

HOUSE BILL 468

K1, C4

5lr1709
CF SB 465

By: **Delegates Jameson and Davis**

Introduced and read first time: February 9, 2015

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Chesapeake Employers' Insurance Company and Injured Workers' Insurance**
3 **Fund Advisory Board**

4 FOR the purpose of authorizing the Chesapeake Employers' Insurance Company to take
5 certain actions relating to a subsidiary for certain purposes subject to certain
6 requirements and under certain circumstances; specifying a certain condition of
7 being an authorized insurer; altering the selection and appointment process for the
8 members of the Board for the Chesapeake Employers' Insurance Company; repealing
9 a requirement that certain appointees take a certain oath before taking office as
10 members of the Board; altering the staggering of the terms of members of the Board;
11 authorizing the Governor to remove only certain members for incompetence or
12 misconduct; authorizing the Board to remove certain members under certain
13 circumstances; requiring a certain designated rating organization to create a certain
14 exception in its classification system for certain authorized insurers; authorizing the
15 Company to remain exempt from certain insurance rate making requirements until
16 a certain date; repealing certain provisions of law that exempt the Company from
17 certain aspects of the insurance rate making process; repealing a provision of law
18 that requires the Board to set rates in a certain manner; establishing the Advisory
19 Board for the Injured Workers' Insurance Fund; providing for the membership of the
20 Advisory Board; requiring the Advisory Board, to the extent practicable, to reflect
21 the geographic and demographic diversity of the State; providing for the terms of the
22 members of the Advisory Board; prohibiting a member of the Advisory Board from
23 serving for more than a certain number of terms or a certain number of years or
24 serving as a member of a certain board; providing that a member of the Advisory
25 Board is entitled to certain reimbursement and compensation; requiring a member
26 of the Advisory Board to take a certain oath before taking office; requiring the
27 Advisory Board to monitor and oversee the administration of a certain program, meet
28 quarterly, and review certain information and report certain findings to certain
29 persons; authorizing the Advisory Board to consult with certain employees, make
30 certain recommendations, and retain certain professionals under certain
31 circumstances; declaring the intent of the General Assembly that a rating

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 organization, in consultation with the Company, create a certain exception in its
2 classification system for authorized insurers before a certain date; requiring the
3 terms of certain members to be extended until a certain date; specifying the process
4 for appointing or selecting a certain member of the Board; authorizing the Governor
5 to appoint a certain member of the Board to be a member for an additional term;
6 providing for the terms of certain members of the Board; specifying the terms of the
7 initial members of the Advisory Board; defining a certain term; altering a certain
8 defined term; making conforming changes; providing for delayed effective dates for
9 certain provisions of this Act; providing for the termination of a certain provision of
10 this Act; and generally relating to the Chesapeake Employers' Insurance Company.

11 BY repealing and reenacting, with amendments,
12 Article – Insurance
13 Section 11–202, 11–303, 24–302, 24–306, and 24–307
14 Annotated Code of Maryland
15 (2011 Replacement Volume and 2014 Supplement)

16 BY adding to
17 Article – Insurance
18 Section 11–331 and 11–332
19 Annotated Code of Maryland
20 (2011 Replacement Volume and 2014 Supplement)

21 BY repealing
22 Article – Insurance
23 Section 24–305
24 Annotated Code of Maryland
25 (2011 Replacement Volume and 2014 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article – Labor and Employment
28 Section 10–101
29 Annotated Code of Maryland
30 (2008 Replacement Volume and 2014 Supplement)

31 BY adding to
32 Article – Labor and Employment
33 Section 10–105.1
34 Annotated Code of Maryland
35 (2008 Replacement Volume and 2014 Supplement)

36 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
37 That the Laws of Maryland read as follows:

38 **Article – Insurance**

39 24–302.

