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By: **Delegates Barve, La Vay, Goldwater, Pendergrass, Kach, Love, and Eckardt**

Introduced and read first time: February 12, 1999

Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Injured Workers' Insurance Fund - Regulation by Insurance Commissioner**  
3 **Under Insurance Article**

4 FOR the purpose of requiring that the Injured Workers' Insurance Fund (IWIF) be  
5 deemed an insurer subject to regulation by the Insurance Commissioner under  
6 the Insurance Article; requiring IWIF to pay a certain tax under the Insurance  
7 Article; requiring that IWIF become a member of the Property and Casualty  
8 Insurance Guarantee Corporation; repealing certain exceptions for IWIF under  
9 prior approval rate setting and competitive rating; repealing certain provisions  
10 relating to audits, rate setting, and policy form filing that applied to IWIF under  
11 the Labor and Employment Article; and generally relating to regulation of the  
12 Injured Workers' Insurance Fund by the Insurance Commissioner under the  
13 Insurance Article.

14 BY repealing and reenacting, with amendments,  
15 Article - Insurance  
16 Section 1-204, 6-101(a), 9-301(f), 11-202, and 11-303  
17 Annotated Code of Maryland  
18 (1997 Volume and 1998 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article - Labor and Employment  
21 Section 10-105  
22 Annotated Code of Maryland  
23 (1991 Volume and 1998 Supplement)

24 BY repealing  
25 Article - Labor and Employment  
26 Section 10-125, 10-126, 10-130, and 10-132  
27 Annotated Code of Maryland  
28 (1991 Volume and 1998 Supplement)

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

3 **Article - Insurance**

4 1-204.

5 (A) FOR PURPOSES OF THIS ARTICLE, THE INJURED WORKERS' INSURANCE  
6 FUND SHALL BE DEEMED AN INSURER AND, EXCEPT AS OTHERWISE SPECIFICALLY  
7 PROVIDED IN THIS ARTICLE, IS SUBJECT TO REGULATION BY THE COMMISSIONER  
8 UNDER THIS ARTICLE.

9 (B) For the purpose of workers' compensation insurance, this article does not  
10 apply to an employer who:

11 (1) participates in a governmental self-insurance group under § 9-404 of  
12 the Labor and Employment Article; or

13 (2) self-insures under § 9-405 of the Labor and Employment Article.

14 6-101.

15 (a) The following persons are subject to taxation under this subtitle:

16 (1) a person engaged as principal in the business of writing insurance  
17 contracts, surety contracts, guaranty contracts, or annuity contracts;

18 (2) an attorney in fact for a reciprocal insurer;

19 (3) the Maryland Automobile Insurance Fund; [and]

20 (4) a credit indemnity company; AND

21 (5) THE INJURED WORKERS' INSURANCE FUND.

22 9-301.

23 (f) (1) "Member insurer" means an authorized insurer that writes a kind of  
24 insurance, including the exchange of reciprocal or interinsurance contracts, to which  
25 this subtitle applies.

26 (2) "Member insurer" includes the Maryland Automobile Insurance Fund  
27 AND THE INJURED WORKERS' INSURANCE FUND.

28 11-202.

29 (a) (1) This subtitle applies to all types of insurers.

30 (2) Except as provided in subsection (b) of this section, this subtitle  
31 applies to:

- 1 (i) property insurance;
- 2 (ii) casualty insurance;
- 3 (iii) surety insurance;
- 4 (iv) marine insurance; and
- 5 (v) wet marine and transportation insurance.

6 (b) This subtitle does not apply to:

- 7 (1) reinsurance, except as provided in § 11-222 of this subtitle;
- 8 (2) insurance of vessels or craft or their cargoes, marine protection and  
9 indemnity insurance, or insurance of other risks commonly insured under policies of  
10 marine insurance, as distinguished from inland marine insurance;
- 11 (3) insurance against loss of or damage to aircraft including their  
12 accessories and equipment, or insurance against liability, other than workers'  
13 compensation insurance or employer's liability insurance, arising out of the  
14 ownership, maintenance, or use of aircraft; OR
- 15 (4) title insurance[; or
- 16 (5) the Injured Workers' Insurance Fund].

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

23 11-303.

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

- 26 (1) life insurance;
- 27 (2) annuities;
- 28 (3) health insurance;
- 29 (4) marine insurance described in § 11-202(b)(2) of this title;
- 30 (5) aircraft insurance described in § 11-202(b)(3) of this title;
- 31 (6) reinsurance;

- 1 (7) insurance provided under the Maryland Automobile Insurance Fund;  
 2 [(8) insurance provided under the Injured Workers' Insurance Fund;]  
 3 [(9)] (8) title insurance;  
 4 [(10)] (9) medical malpractice insurance;  
 5 [(11)] (10) any form or plan of insurance regulated under § 27-217 of this  
 6 article; and  
 7 [(12)] (11) surety insurance.

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

## 12 Article - Labor and Employment

13 10-105.

14 (a) [The] EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE  
 15 Fund is independent of all State units.

16 (b) (1) Except as provided in paragraph (2) of this subsection, SUBSECTION  
 17 (C) OF THIS SECTION, and elsewhere in this subtitle, the Fund is not subject to any  
 18 law, including § 6-106 of the State Government Article, that affects governmental  
 19 units.

20 (2) The Fund is subject to:

21 (i) Title 10, Subtitle 5 of the State Government Article;

22 (ii) Title 10, Subtitle 6, Part III of the State Government Article;

23 (iii) Title 12 of the State Government Article;

24 (iv) the Maryland Public Ethics Law; and

25 (v) Title 5, Subtitle 3 of the State Personnel and Pensions Article.

