
By: **Senator Middleton**

Constitutional Requirements Complied with for Introduction in the last 35 Days of Session

Introduced and read first time: March 24, 2005

Rules suspended

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: April 5, 2005

CHAPTER _____

1 AN ACT concerning

2 **Health Insurance - Small Group Market - Self-Employed Individuals -**
 3 **Transfer to Maryland Health Insurance Plan**

4 FOR the purpose of ~~providing that certain self-employed individuals or sole~~
 5 ~~proprietors are considered medically uninsurable individuals for purposes of the~~
 6 ~~Maryland Health Insurance Plan; requiring the Plan to be a mechanism for~~
 7 ~~certain self-employed individuals or sole proprietors to obtain health insurance~~
 8 ~~coverage in the State; establishing certain criteria that self-employed~~
 9 ~~individuals or sole proprietors must meet to be eligible for coverage under the~~
 10 ~~Maryland Health Insurance Plan; altering certain criteria for determining when~~
 11 ~~an employee is considered an eligible employee for small group market health~~
 12 ~~insurance; repealing certain provisions of law requiring certain self-employed~~
 13 ~~individuals to be considered small employers under small group market health~~
 14 ~~insurance; repealing a certain provision of law that requires a carrier to~~
 15 ~~establish a certain open enrollment period for self-employed individuals;~~
 16 ~~altering certain definitions; requiring certain individuals to be automatically~~
 17 ~~enrolled in the Maryland Health Insurance Plan on a certain date under certain~~
 18 ~~circumstances; providing for the applicability of this Act; authorizing certain~~
 19 ~~self-employed individuals or sole proprietors to remain enrolled in small group~~
 20 ~~market health insurance under certain circumstances; requiring the Maryland~~
 21 ~~Insurance Administration and the Maryland Health Insurance Plan to make a~~
 22 ~~certain report to certain committees of the General Assembly on or before a~~
 23 ~~certain date; providing for the termination of certain provisions of the Act; and~~
 24 ~~generally relating to coverage for self-employed individuals under small group~~
 25 ~~market health insurance and the Maryland Health Insurance Plan.~~

1 BY repealing and reenacting, without amendments,
 2 Article - Insurance
 3 Section 14-501(a), (h) and (i), 14-502, ~~and~~ 15-1201(a), and 15-1212(b)
 4 Annotated Code of Maryland
 5 (2002 Replacement Volume and 2004 Supplement)

6 BY repealing and reenacting, with amendments,
 7 Article - Insurance
 8 Section ~~14-501(h)~~, 15-1201(e) and (h), 15-1203, and 15-1210(a)
 9 Annotated Code of Maryland
 10 (2002 Replacement Volume and 2004 Supplement)

11 ~~BY adding to~~
 12 ~~Article - Insurance~~
 13 ~~Section 14-509~~
 14 ~~Annotated Code of Maryland~~
 15 ~~(2002 Replacement Volume and 2004 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 14-501.

20 (a) In this subtitle the following words have the meanings indicated.

21 (h) (1) "Medically uninsurable individual" means an individual who is a
 22 resident of the State and who:

23 (i) provides evidence that, for health reasons, a carrier has refused
 24 to issue substantially similar coverage to the individual;

25 (ii) provides evidence that, for health reasons, a carrier has refused
 26 to issue substantially similar coverage to the individual, except at a rate that exceeds
 27 the Plan rate;

28 (iii) satisfies the definition of "eligible individual" under § 15-1301
 29 of this article;

30 (iv) has a history of or suffers from a medical or health condition
 31 that is included on a list promulgated in regulation by the Board;

32 (v) is eligible for the tax credit for health insurance costs under § 35
 33 of the Internal Revenue Code; ~~for~~

1 (vi) ~~IS A SELF EMPLOYED INDIVIDUAL OR SOLE PROPRIETOR~~
 2 ~~DESCRIBED IN § 14-509 OF THIS SUBTITLE; OR~~

3 ~~(VII)~~ is a dependent of an individual who is eligible for coverage
 4 under this subsection.

