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By: **Delegate McHale**

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Committee Report: Favorable

House action: Adopted

Read second time: March 27, 2003

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Insurers - Assets and Investments - Location**

3 FOR the purpose of altering the exceptions to the types of assets that certain domestic  
4 insurers are required to keep in the State; repealing a certain limitation on the  
5 amount of admitted assets that a domestic insurer may keep outside of the  
6 State; altering the conditions under which the reserve investments of a life  
7 insurer may include derivative transactions; and generally relating to the assets  
8 and investments of insurers.

9 BY repealing and reenacting, with amendments,  
10 Article - Insurance  
11 Section 4-115(c), (d), and (e) and 5-511(o)  
12 Annotated Code of Maryland  
13 (1997 Volume and 2002 Supplement)

14 BY repealing and reenacting, without amendments,  
15 Article - Insurance  
16 Section 5-511(n)  
17 Annotated Code of Maryland  
18 (1997 Volume and 2002 Supplement)

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

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**Article - Insurance**

2 4-115.

3 (c) (1) A domestic insurer, including a reciprocal insurer, fraternal benefit  
4 society, or nonprofit health service plan, with its home or executive office in the State  
5 shall keep in the State:

6 (i) its general ledger accounting records; and

7 (ii) [subject to subsection (d) of this section,] all of its assets except:

8 1. real property lawfully owned by the insurer and located  
9 outside of the State, personal property appurtenant to the real property, or mortgages  
10 on the real property;

11 2. property of the insurer that is customary and necessary to  
12 the operation of the insurer's branch offices outside of the State;

13 3. securities deposited in a jurisdiction outside of the State as  
14 a condition of authority to transact business in that jurisdiction or securities  
15 deposited in connection with obtaining surety bonds; [and

16 4. securities held for safekeeping by a bank or other  
17 institution that:

18 A. is approved by the Commissioner;

19 B. is located in the United States or Canada, or in any  
20 jurisdiction in which the insurer is licensed to do business; and

21 C. has a custodial agreement with the insurer approved by  
22 the Commissioner]

23 4. SECURITIES HELD EITHER BY THE INSURER OR IN  
24 COMPLIANCE WITH REGULATIONS ADOPTED BY THE COMMISSIONER; AND

25 5. TRANSACTIONS OR SECURITIES INVOLVED IN  
26 TRANSACTIONS AUTHORIZED BY § 5-511(N) AND (O) OF THIS ARTICLE OR ANY OTHER  
27 TRANSACTIONS OR SECURITIES INVOLVED IN TRANSACTIONS EXEMPTED BY THE  
28 COMMISSIONER FROM THIS PARAGRAPH.

29 (2) A financial guaranty reinsurance company or financial guaranty  
30 insurance company that became domiciled in the State on or before December 31,  
31 1993, and that does not have its home or executive office in the State:

32 (i) shall keep in the State its entire assets as required by  
33 paragraph (1)(ii) of this subsection; and

1 (ii) may keep its general ledger accounting records outside the  
2 State if it makes those records available in the State to the Commissioner within 2  
3 business days after being requested to do so by the Commissioner.

4 (d) [Unless approved by the Commissioner, a domestic insurer may not keep  
5 more than 15% of the domestic insurer's admitted assets outside of the State under  
6 this section.

7 (e)] This section does not prohibit the holding of funds or transmission of  
8 securities outside of the State to:

9 (1) secure or record title to the securities; or

10 (2) sell, lend, buy, redeem, or exchange the securities or alter the  
11 provisions of the securities.

12 5-511.

13 (n) (1) The reserve investments of a life insurer may include securities  
14 lending, repurchase, reverse repurchase, and dollar roll transactions with business  
15 entities, subject to the requirements of paragraphs (2) through (9) of this subsection.

16 (2) The insurer's board of directors shall adopt a written plan that  
17 specifies guidelines and objectives to be followed, such as:

18 (i) a description of how cash received will be invested or used for  
19 general corporate purposes of the insurer;

20 (ii) operational procedures to manage interest rate risk,  
21 counterparty default risk, the conditions under which proceeds from reverse  
22 repurchase transactions may be used in the ordinary course of business, and the use  
23 of acceptable collateral in a manner that reflects the liquidity needs of the  
24 transaction; and

25 (iii) the extent to which the insurer may engage in these  
26 transactions.

27 (3) (i) The insurer shall enter into a written agreement for all  
28 transactions authorized under this subsection other than dollar roll transactions.

29 (ii) The written agreement shall require that each transaction  
30 terminate no more than 1 year from its inception or on the earlier demand of the  
31 insurer.

