
By: **Delegate Busch**

Introduced and read first time: February 11, 2000

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Insurance - Regulation of Extraordinary Dividends and Distributions**

3 FOR the purpose of altering the circumstances under which a dividend or distribution
4 of cash or other property to shareholders by certain insurers is considered
5 extraordinary; providing that certain insurers may not pay an extraordinary
6 dividend or make an extraordinary distribution except under certain
7 circumstances; clarifying that certain provisions regulating transactions within
8 insurance holding company systems apply to certain insurers; defining a certain
9 term; providing for the application of this Act; and generally relating to
10 dividends and distributions by insurers.

11 BY repealing and reenacting, with amendments,
12 Article - Insurance
13 Section 7-701 and 7-706
14 Annotated Code of Maryland
15 (1997 Volume and 1999 Supplement)

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

18 **Article - Insurance**

19 7-701.

20 (A) THIS SUBTITLE APPLIES TO INSURERS THAT ARE SUBJECT TO
21 REGISTRATION UNDER SUBTITLE 6 OF THIS TITLE.

22 (B) This subtitle does not authorize an insurer that is a member of an
23 insurance holding company system to enter into a transaction that otherwise would
24 be contrary to law for an insurer that is not a member of the same insurance holding
25 company system.

26 7-706.

27 [(a) (1) In this section, "earned surplus" means the part of surplus that, after
28 deduction of all losses, represents the net earnings, gains, or profits that have not

1 been distributed to shareholders as dividends, transferred to stated capital,
2 transferred to capital surplus, or applied to other purposes allowed by law.

3 (2) In this section, "earned surplus" does not include unrealized capital
4 gains or reevaluation of assets.

5 (b) Except as provided in subsection (c) of this section, in determining whether
6 an extraordinary dividend or extraordinary distribution exists under this section, an
7 insurer shall:

8 (1) exclude pro rata distributions of any class of the insurer's own
9 securities; and

10 (2) include any dividend or distribution of cash or other property with a
11 fair market value that, when combined with the fair market value of other dividends
12 and distributions made in the preceding 12 months:

13 (i) exceeds 10% of the insurer's surplus as regards policyholders as
14 of the December 31 immediately preceding; or

15 (ii) for an insurance subsidiary of the Medical Mutual Liability
16 Insurance Society of Maryland, exceeds 5% of the insurer's surplus as regards
17 policyholders as of the December 31 immediately preceding.

18 (c) (1) This subsection only applies to an insurer that:

19 (i) has an earned surplus that exceeds 10% of its surplus as
20 regards policyholders as of the December 31 immediately preceding; and

21 (ii) in the immediately preceding calendar year has more than 75%
22 of its gross direct written premium in homeowners insurance, private passenger
23 automobile liability insurance, and private passenger automobile physical damage
24 insurance.

25 (2) In determining whether an extraordinary dividend or extraordinary
26 distribution exists under this section, an insurer described in paragraph (1) of this
27 subsection shall:

28 (i) exclude pro rata distributions of any class of the insurer's own
29 securities; and

30 (ii) include any dividend or distribution of cash or other property,
31 not exceeding the amount of the insurer's earned surplus, with a fair market value
32 that, when combined with the fair market value of other dividends and distributions
33 made in the preceding 12 months, exceeds the greater of:

34 1. 10% of the insurer's surplus as regards policyholders as of
35 the December 31 immediately preceding; and

1 2. for the immediately preceding calendar year, the net gain
2 from operation of an insurer that is a life insurer or the net income of an insurer other
3 than a life insurer.

4 (d) Before paying an extraordinary dividend or making an extraordinary
5 distribution, an insurer subject to registration under Subtitle 6 of this title shall
6 notify the Commissioner of its intent to pay the extraordinary dividend or make the
7 extraordinary distribution.

8 (e) The insurer shall notify the Commissioner under subsection (d) of this
9 section at least 30 days before the extraordinary dividend is to be paid or the
10 extraordinary distribution is to be made.