1 The General Assembly finds and determines that:

2 (1) employers' access to affordable workers' compensation insurance is of
3 utmost importance to the economy of the State;

4 (2) the Fund has been the State's insurer of last resort for workers'
5 compensation insurance since 1914;

6 (3) since its creation, the Fund was permitted to compete with the private
7 insurance market; however, the Fund did not become an effective competitive insurer until
8 the General Assembly exempted the Fund from most laws that apply to State government
9 agencies and required the Fund to be a regulated insurer;

10 (4) the most effective way to ensure that Maryland's workers'
11 compensation system remains stable and affordable is to encourage and create as much
12 competition in the marketplace as possible;

13 (5) the long-term competitive success of the Fund would be enhanced if the
14 final barriers to full competition were eliminated by converting the Fund into a fully
15 competitive, fully regulated, private insurer;

16 (6) converting the Fund into a private, nonstock, nonprofit insurer would
17 level the competitive playing field for all workers' compensation insurers operating in the
18 State;

19 (7) converting the Fund into a private, nonstock, nonprofit insurer would
20 provide assurance to Maryland employers that the financial success of the Fund would
21 inure to their benefit as policyholders through dividends and lower rates and that surplus
22 funds could not be transferred to the State's General Fund;

23 (8) the interests of the State would be protected if the Fund's statutory
24 purpose of insurer of last resort for workers' compensation insurance is preserved and the
25 Governor retains the right to appoint [the] TWO members of the board of the new company;

26 (9) (i) the interests of the employees of the Fund would be satisfied by
27 ensuring that current employees have the option to remain State employees of the Fund
28 after the conversion of the Fund to a private, nonstock, nonprofit insurer; and

29 (ii) the interests of employees of the Fund would further be satisfied
30 by ensuring that current long-term State employees who remain State employees of the
31 Fund after the conversion of the Fund to a private, nonstock, nonprofit insurer shall remain
32 in the State retirement system and, therefore, would not be unfairly penalized by being
33 prematurely forced out of the State retirement system due to the conversion; and

1 (10) the interests of the residents of the State, both employers and
2 employees, will be best met by converting the Fund into a private, nonstock, nonprofit, fully
3 regulated, competitive insurer.

4 24–306.

5 (a) The Company:

6 (1) shall be an authorized insurer; and

7 (2) on and after October 1, 2013, **AS A CONDITION OF BEING AN**
8 **AUTHORIZED INSURER**, shall be the workers' compensation insurer of last resort for
9 employers covered under Title 9 of the Labor and Employment Article.

10 (b) Before October 1, 2013, the Fund shall serve as the workers' compensation
11 insurer of last resort for workers' compensation insurance and as a competitive workers'
12 compensation insurer under the same terms and conditions as the Fund served before
13 October 1, 2012.

14 (c) The Company may not cancel or refuse to renew or issue a policy except for:

15 (1) nonpayment of a premium for current or prior policies issued by the
16 Fund or the Company;

17 (2) failure to provide payroll information to the Fund or the Company;

18 (3) failure to cooperate in any payroll audit conducted by the Fund or the
19 Company; or

20 (4) failure to reimburse the Company under a policy with deductibles as
21 required under § 19–404 of this article.

22 (d) The Company may engage only in the business of workers' compensation
23 insurance in accordance with State law.

24 **(E) SUBJECT TO THE REQUIREMENTS OF TITLE 7 OF THIS ARTICLE, THE**
25 **COMPANY MAY ESTABLISH, OWN, OR ACQUIRE A SUBSIDIARY FOR ANY LAWFUL**
26 **PURPOSE IF THE SUBSIDIARY:**

27 **(1) IS, OR AFTER ACQUISITION WILL BE, WHOLLY OWNED BY THE**
28 **COMPANY;**

29 **(2) ENGAGES IN A BUSINESS ACTIVITY THAT IS ANCILLARY TO THE**
30 **WORKERS' COMPENSATION INSURANCE BUSINESS; AND**

31 **(3) IS OPERATED FOR THE PURPOSE OF BENEFITING THE COMPANY.**

1 24–307.

2 (a) (1) There is a Board for the Chesapeake Employers' Insurance Company.

3 (2) The Board shall manage the business and affairs of the Company as a
4 private, nonprofit corporation in accordance with State law.

