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By: **Delegate Busch**  
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Assigned to: Economic Matters

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Committee Report: Favorable  
House action: Adopted  
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CHAPTER \_\_\_\_\_

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.

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

5 7-706.

6 [(a) (1) In this section, "earned surplus" means the part of surplus that, after  
7 deduction of all losses, represents the net earnings, gains, or profits that have not  
8 been distributed to shareholders as dividends, transferred to stated capital,  
9 transferred to capital surplus, or applied to other purposes allowed by law.

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

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

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

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

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

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

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

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

28 (ii) in the immediately preceding calendar year has more than 75%  
29 of its gross direct written premium in homeowners insurance, private passenger  
30 automobile liability insurance, and private passenger automobile physical damage  
31 insurance.

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

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

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

5 1. 10% of the insurer's surplus as regards policyholders as of  
6 the December 31 immediately preceding; and

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

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

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

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

21 (A) IN THIS SECTION, "EXTRAORDINARY DIVIDEND" OR "EXTRAORDINARY  
22 DISTRIBUTION" INCLUDES ANY DIVIDEND OR DISTRIBUTION OF CASH OR OTHER  
23 PROPERTY WITH A FAIR MARKET VALUE, THAT WHEN COMBINED WITH THE FAIR  
24 MARKET VALUE OF ANY OTHER DIVIDENDS OR DISTRIBUTIONS MADE IN THE  
25 PRECEDING 12 MONTHS EXCEEDS THE LESSER OF:

26 (1) 10% OF THE INSURER'S SURPLUS AS REGARDS POLICYHOLDERS AS  
27 OF DECEMBER 31 OF THE PRECEDING YEAR; OR

28 (2) (I) FOR A LIFE INSURER, THE NET GAIN FROM OPERATIONS OF  
29 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; OR

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

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