26 (3) Paragraph (1) of this subsection does not affect the exemption from  
 27 property tax under § 7-210 of the Tax - Property Article.

28 (C) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE FUND  
 29 SHALL BE DEEMED AN INSURER FOR PURPOSES OF THE INSURANCE ARTICLE AND,  
 30 EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE INSURANCE ARTICLE, IS  
 31 SUBJECT TO REGULATION AS AN INSURER BY THE INSURANCE COMMISSIONER  
 32 UNDER THE INSURANCE ARTICLE.

1 [10-125.

2 (a) (1) The Legislative Auditor shall conduct:

3 (i) a fiscal audit of the accounts and transactions of the Fund each  
4 year;

5 (ii) a compliance audit of the accounts and transactions of the Fund  
6 every 2 years; and

7 (iii) a statutory audit of the Fund at least every 3 years in a manner  
8 recognized and required by the Legislative Auditor.

9 (2) As part of the statutory audit, the Legislative Auditor shall perform a  
10 market conduct survey about the operations of the Fund, including a review of:

11 (i) the average caseload of the Fund's attorneys;

12 (ii) the average length of time to process a claim;

13 (iii) each complaint submitted during the calendar year before the  
14 survey, the nature of the complaint, and the resolution of the complaint;

15 (iv) the percentage of claims contested before the Workers'  
16 Compensation Commission; and

17 (v) whether the Fund unfairly discriminates or allows unfair  
18 discrimination between individuals of the same class and essentially the same hazard  
19 level:

20 1. in the terms or conditions of an insurance policy;

21 2. in premiums charged; or

22 3. except as provided under the Fund's experience  
23 modification and premium discount plan, in any other manner.

24 (3) As soon as possible, the Legislative Auditor shall submit the results  
25 of:

26 (i) each audit to the Governor and, subject to § 2-1246 of the State  
27 Government Article, to the Legislative Policy Committee; and

28 (ii) the market conduct survey to the Legislative Policy Committee.

29 (b) The Fund shall pay for:

30 (1) the fiscal portion of the postaudit examination;

31 (2) the market conduct survey; and

1 (3) the statutory audit.]

2 [10-126.

3 (a) Within 90 days after the close of each fiscal year, the Board shall submit to  
4 the Governor an annual report that includes a detailed statement of:

5 (1) the condition and expenses of the Fund in detail;

6 (2) growth of the Fund;

7 (3) changes in earned premiums of the Fund;

8 (4) changes in the number of policyholders of the Fund;

9 (5) the degree of the Fund's personnel flexibility;

10 (6) trends in the overall market share; and

11 (7) trends in the premium to expense ratio.

12 (b) (1) On or before October 1 of each year, the Fund shall submit to the  
13 Governor:

14 (i) a copy of each policy form that the Fund will use during the next  
15 calendar year;

16 (ii) the schedule of premium rates that the Fund will charge for the  
17 next calendar year;

18 (iii) information about provision for claim payment, as defined in §  
19 11-330(a) of the Insurance Article, for each class for which the Fund writes coverage;  
20 and

21 (iv) other information that the Governor requests about premium  
22 rates, including classes, financial information, and losses.

23 (2) (i) Information required under paragraph (1)(ii) through (iv) of this  
24 subsection shall be submitted on the form that the Governor requires.

25 (ii) The form shall conform as closely as possible to the form that a  
26 rating organization uses to comply with §§ 11-307, 11-329, and 11-330 of the  
27 Insurance Article.]

28 [10-130.

29 (a) The Board shall adopt, by regulation, a schedule of premium rates, as  
30 provided in this section.

31 (b) (1) The Board shall determine the schedule by:

1 (i) classifying all of the policyholders on the basis of the respective  
2 level of hazard of their enterprises; and

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

4 1. its level of hazard; and

5 2. incentives to prevent injuries to employees.

6 (2) To determine the schedule, the Board shall use the rating system  
7 that, in the opinion of the Board:

8 (i) most accurately measures the level of hazard for each  
9 policyholder on the basis of the number of injuries that occur in the enterprises of the  
10 policyholder;

11 (ii) encourages the prevention of injuries; and

12 (iii) ensures the solvency of the Fund from year to year.

13 (3) The Board may set minimum premium rates.

14 (c) (1) The Board shall state premium rates as a percentage of the gross  
15 annual wages of employees to whom Title 9 of this article applies.

16 (2) For employees who work partly in and partly outside the State, the  
17 premium shall be based on wages for employment in the State.

18 (d) (1) Except as provided in paragraph (2) of this subsection, the schedule  
19 of premium rates in effect at the beginning of a calendar year remains in effect for the  
20 year.

21 (2) The Board shall adjust classes and rates as often as the Board  
22 determines to be just and advantageous to meet the criteria under subsection (b)(2) of  
23 this section and to reflect changes in levels of hazards.

24 (e) (1) Except as provided in paragraph (2) of this subsection, the Board may  
25 not increase the policy rate of an employer on renewal of a policy by more than 20%  
26 unless the Board notifies the employer in writing at least 45 days before the effective  
27 date of the policy rate increase.

28 (2) This subsection does not apply to an increase based on the experience  
29 of the employer.]

30 [10-132.

31 Each employer who applies and is eligible for insurance under this subtitle shall  
32 be assigned, after consideration of the number of employees and the relative hazards  
33 of the various types of work performed in the enterprise of the employer:

34 (1) to the class that includes the work; or

1 (2) if more than 1 class clearly applies to the work, to each applicable  
2 class.]

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4 October 1, 1999.