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By: **Delegate McHale**  
Introduced and read first time: February 28, 2001  
Assigned to: Rules and Executive Nominations

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A BILL ENTITLED

1 AN ACT concerning

2 **Insurance - Premium Increases - Surcharges and Retiering**

3 FOR the purpose of exempting certain motor vehicle liability insurance and certain  
4 premium increases from the requirement that an insurer provide certain notice  
5 of premium increases under certain circumstances; altering the circumstances  
6 under which an insurer is required to provide certain notice to an insured of  
7 certain increases in premiums under a policy of motor vehicle liability  
8 insurance; altering the circumstances under which an insured has the right to a  
9 hearing before the Insurance Commissioner to protest a certain proposed action  
10 of an insurer under a policy of motor vehicle liability insurance; altering the  
11 circumstances under which the Commissioner is required to hold a certain  
12 hearing; defining a certain term; and generally relating to premium increases,  
13 surcharges, and retiering under policies of insurance.

14 BY repealing and reenacting, with amendments,  
15 Article - Insurance  
16 Section 27-604 and 27-605  
17 Annotated Code of Maryland  
18 (1997 Volume and 2000 Supplement)

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

21 **Article - Insurance**

22 27-604.

23 (A) IN THIS SECTION AND IN § 27-605 OF THIS SUBTITLE, "RETIERING" MEANS  
24 THE PLACEMENT BY AN INSURER OF AN INSURED RISK IN ANOTHER UNDERWRITING  
25 TIER, REGARDLESS OF WHETHER THE TIER IS IN THE SAME COMPANY, IF THE  
26 INSURER CONTINUES TO INSURE THE RISK THROUGH A COMPANY THAT IS AN  
27 AFFILIATE OR SUBSIDIARY OF THE INSURER.

28 [(a)] (B) This section does not apply to:

- 1 (1) life insurance;
- 2 (2) health insurance;
- 3 (3) motor vehicle liability insurance issued to a resident of a household  
4 in the State as set forth in § 27-605 of this subtitle, IF THE PREMIUM INCREASE  
5 RESULTS FROM A SURCHARGE OR RETIERING;
- 6 (4) surety insurance;
- 7 (5) insurance written or issued by the Maryland Automobile Insurance  
8 Fund, IF THE PREMIUM INCREASE RESULTS FROM A SURCHARGE OR RETIERING;  
9 [or]

10 (6) an insurer that satisfies the Commissioner that it cannot reasonably  
11 comply with the notice requirement in connection with certain risks or lines of  
12 business; OR

13 (7) AN INCREASE IN PREMIUM THAT RESULTS FROM AN ACTION  
14 INITIATED BY AN INSURED OR A CHANGE TO A POLICY REQUESTED BY AN INSURED.

15 [(b)] (C) Whenever an insurer intends to increase a premium for a particular  
16 policy written in the State by 20% or more, the insurer shall notify the insured and  
17 agent of the increase.

18 [(c)] (D) The notice shall be sent by first-class mail to the insured and agent  
19 at least 45 days before the effective date of the proposed premium increase.

20 27-605.

21 (a) (1) Except in accordance with this article, with respect to a policy of  
22 motor vehicle liability insurance or a binder of motor vehicle liability insurance, if the  
23 binder has been in effect for at least 45 days, issued in the State to any resident of the  
24 household of the named insured, an insurer other than the Maryland Automobile  
25 Insurance Fund may not:

26 (i) cancel or fail to renew the policy or binder for a reason other  
27 than nonpayment of premium;

28 (ii) [increase a premium for any coverage on the policy] IMPOSE A  
29 SURCHARGE OR RETIER A RISK TO AN UNDERWRITING TIER THAT ENTAILS A HIGHER  
30 PREMIUM; or

31 (iii) reduce coverage under the policy.

32 (2) Notwithstanding paragraph (1) of this subsection, the requirements  
33 of this section do not apply if:

34 (i) the [premium increase] SURCHARGE OR RETIERING described  
35 in paragraph (1)(i) of this subsection is part of a general increase in premiums

1 approved by the Commissioner and does not result from a reclassification of the  
2 insured;

3 (ii) the reduction in coverage described in paragraph (1)(iii) of this  
4 subsection is part of a general reduction in coverage approved by the Commissioner or  
5 satisfies the requirements of Title 19, Subtitle 5 of this article; [or]

6 (iii) the failure to renew the policy takes place under a plan of  
7 withdrawal that:

8 1. is approved by the Commissioner under § 27-603 of this  
9 subtitle; and

10 2. provides that each insured affected by the plan of  
11 withdrawal shall be sent by certificate of mailing at least 45 days before the  
12 nonrenewal of the policy a written notice that states the date that the policy will be  
13 nonrenewed and that the nonrenewal is the result of the withdrawal of the insurer  
14 from the market; OR

15 (IV) THE INCREASE IN PREMIUM RESULTS FROM AN ACTION  
16 INITIATED BY THE INSURED OR A CHANGE TO THE POLICY REQUESTED BY THE  
17 INSURED.

18 (b) (1) At least 45 days before the proposed effective date of the action, an  
19 insurer that intends to take an action subject to this section must send written notice  
20 of its proposed action to the insured at the last known address of the insured:

21 (i) for notice of cancellation or nonrenewal, by certified mail; and

22 (ii) for all other notices of actions subject to this section, by  
23 certificate of mailing.

24 (2) The notice must be in triplicate and on a form approved by the  
25 Commissioner.