5 (b) (1) The Board shall consist of nine members [appointed by the Governor
6 with the advice and consent of the Senate], **OF WHICH:**

7 (I) **TWO MEMBERS SHALL BE APPOINTED BY THE GOVERNOR;**
8 **AND**

9 (II) **SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, SEVEN**
10 **MEMBERS SHALL BE APPOINTED BY THE POLICYHOLDERS OF THE COMPANY UNDER**
11 **PROCEDURES PROVIDED IN THE BYLAWS OF THE BOARD.**

12 (2) To the extent practicable, the Board shall reflect the geographic and
13 demographic, including race and gender, diversity of the State.

14 (3) Of the [nine] **SEVEN** members **APPOINTED BY THE POLICYHOLDERS:**

15 (i) [at least] two members shall have substantial experience as
16 officers or employees of an insurer, but may not be employed by an insurer that is in direct
17 competition with the Company while serving on the Board;

18 (ii) [at least] two members shall be policyholders of the Company;

19 (iii) [at least] one member shall have significant experience in the
20 investment business;

21 (iv) [at least] one member shall have significant experience in the
22 accounting or auditing field; and

23 (v) [at least] one member shall have significant experience as a
24 representative, employee, or member of a labor union.

25 (c) Each member shall be a resident of the State.

26 [(d) Before taking office, each appointee to the Board shall take the oath required
27 by Article I, § 9 of the Maryland Constitution.]

28 [(e)] (D) (1) The term of a member is 5 years.

1 (2) The terms of members are staggered as required by the terms provided
2 for members of the Board for the Fund on October 1, [1991] **2015**.

3 (3) At the end of a term, a member continues to serve until a successor is
4 appointed and qualifies.

5 (4) A member who is appointed after a term has begun serves only for the
6 rest of the term and until a successor is appointed and qualifies.

7 (5) A member may not serve for more than:

8 (i) two full terms; or

9 (ii) a total of 10 years.

10 [(f)] **(E) (1)** The Governor may remove a member **APPOINTED BY THE**
11 **GOVERNOR** for incompetence or misconduct.

12 **(2) THE BOARD MAY REMOVE A MEMBER APPOINTED BY THE**
13 **POLICYHOLDERS FOR MISCONDUCT, INCOMPETENCE, OR DERELICTION OF DUTIES.**

14 [(g)] **(F)** The Board shall adopt rules, bylaws, and procedures.

15 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
16 as follows:

17 **Article – Insurance**

18 **11–331.**

19 **ON OR BEFORE OCTOBER 1, 2016, AND BY OCTOBER 1 EACH YEAR**
20 **THEREAFTER THROUGH 2020, THE RATING ORGANIZATION THAT THE**
21 **COMMISSIONER DESIGNATES UNDER § 11–329 OF THIS SUBTITLE, IN**
22 **CONSULTATION WITH THE CHESAPEAKE EMPLOYERS’ INSURANCE COMPANY,**
23 **SHALL SUBMIT A REPORT TO THE SENATE FINANCE COMMITTEE AND THE HOUSE**
24 **ECONOMIC MATTERS COMMITTEE, IN ACCORDANCE WITH § 2–1246 OF THE STATE**
25 **GOVERNMENT ARTICLE, ON THE PROGRESS THAT THE CHESAPEAKE EMPLOYERS’**
26 **INSURANCE COMPANY HAS MADE IN PREPARING TO BECOME A MEMBER OF THE**
27 **RATING ORGANIZATION.**

28 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
29 as follows:

30 **Article – Insurance**

1 11-332.

2 THE RATING ORGANIZATION THAT THE COMMISSIONER DESIGNATES UNDER
3 § 11-329 OF THIS SUBTITLE SHALL CREATE AND MAINTAIN AN EXCEPTION IN ITS
4 CLASSIFICATION SYSTEM TO ALLOW ANY AUTHORIZED INSURER IN THE STATE TO
5 USE A SINGLE CLASSIFICATION CODE FOR GOVERNMENTAL OCCUPATIONS THAT ARE
6 NOT INCLUDED IN POLICE, FIREFIGHTER, AND CLERICAL CLASSIFICATIONS.