32 (iii) The agreement shall be with the business entity counterparty,  
33 but for securities lending transactions, the agreement may be with an agent acting on  
34 behalf of the insurer, if the agent is a qualified business entity, and if the agreement:

35 1. requires the agent to enter into separate agreements with  
36 each counterparty that are consistent with the requirements of this section; and



1 (ii) If at any time the market value of the acceptable collateral is  
2 less than the market value of the loaned securities, the business entity counterparty  
3 shall be obligated to deliver additional acceptable collateral, the market value of  
4 which, together with the market value of all acceptable collateral then held in  
5 connection with the transaction, at least equals 102% of the market value of the  
6 loaned securities.

7 (7) (i) In a reverse repurchase transaction, other than a dollar roll  
8 transaction, the insurer shall receive acceptable collateral having a market value as  
9 of the transaction date at least equal to 95% of the market value of the securities  
10 transferred by the insurer in the transaction as of that date.

11 (ii) If at any time the market value of the acceptable collateral is  
12 less than 95% of the market value of the securities so transferred, the business entity  
13 counterparty shall be obligated to deliver additional acceptable collateral, the market  
14 value of which, together with the market value of all acceptable collateral then held in  
15 connection with the transaction, at least equals 95% of the market value of the  
16 transferred securities.

17 (8) In a dollar roll transaction, the insurer shall receive cash in an  
18 amount at least equal to the market value of the securities transferred by the insurer  
19 in the transaction as of the transaction date.

20 (9) (i) In a repurchase transaction, the insurer shall receive as  
21 acceptable collateral transferred securities having a market value at least equal to  
22 102% of the purchase price paid by the insurer for the securities.

23 (ii) If at any time the market value of the acceptable collateral is  
24 less than 100% of the purchase price paid by the insurer, the business entity  
25 counterparty shall be obligated to provide additional acceptable collateral, the market  
26 value of which, together with the market value of all acceptable collateral then held in  
27 connection with the transaction, at least equals 102% of the purchase price.

28 (iii) Securities acquired by an insurer in a repurchase transaction  
29 may not be sold in a reverse repurchase transaction, loaned in a securities lending  
30 transaction, or otherwise pledged.

31 (o) (1) The reserve investments of a life insurer may include derivative  
32 transactions under this subsection, whether entered into directly or indirectly  
33 through an investment subsidiary, under the conditions of paragraphs (2) through (7)  
34 of this subsection.

35 (2) (i) An insurer may use derivative instruments under this  
36 subsection to engage in hedging transactions.

37 (ii) Prior to entering into any derivative transaction, the board of  
38 directors of the insurer shall approve a derivative use plan that:

1 1. describes investment objectives and risk constraints, such  
2 as counterparty exposure amounts AND COLLATERAL ARRANGEMENTS SUPPORTING  
3 DERIVATIVE TRANSACTIONS;

4 2. defines permissible transactions identifying the risks to be  
5 hedged, the assets or liabilities being replicated; and

6 3. requires compliance with internal control procedures that  
7 demonstrate the intended hedging characteristics and the ongoing effectiveness of the  
8 derivative transaction or combination of the transactions through cash flow testing or  
9 other appropriate analyses.

10 (iii) Whenever the derivative transactions entered into under this  
11 subsection are not in compliance with this subsection or, if continued, may now or  
12 subsequently, create a hazardous financial condition to the insurer that affects its  
13 policyholders, creditors, or the general public, the Commissioner may, after notice and  
14 an opportunity for a hearing, order the insurer to take any action as may be  
15 reasonably necessary to:

16 1. rectify a hazardous financial condition; or

17 2. prevent an impending hazardous financial condition from  
18 occurring.

19 (3) An insurer may enter into hedging transactions under this subsection  
20 if, as a result of and after giving effect to the transaction:

21 (i) the aggregate statement value of options, caps, floors, and  
22 warrants not attached to another financial instrument purchased and used in  
23 hedging transactions does not exceed 7.5% of its admitted assets;

24 (ii) the aggregate statement value of options, caps, and floors  
25 written in hedging transactions does not exceed 3% of its admitted assets; and

26 (iii) the aggregate potential exposure of collars, swaps, forwards,  
27 and futures used in hedging transactions does not exceed 6.5% of its admitted assets.

28 (4) An insurer shall include all counterparty exposure amounts in  
29 determining compliance with the limitations of § 5-507 of this subtitle.

30 (5) Each derivative instrument shall be:

31 (i) traded on a securities exchange;

32 (ii) entered into with, or guaranteed by, a business entity;

33 (iii) issued or written by or entered into with the issuer of the  
34 underlying interest on which the derivative instrument is based; or

35 (iv) in the case of futures, traded through a broker that is registered  
36 as a futures commission merchant under the Commodity Exchange Act or that has

1 received exemptive relief from registration under Rule 30.10 adopted under the  
2 Commodity Exchange Act.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4 October 1, 2003.