26 (3) The notice must state in clear and specific terms:

27 (i) the proposed action to be taken, including:

28 1. for a premium increase, the amount of the increase and  
29 the type of coverage to which it is applicable; and

30 2. for a reduction in coverage, the type of coverage reduced  
31 and the extent of the reduction;

32 (ii) the proposed effective date of the action;

33 (iii) subject to paragraph (4) of this subsection, the actual reason of  
34 the insurer for proposing to take the action;

1 (iv) if there is coupled with the notice an offer to continue or renew  
2 the policy in accordance with § 27-606 of this subtitle:

3 1. the name of the individual or individuals to be excluded  
4 from coverage; and

5 2. the premium amount if the policy is continued or renewed  
6 with the named individual or individuals excluded from coverage;

7 (v) the right of the insured to replace the insurance through the  
8 Maryland Automobile Insurance Fund and the current address and telephone number  
9 of the Fund;

10 (vi) the right of the insured to protest the proposed action of the  
11 insurer and, except in the case of a [premium increase that is consistent with the  
12 insurer's surcharge plan as filed with the Commissioner and authorized under the  
13 applicable provisions of Title 11 of this article] SURCHARGE OR RETIERING, request a  
14 hearing before the Commissioner on the proposed action by signing two copies of the  
15 notice and sending them to the Commissioner within 30 days after the mailing date of  
16 the notice;

17 (vii) that if a protest is filed by the insured, the insurer must  
18 maintain the current insurance in effect until a final determination is made by the  
19 Commissioner, subject to the payment of any authorized premium due or becoming  
20 due before the determination; and

21 (viii) the authority of the Commissioner to award reasonable  
22 attorney fees to the insured for representation at a hearing if the Commissioner finds  
23 the proposed action of the insurer to be unjustified.

24 (4) (i) The insurer's statement of actual reason for proposing to take  
25 an action subject to this section must be sufficiently clear and specific so that an  
26 individual of average intelligence can identify the basis for the insurer's decision  
27 without making further inquiry.

28 (ii) The use of generalized terms such as "personal habits", "living  
29 conditions", "poor morals", or "violation or accident record" does not meet the  
30 requirements of this paragraph.

31 (c) At least 10 days before the date an insurer proposes to cancel a policy for  
32 nonpayment of premium, the insurer shall cause to be sent to the insured, by  
33 certificate of mailing, a written notice of intention to cancel for nonpayment of  
34 premium.

35 (d) A statement of actual reason contained in the notice given under  
36 subsection (b) of this section is privileged and does not constitute grounds for an  
37 action against the insurer, its representatives, or another person that in good faith  
38 provides to the insurer information on which the statement is based.

1 (e) (1) This subsection does not apply to an action of an insurer taken under  
2 subsection (c) of this section.

3 (2) An insured may protest a proposed action of the insurer under this  
4 section by signing two copies of the notice and sending them to the Commissioner  
5 within 30 days after the mailing date of the notice.

6 (3) On receipt of a protest, the Commissioner shall notify the insurer of  
7 the filing of the protest.

8 (4) A protest filed with the Commissioner stays the proposed action of  
9 the insurer pending a final determination by the Commissioner.

10 (5) (i) The insurer shall maintain in effect the same coverage and  
11 premium that were in effect on the day the notice of proposed action was sent to the  
12 insured until a final determination is made, subject to the payment of any authorized  
13 premium due or becoming due before the determination.

14 (ii) In the case of a premium increase, a dismissal of the protest is  
15 deemed to be a final determination of the Commissioner 20 days after the mailing  
16 date of the Commissioner's notice of action.

17 (f) (1) Based on the information contained in the notice, the Commissioner:

18 (i) shall determine whether the protest by the insured has merit;  
19 and

20 (ii) either shall dismiss the protest or disallow the proposed action  
21 of the insurer.

22 (2) The Commissioner shall notify the insurer and the insured of the  
23 action of the Commissioner promptly in writing.

24 (3) Subject to paragraph (4) of this subsection, within 30 days after the  
25 mailing date of the Commissioner's notice of action, the aggrieved party may request  
26 a hearing.

27 (4) Except in the case of a [premium increase that is consistent with the  
28 insurer's surcharge plan as filed with the Commissioner and authorized under the  
29 applicable provisions of Title 11 of this article] SURCHARGE OR RETIERING, the  
30 Commissioner shall:

31 (i) hold a hearing within a reasonable time after the request for a  
32 hearing; and

33 (ii) give written notice of the time and place of the hearing at least  
34 10 days before the hearing.

35 (5) A hearing held under this subsection shall be conducted in  
36 accordance with Title 10, Subtitle 2 of the State Government Article.

1           (6)     At the hearing the insurer has the burden of proving its proposed  
2 action to be justified and, in doing so, may rely only on the reasons set forth in its  
3 notice to the insured.

4     (g)     (1)     The Commissioner shall issue an order within 30 days after the  
5 conclusion of the hearing.

6           (2)     If the Commissioner finds the proposed action of the insurer to be  
7 justified, the Commissioner shall:

8                   (i)     dismiss the protest; and

9                   (ii)    allow the proposed action to be taken on the later of:

10                           1.     its proposed effective date; and

11                           2.     30 days after the date of the determination.

12           (3)     If the Commissioner finds the proposed action to be unjustified, the  
13 Commissioner:

14                   (i)     shall disallow the action; and

15                   (ii)    may order the insurer to pay reasonable attorney fees incurred  
16 by the insured for representation at the hearing as the Commissioner considers  
17 appropriate.

18     (h)     The Commissioner may delegate the powers and duties of the  
19 Commissioner under this section to one or more employees or hearing examiners.

20     (i)     A party to a proceeding under this section may appeal the decision of the  
21 Commissioner in accordance with § 2-215 of this article.

22     SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
23 June 1, 2001.