeding fifteen percent (15%) of the total policy premium for services rendered in placing the insurance if commissions for the policy are not payable by the insurer. The amount and availability of such fee may not be arbitrary, capricious or unfairly discriminatory.*

5. What are the qualifying criteria for Exempt Commercial Policyholder status?

*See § 11-206 of the Insurance Article, as amended by Chapter 193, Acts of 2018. In summary, the applicant must pay at least \$25,000 of annual aggregate commercial policy insurance premiums in the current or preceding calendar year AND must meet at least two (2) of the following five (5) metrics:*

- i. More than \$5,000,000 of annual revenue or sales;*
  - ii. A net worth in excess of \$2,500,000*
  - iii. Employ at least 25 full-time employees;*
  - iv. A non-profit organization or public body with an annual budget of at least \$5,000,000; or*
  - v. A municipal corporation with a population of at least 15,000.*
6. Is the content of a policy and the rates charged for a policy that is issued to an Exempt Commercial Policyholder on or after October 1, 2018 subject to the Insurance Commissioner's regulatory authority?

*Yes. See § 11-206(j)(7) of the Insurance Article, as amended by Chapter 193, Acts of 2018. While the rates and forms for policies issued to qualified Exempt Commercial Policyholders need not be filed with the Administration, all other requirements of the Insurance Article apply. Rates may not be inadequate, excessive or unfairly discriminatory.*

The Insurance Administration thanks everyone that participated in the legislative process around these issues. Please direct any questions regarding this Bulletin to Robert Baron, Associate Commissioner, Property & Casualty (410.468.2353 / [Robert.Baron@Maryland.gov](mailto:Robert.Baron@Maryland.gov)).

**Alfred W. Redmer, Jr.**  
signature on original \_\_\_\_\_  
By:  Commissioner

# CERTIFICATE OF QUALIFICATION AS AN EXEMPT COMMERCIAL POLICYHOLDER

Effective October 1, 2018, an exempt commercial policyholder must use this form to certify to an insurer that it meets the criteria required to qualify as an Exempt Commercial Policyholder under Section 11-206 of the Insurance Article. The certification enables an individual or entity to purchase commercial insurance policy forms and endorsements that have not been filed with and approved by the Maryland Insurance Administration. Rates for policies issued to qualified Exempt Commercial Policyholders also do not have to be filed with the Maryland Insurance Administration.

Pursuant to Section 11-206(j)(3), to qualify as an Exempt Commercial Policyholder, the individual or entity must meet the following minimum requirements:

- I. Total aggregate premium for property and casualty insurance policies paid in the current or preceding calendar year must be \$25,000 or greater.

Are your commercial property and casualty premiums for policies issued or delivered in Maryland \$25,000 or greater?

YES \_\_\_\_\_ NO \_\_\_\_\_ **AND**

- II. any two (2) of the following (check all that apply)

- \_\_\_\_\_ More than \$5,000,000 of annual revenue or sales;
- \_\_\_\_\_ A net worth in excess of \$2,500,000;
- \_\_\_\_\_ Employ at least 25 full-time employees;
- \_\_\_\_\_ A non-profit organization or public body with an annual budget of at least \$5,000,000; or
- \_\_\_\_\_ A municipal corporation with a population of at least 15,000.

The undersigned commercial insurance policyholder acknowledges that the policy I am receiving from \_\_\_\_\_ (name of issuing insurance company) may contain forms and/or endorsements that have not been filed with and approved by the Maryland Insurance Administration.

This form shall be submitted to the insurer issuing coverage on or prior to the effective date of coverage, and must be completed each time coverage is obtained with a new insurer, including a different affiliate.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title of Authorized Representative

\_\_\_\_\_  
Name of Commercial Insured

**ANY PERSON WHO KNOWINGLY OR WILLFULLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR WHO KNOWINGLY OR WILLFULLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO FINES AND CONFINEMENT IN PRISON.**

Form CECP (rev. 07/2018)