5 (2) "Medically uninsurable individual" does not include an individual
 6 who is eligible for coverage under:

7 (i) the federal Medicare program;

8 (ii) the Maryland Medical Assistance Program;

9 (iii) the Maryland Children's Health Program; or

10 (iv) an employer-sponsored group health insurance plan that
 11 includes benefits comparable to Plan benefits, unless the individual is eligible for the
 12 tax credit for health insurance costs under § 35 of the Internal Revenue Code.

13 (i) "Plan" means the Maryland Health Insurance Plan.

14 14-502.

15 (a) There is a Maryland Health Insurance Plan.

16 (b) The Plan is an independent unit that operates within the Administration.

17 (c) The purpose of the Plan is to decrease uncompensated care costs by
 18 providing access to affordable, comprehensive health benefits for medically
 19 uninsurable residents of the State by July 1, 2003.

20 (d) It is the intent of the General Assembly that the Plan operate as a
 21 nonprofit entity and that Fund revenue, to the extent consistent with good business
 22 practices, be used to subsidize health insurance coverage for medically uninsurable
 23 individuals.

24 ~~14-509.~~

25 ~~(A) THE PLAN SHALL BE A MECHANISM FOR SELF EMPLOYED INDIVIDUALS~~
 26 ~~OR SOLE PROPRIETORS AS DESCRIBED IN THIS SECTION TO OBTAIN HEALTH~~
 27 ~~INSURANCE COVERAGE IN THE STATE.~~

28 ~~(B) (1) AN INDIVIDUAL IS ELIGIBLE FOR COVERAGE AS A SELF INSURED~~
 29 ~~INDIVIDUAL OR SOLE PROPRIETOR UNDER THE PLAN IF THE INDIVIDUAL MEETS THE~~
 30 ~~CRITERIA SPECIFIED IN THIS SUBSECTION.~~

31 ~~(2) AN INDIVIDUAL IS ELIGIBLE FOR COVERAGE UNDER THE PLAN IF~~
 32 ~~THE INDIVIDUAL:~~

33 ~~(i) WORKS AND RESIDES IN THE STATE; AND~~

1 ~~(H) IS A SELF EMPLOYED INDIVIDUAL ORGANIZED AS A SOLE~~
 2 ~~PROPRIETORSHIP OR IN ANY OTHER LEGALLY RECOGNIZED MANNER THAT A~~
 3 ~~SELF EMPLOYED INDIVIDUAL MAY ORGANIZE:~~

4 ~~1. A SUBSTANTIAL PART OF WHOSE INCOME DERIVES FROM~~
 5 ~~A TRADE OR BUSINESS THROUGH WHICH THE INDIVIDUAL HAS ATTEMPTED TO EARN~~
 6 ~~TAXABLE INCOME;~~

7 ~~2. WHO HAS FILED THE APPROPRIATE INTERNAL REVENUE~~
 8 ~~FORM FOR THE PREVIOUS TAXABLE YEAR; AND~~

9 ~~3. FOR WHOM A COPY OF THE APPROPRIATE INTERNAL~~
 10 ~~REVENUE FORM OR FORMS AND SCHEDULE HAS BEEN FILED WITH THE PLAN.~~

11 ~~(3) AN INDIVIDUAL IS ELIGIBLE FOR COVERAGE UNDER THE PLAN IF~~
 12 ~~THE INDIVIDUAL IS A SELF EMPLOYED INDIVIDUAL WHO IS ENGAGED IN A~~
 13 ~~LICENSED PROFESSION THROUGH A PROFESSIONAL CORPORATION ORGANIZED IN~~
 14 ~~ACCORDANCE WITH TITLE 5, SUBTITLE 1 OF THE CORPORATIONS AND ASSOCIATIONS~~
 15 ~~ARTICLE AND WHO RECEIVED HEALTH BENEFITS THROUGH A PROFESSIONAL~~
 16 ~~ASSOCIATION ON OR BEFORE JUNE 30, 1994.~~

17 15-1201.

18 (a) In this subtitle the following words have the meanings indicated.

