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By: **Delegates Barve and Frank**

Introduced and read first time: February 23, 1998

Assigned to: Rules and Executive Nominations

Re-referred to: Economic Matters, March 2, 1998

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 26, 1998

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Regulation of Insurance Professions - Advisers - Exemptions**

3 FOR the purpose of exempting from regulation as an adviser by the Maryland  
4 Insurance Commissioner an individual who is employed by a certain investment  
5 adviser, whose only clients in the State each meet certain requirements, and  
6 whose business activities in the State are limited in a certain manner under  
7 certain circumstances; providing that the provisions of this Act may not be  
8 construed in a certain manner; defining certain terms; and generally relating to  
9 exemptions from the regulation of advisers by the Maryland Insurance  
10 Commissioner.

11 BY repealing and reenacting, without amendments,  
12 Article - Insurance  
13 Section 10-201  
14 Annotated Code of Maryland  
15 (1997 Volume)

16 BY repealing and reenacting, with amendments,  
17 Article - Insurance  
18 Section 10-202  
19 Annotated Code of Maryland  
20 (1997 Volume)

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

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**Article - Insurance**

2 10-201.

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

4 (b) "Adviser" means a person that, for compensation:

5 (1) examines or offers to examine a policy, annuity contract, or pure  
6 endowment contract for the purpose of giving, or gives or offers to give, advice or  
7 information about:8 (i) the terms, conditions, benefits, coverage, or premium of a policy,  
9 annuity contract, or pure endowment contract; or10 (ii) the advisability of changing, exchanging, converting, replacing,  
11 surrendering, continuing, or rejecting a policy, annuity contract, or pure endowment  
12 contract or of accepting or procuring a policy, annuity contract, or pure endowment  
13 contract from an insurer; or14 (2) represents to the public that the person gives or is engaged in the  
15 business of giving advice or information to holders of policies or annuity contracts by  
16 use of the title "insurance adviser", "insurance specialist", "insurance counselor",  
17 "insurance analyst", "policyholders' adviser", "policyholders' counselor", "refund  
18 company", or other similar title:19 (i) in or on advertisements, cards, signs, circulars, letterheads, or  
20 elsewhere; or

21 (ii) in any other manner in which public announcements are made.

22 (c) "License" means a license issued by the Commissioner to act as an adviser.  
23 10-202.24 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
25 INDICATED.26 (2) "GUARANTEED INVESTMENT CONTRACT" MEANS AN AGREEMENT  
27 BETWEEN AN INSURER AND AN ENTITY LISTED IN SUBSECTION (B)(5)(II)2 OF THIS  
28 SECTION THAT:29 (I) PERMITS WITHDRAWALS BY THE PURCHASER FOR SPECIFIED  
30 PURPOSES; AND31 (II) CONTAINS A GENERAL OBLIGATION OF THE INSURER TO REPAY  
32 A DEPOSIT PLUS INTEREST.33 (3) "SYNTHETIC INVESTMENT CONTRACT" MEANS AN AGREEMENT  
34 BETWEEN AN INSURER ~~OR FINANCIAL INSTITUTION~~ AND AN ENTITY LISTED IN  
35 SUBSECTION (B)(5)(II)2 OF THIS SECTION THAT:

1 (I) PERMITS WITHDRAWALS BY THE PURCHASER FOR SPECIFIED  
2 PURPOSES; AND

3 (II) CONTAINS A LIMITED OBLIGATION OF THE INSURER ~~OR~~  
4 ~~FINANCIAL INSTITUTION~~ TO REPAY A DEPOSIT PLUS INTEREST THAT IS SUPPORTED  
5 BY A PORTFOLIO OF FIXED INCOME SECURITIES IDENTIFIED IN THE AGREEMENT  
6 AND OWNED BY THE PURCHASER.

7 (B) This subtitle does not apply to:

8 (1) an officer, employee, agent, or other representative of an authorized  
9 insurer while acting for the authorized insurer;

10 (2) a broker that holds a certificate of qualification while acting as a  
11 broker for a client;

12 (3) an attorney at law of the State while acting within the scope of the  
13 legal profession; [and]

14 (4) a licensed public adjuster while acting within the scope of the public  
15 adjuster's license; AND

16 (5) AN INDIVIDUAL:

17 (I) WHO IS EMPLOYED BY AN INVESTMENT ADVISER REGISTERED  
18 WITH THE SECURITIES AND EXCHANGE COMMISSION;

19 (II) WHOSE ONLY CLIENTS IN THE STATE EACH:

20 1. HAS ASSETS OF NOT LESS THAN \$5,000,000; AND

21 2. IS ONE OF THE FOLLOWING TYPES OF INSTITUTIONAL  
22 INVESTORS, WHETHER ACTING FOR ITSELF OR AS A TRUSTEE OR FIDUCIARY WITH  
23 INVESTMENT CONTROL:

24 A. AN INVESTMENT COMPANY, AS DEFINED IN THE  
25 INVESTMENT COMPANY ACT OF 1940;

26 B. AN INVESTMENT ADVISER REGISTERED WITH THE  
27 SECURITIES AND EXCHANGE COMMISSION;

28 C. AN ADVISER, AS DEFINED IN § 10-201 OF THIS SUBTITLE;

29 D. A FEDERAL COVERED ADVISER, AS DEFINED IN THE  
30 MARYLAND SECURITIES ACT, TITLE 11 OF THE CORPORATIONS AND ASSOCIATIONS  
31 ARTICLE;

32 E. A BROKER-DEALER;

33 F. A BANK, TRUST COMPANY, OR SAVINGS AND LOAN  
34 ASSOCIATION;

1 G. A COLLECTIVE INVESTMENT FUND OR COMMON TRUST  
2 FUND MAINTAINED BY A BANK OR TRUST COMPANY;

3 H. AN INSURER;

4 I. AN EMPLOYEE BENEFIT PLAN;

5 J. A GOVERNMENTAL AGENCY OR INSTRUMENTALITY; OR

6 K. ANY OTHER TYPE OF INSTITUTIONAL INVESTOR, AS  
7 DESIGNATED BY THE COMMISSIONER; AND

8 (III) WHOSE BUSINESS ACTIVITIES IN THE STATE THAT WOULD  
9 OTHERWISE BE SUBJECT TO REGULATION UNDER THIS SUBTITLE ARE LIMITED TO  
10 ACTING AS AN ADVISER WITH RESPECT TO GUARANTEED INVESTMENT CONTRACTS  
11 OR SYNTHETIC INVESTMENT CONTRACTS.

12 (C) THIS SECTION MAY NOT BE CONSTRUED TO AFFORD COVERAGE FOR  
13 GUARANTEED INVESTMENT CONTRACTS OR SYNTHETIC INVESTMENT CONTRACTS  
14 UNDER THE LIFE AND HEALTH INSURANCE GUARANTY CORPORATION ACT, TITLE 9,  
15 SUBTITLE 4 OF THIS ARTICLE.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
17 October 1, 1998.