7 SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
8 as follows:

9 **Article – Insurance**

10 11-202.

- 11 (a) (1) This subtitle applies to all types of insurers.
- 12 (2) Except as provided in subsection (b) of this section, this subtitle applies
13 to:
- 14 (i) property insurance;
- 15 (ii) casualty insurance;
- 16 (iii) surety insurance;
- 17 (iv) marine insurance; and
- 18 (v) wet marine and transportation insurance.
- 19 (b) This subtitle does not apply to:
- 20 (1) reinsurance, except as provided in § 11-222 of this subtitle;
- 21 (2) insurance of vessels or craft or their cargoes, marine protection and
22 indemnity insurance, or insurance of other risks commonly insured under policies of marine
23 insurance, as distinguished from inland marine insurance;
- 24 (3) insurance against loss of or damage to aircraft including their
25 accessories and equipment, or insurance against liability, other than workers'
26 compensation insurance or employer's liability insurance, arising out of the ownership,
27 maintenance, or use of aircraft; **OR**
- 28 (4) title insurance[; or
- 29 (5) the Chesapeake Employers' Insurance Company].

1 (c) If a kind of insurance, subdivision or combination of kinds of insurance, or
 2 type of coverage is subject to this subtitle and is also subject to regulation by another rate
 3 regulatory provision of the statutes of the State, an insurer to which both provisions are
 4 otherwise applicable shall file with the Commissioner a designation as to which rate
 5 regulatory provision is applicable to it with respect to that kind of insurance, subdivision
 6 or combination of kinds of insurance, or type of coverage.

7 11–303.

8 (a) Notwithstanding Subtitle 2 of this title, this subtitle applies to the
 9 establishment of rates for all types of insurance except:

- 10 (1) life insurance;
- 11 (2) annuities;
- 12 (3) health insurance;
- 13 (4) marine insurance described in § 11–202(b)(2) of this title;
- 14 (5) aircraft insurance described in § 11–202(b)(3) of this title;
- 15 (6) reinsurance;
- 16 (7) insurance provided under the Maryland Automobile Insurance Fund;
- 17 [(8) insurance provided under the Chesapeake Employers' Insurance
 18 Company;]
- 19 [(9) (8) title insurance;
- 20 [(10) (9) medical malpractice insurance;
- 21 [(11) (10) any form or plan of insurance regulated under § 27–217 of this
 22 article; and
- 23 [(12) (11) surety insurance.

24 (b) If and to the extent that the Commissioner finds that the application of any or
 25 all of the provisions of this subtitle is unnecessary to achieve the purposes of this subtitle,
 26 the Commissioner by rule may exempt a person or class of persons or a line or lines of
 27 insurance from any or all of those provisions.

28 [24–305.

1 (a) The Company is not subject to Title 11 of this article.

2 (b) The Board shall:

3 (1) adopt a schedule of premium rates in accordance with sound actuarial
4 practices; and

5 (2) ensure that the rates are not excessive, inadequate, or unfairly
6 discriminatory.

7 (c) (1) The Board shall determine the schedule of premium rates by:

8 (i) classifying all of the policyholders of the Company on the basis of
9 the respective level of hazard of their enterprises; and

10 (ii) setting a premium rate for each class on the basis of:

11 1. its level of hazard; and

12 2. incentives to prevent injuries to employees.

13 (2) To determine the schedule of premium rates, the Board shall use the
14 rating system that, in the opinion of the Board:

15 (i) most accurately measures the level of hazard for each
16 policyholder on the basis of the number of injuries that occur in the enterprises of the
17 policyholder;

18 (ii) encourages the prevention of injuries; and

19 (iii) ensures the solvency of the Company from year to year.

20 (3) The Board may set minimum premium rates for policies issued by the
21 Company.

22 (d) The Commissioner shall review the Company's rates as part of an examination
23 under § 2–205 of this article to determine whether the Company's rate making practices
24 produce actuarially sound rates.]