11 (f) The insurer may pay an extraordinary dividend or make an extraordinary
12 distribution to its shareholders only if, within 30 days after the Commissioner
13 receives the notice, the Commissioner either approves the payment or distribution, or
14 does not disapprove the payment or distribution.]

15 (A) IN THIS SECTION, "EXTRAORDINARY DIVIDEND" OR "EXTRAORDINARY
16 DISTRIBUTION" INCLUDES ANY DIVIDEND OR DISTRIBUTION OF CASH OR OTHER
17 PROPERTY WITH A FAIR MARKET VALUE, THAT WHEN COMBINED WITH THE FAIR
18 MARKET VALUE OF ANY OTHER DIVIDENDS OR DISTRIBUTIONS MADE IN THE
19 PRECEDING 12 MONTHS EXCEEDS THE LESSER OF:

20 (1) 10% OF THE INSURER'S SURPLUS AS REGARDS POLICYHOLDERS AS
21 OF DECEMBER 31 OF THE PRECEDING YEAR; OR

22 (2) (I) FOR A LIFE INSURER, THE NET GAIN FROM OPERATIONS OF
23 THE INSURER NOT INCLUDING:

24 1. REALIZED CAPITAL GAINS FOR THE 12-MONTH PERIOD
25 ENDING DECEMBER 31 OF THE PRECEDING YEAR; AND

26 2. PRO RATA DISTRIBUTIONS OF ANY CLASS OF THE
27 INSURER'S OWN SECURITIES; OR

28 (II) FOR AN INSURER THAT IS NOT A LIFE INSURER, THE NET
29 INCOME OF THE INSURER NOT INCLUDING:

30 1. REALIZED CAPITAL GAINS FOR THE 12-MONTH PERIOD
31 ENDING DECEMBER 31 OF THE PRECEDING YEAR; AND

32 2. PRO RATA DISTRIBUTIONS OF ANY CLASS OF THE
33 INSURER'S OWN SECURITIES.

34 (B) (1) IN DETERMINING WHETHER A DIVIDEND OR DISTRIBUTION IS
35 EXTRAORDINARY UNDER THIS SECTION, AN INSURER THAT IS NOT A LIFE INSURER
36 MAY CARRY FORWARD NET INCOME FROM THE 2 CALENDAR YEARS PRIOR TO THE
37 PRECEDING CALENDAR YEAR THAT HAS NOT ALREADY BEEN PAID OUT AS
38 DIVIDENDS.

1 (2) THE AMOUNT CARRIED FORWARD UNDER PARAGRAPH (1) OF THIS
2 SUBSECTION SHALL BE COMPUTED BY TAKING THE NET INCOME FROM THE 2
3 CALENDAR YEARS PRIOR TO THE PRECEDING CALENDAR YEAR:

4 (I) NOT INCLUDING REALIZED CAPITAL GAINS; AND

5 (II) MINUS DIVIDENDS PAID IN THE PRECEDING 2 CALENDAR
6 YEARS.

7 (C) A DOMESTIC INSURER MAY NOT PAY AN EXTRAORDINARY DIVIDEND OR
8 MAKE ANY OTHER EXTRAORDINARY DISTRIBUTION TO ITS SHAREHOLDERS UNLESS:

9 (1) THE INSURER PROVIDES NOTICE OF THE DECLARATION TO THE
10 COMMISSIONER AT LEAST 30 DAYS BEFORE THE DECLARATION IS MADE; AND

11 (2) THE COMMISSIONER HAS APPROVED OR NOT DISAPPROVED THE
12 DECLARATION WITHIN THE 30 DAYS FOLLOWING NOTICE.

13 [(g)] (D) (1) Notwithstanding any other provision of law, an insurer [subject
14 to registration under Subtitle 6 of this title] may declare an extraordinary dividend or
15 extraordinary distribution conditioned on the Commissioner's approval.

16 (2) A conditional declaration confers no rights on shareholders unless,
17 within 30 days after the Commissioner receives the notice under subsection [(d)] (C)
18 of this section, the Commissioner either approves the payment or distribution, or does
19 not disapprove the payment or distribution.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act applies to
21 dividends or distributions declared and paid on or after January 1, 2001.

22 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2000.