25 SECTION 5. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
26 as follows:

27 **Article – Labor and Employment**

28 10–101.

29 (a) In this subtitle the following words have the meanings indicated.

1 (b) "Administration" means the Maryland Insurance Administration.

2 (c) "ADVISORY Board" means the ADVISORY Board for the Injured Workers'
3 Insurance Fund.

4 (D) "BOARD" MEANS THE BOARD FOR THE CHESAPEAKE EMPLOYERS'
5 INSURANCE COMPANY.

6 [(d)] (E) "Commissioner" means the Maryland Insurance Commissioner.

7 [(e)] (F) "Company" means the Chesapeake Employers' Insurance Company
8 established under Title 24, Subtitle 3 of the Insurance Article.

9 [(f)] (G) "Fund" means the Injured Workers' Insurance Fund.

10 **10-105.1.**

11 (A) **THERE IS AN ADVISORY BOARD FOR THE FUND.**

12 (B) (1) **THE ADVISORY BOARD SHALL CONSIST OF FIVE MEMBERS**
13 **APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE.**

14 (2) **TO THE EXTENT PRACTICABLE, THE ADVISORY BOARD SHALL**
15 **REFLECT THE GEOGRAPHIC AND DEMOGRAPHIC, INCLUDING RACE AND GENDER,**
16 **DIVERSITY OF THE STATE.**

17 (C) (1) **THE TERM OF A MEMBER OF THE ADVISORY BOARD IS 3 YEARS.**

18 (2) **THE TERMS OF THE MEMBERS ARE STAGGERED AS REQUIRED BY**
19 **THE TERMS PROVIDED FOR MEMBERS OF THE ADVISORY BOARD ON OCTOBER 1,**
20 **2015.**

21 (3) **AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL**
22 **A SUCCESSOR IS APPOINTED AND QUALIFIES.**

23 (4) **A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES**
24 **ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND**
25 **QUALIFIES.**

26 (5) **A MEMBER MAY NOT:**

27 (I) **SERVE FOR MORE THAN:**

1 1. THREE FULL TERMS; OR

2 2. A TOTAL OF 9 YEARS; OR

3 (II) SERVE AS A MEMBER OF THE BOARD.

4 (D) A MEMBER OF THE ADVISORY BOARD IS ENTITLED TO REASONABLE
5 REIMBURSEMENT FOR EXPENSES AND TO COMPENSATION AS PROVIDED IN THE
6 BUDGET OF THE BOARD.

7 (E) BEFORE TAKING OFFICE, EACH APPOINTEE TO THE ADVISORY BOARD
8 SHALL TAKE THE OATH REQUIRED BY ARTICLE I, § 9 OF THE MARYLAND
9 CONSTITUTION.

10 (F) THE ADVISORY BOARD SHALL MONITOR AND OVERSEE THE FUND'S
11 ADMINISTRATION OF THE STATE'S SELF-INSURED WORKERS' COMPENSATION
12 PROGRAM FOR STATE EMPLOYEES UNDER § 10-102(D) OF THIS SUBTITLE.

13 (G) THE ADVISORY BOARD SHALL:

14 (1) MEET QUARTERLY; AND

15 (2) (I) REVIEW THE AMOUNTS BILLED TO THE STATE FOR
16 ADMINISTRATIVE FEES, CLAIMS, AND CLAIMS-RELATED CHARGES TO ENSURE THAT
17 THE AMOUNTS ARE FAIR, REASONABLE, AND IN ACCORDANCE WITH THE CONTRACT
18 SPECIFIED IN § 10-102(D) OF THIS SUBTITLE; AND

19 (II) ANNUALLY REPORT ITS FINDINGS UNDER ITEM (I) OF THIS
20 ITEM TO THE COMPANY AND THE STATE TREASURER.

21 (H) THE ADVISORY BOARD MAY:

22 (1) CONSULT WITH EMPLOYEES OF THE COMPANY AND THE FUND
23 WHO ARE PERFORMING DUTIES IN CONNECTION WITH THE STATE'S SELF-INSURED
24 WORKERS' COMPENSATION PROGRAM FOR STATE EMPLOYEES;

25 (2) MAKE RECOMMENDATIONS TO THE COMPANY AND TO THE STATE
26 TREASURER TO IMPROVE THE FINANCIAL, SAFETY, AND OPERATING RESULTS OF
27 THE STATE'S SELF-INSURED WORKERS' COMPENSATION PROGRAM FOR STATE
28 EMPLOYEES; AND

1 **(3) WITH THE APPROVAL OF THE COMPANY, RETAIN AUDITORS,**
2 **ACCOUNTANTS, AND OTHER PROFESSIONALS TO ASSIST THE ADVISORY BOARD IN**
3 **PERFORMING ITS DUTIES UNDER THIS SECTION.**

4 SECTION 6. AND BE IT FURTHER ENACTED, That, notwithstanding any other
5 provision of law, it is the intent of the General Assembly that, on or before January 1, 2020,
6 the rating organization that the Maryland Insurance Commissioner designates under §
7 11–329 of the Insurance Article, in consultation with the Chesapeake Employers’ Insurance
8 Company, create an exception in its classification system, as required under § 11–332 of
9 the Insurance Article as enacted by Section 3 of this Act, to allow any authorized insurer
10 in Maryland to use a single classification code for governmental occupations that are not
11 included in police, firefighter, and clerical classifications.

12 SECTION 7. AND BE IT FURTHER ENACTED, That:

13 (a) Notwithstanding § 24–307 of the Insurance Article as enacted by Section 1 of
14 this Act, the term of any member who is on the Board of the Chesapeake Employers’
15 Insurance Company on the effective date of this Act shall be extended until September 30,
16 2020.

17 (b) (1) Except as provided in paragraph (2) of this subsection, policyholders
18 shall select a successor to fill a vacancy that occurs on the Board of the Chesapeake
19 Employers’ Insurance Company before October 1, 2020, as provided in § 24–307(b)(2) of the
20 Insurance Article as enacted by Section 1 of this Act.

21 (2) If a vacancy occurs on the Board before October 1, 2020, and the Board
22 includes seven members selected by the policyholders, the Governor shall appoint a
23 successor to fill the vacancy in accordance with § 24–307(b)(2) and (3) of the Insurance
24 Article as enacted by Section 1 of this Act.

25 (c) Notwithstanding the term limits or qualifications specified in § 24–307 of the
26 Insurance Article as enacted by Section 1 of this Act, the Governor may appoint a member
27 who is on the Board of the Chesapeake Employers’ Insurance Company on September 30,
28 2020, to be a member of the Board for an additional term.

29 (d) The terms of members of the Board of the Chesapeake Employers’ Insurance
30 Company that begin on October 1, 2010, shall expire as follows:

31 (1) two members appointed by the policyholders and one member
32 appointed by the Governor, in 2023;

33 (2) two members appointed by the policyholders and one member
34 appointed by the Governor, in 2024; and

35 (3) three members appointed by the policyholders, in 2025.

1 SECTION 8. AND BE IT FURTHER ENACTED, That the terms of the initial
2 members of the Advisory Board for the Injured Workers' Insurance Fund shall expire as
3 follows:

- 4 (1) one member in 2016;
- 5 (2) two members in 2017; and
- 6 (3) two members in 2018.

7 SECTION 9. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall take
8 effect January 1, 2020.

9 SECTION 10. AND BE IT FURTHER ENACTED, That Sections 4 and 5 of this Act
10 shall take effect January 1, 2021.

11 SECTION 11. AND BE IT FURTHER ENACTED, That, except as provided in
12 Sections 9 and 10 of this Act, this Act shall take effect October 1, 2015. Section 2 of this
13 Act shall remain effective for a period of 6 years and, at the end of September 30, 2021,
14 with no further action required by the General Assembly, Section 2 of this Act shall be
15 abrogated and of no further force and effect.