19 (e) (1) "Eligible employee" means:

20 (i) an individual who:

21 1. is an employee, [sole proprietor, self-employed
 22 individual,] partner of a partnership, or independent contractor who is included as an
 23 employee under a health benefit plan; and

24 2. works on a full-time basis and has a normal workweek of
 25 at least 30 hours; or

26 (ii) a sole employee of a nonprofit organization that has been
 27 determined by the Internal Revenue Service to be exempt from taxation under §
 28 501(c)(3), (4), or (6) of the Internal Revenue Code who:

29 1. has a normal workweek of at least 20 hours; and

30 2. is not covered under a public or private plan for health
 31 insurance or other health benefit arrangement.

32 (2) "Eligible employee" does not include an individual who works:

33 (i) on a temporary or substitute basis; or

34 (ii) except for an individual described in paragraph (1)(ii) of this
 35 subsection, for less than 30 hours in a normal workweek.

1 (h) "Late enrollee" means[:

2 (1)] an eligible employee or dependent who requests enrollment in a
3 health benefit plan after the initial enrollment period provided under the health
4 benefit plan[; or

5 (2) a self-employed individual described in § 15-1203(c) or (d) of this
6 subtitle or dependent who requests enrollment in a health benefit plan after an
7 annual open enrollment period for self-employed individuals established by the
8 carrier in accordance with regulations adopted by the Commissioner].

9 15-1203.

10 (a) A small employer under this subtitle is a person that meets the criteria
11 specified in any subsection of this section.

12 (b) (1) A person is considered a small employer under this subtitle if the
13 person:

14 (i) is an employer that on at least 50% of its working days during
15 the preceding calendar quarter, employed at least two but not more than 50 eligible
16 employees, the majority of whom are employed in the State; and

17 (ii) is a person actively engaged in business or is the governing body
18 of:

19 1. a charter home-rule county established under Article
20 XI-A of the Maryland Constitution;

21 2. a code home-rule county established under Article XI-F of
22 the Maryland Constitution;

23 3. a commission county established or operating under
24 Article 25 of the Code; or

25 4. a municipal corporation established or operating under
26 Article XI-E of the Maryland Constitution.

27 (2) Notwithstanding paragraph (1)(i) of this subsection:

28 (i) a person is considered a small employer under this subtitle if
29 the employer did not exist during the preceding calendar year but on at least 50% of
30 the working days during its first year the employer employs at least two but not more
31 than 50 eligible employees and otherwise satisfies the conditions of paragraph (1)(i) of
32 this subsection; and

33 (ii) if the federal Employee Retirement Income Security Act
34 (ERISA) is amended to exclude employee groups under a specific size, this subtitle
35 shall apply to any employee group size that is excluded from that Act.

1 (3) In determining the group size specified under paragraph (1)(i) of this
2 subsection:

3 (i) companies that are affiliated companies or that are eligible to
4 file a consolidated federal income tax return shall be considered one employer; and

5 (ii) an employee may not be counted who is a part-time employee
6 as described in § 15-1210(a)(2) of this subtitle.

7 (4) A carrier may request documentation to verify that a person meets
8 the criteria under this subsection to be considered a small employer under this
9 subtitle.

10 (5) Notwithstanding paragraph (1)(i) of this subsection, a person is
11 considered to continue to be a small employer under this subtitle if the person met the
12 conditions of paragraph (1)(i) of this subsection and purchased a health benefit plan
13 in accordance with this subtitle, and subsequently eliminated all but one employee.

14 [(c) An individual is considered a small employer under this subtitle if the
15 individual:

16 (1) works and resides in the State; and

17 (2) is a self-employed individual organized as a sole proprietorship or in
18 any other legally recognized manner that a self-employed individual may organize:

19 (i) a substantial part of whose income derives from a trade or
20 business through which the individual has attempted to earn taxable income;

21 (ii) who has filed the appropriate Internal Revenue form for the
22 previous taxable year; and

23 (iii) for whom a copy of the appropriate Internal Revenue form or
24 forms and schedule has been filed with the carrier.

25 (d) An individual is considered a small employer under this subtitle if the
26 individual is a self-employed individual who is engaged in a licensed profession
27 through a professional corporation organized in accordance with Title 5, Subtitle 1 of
28 the Corporations and Associations Article and who received health benefits through a
29 professional association on or before June 30, 1994.]

30 [(e) (C) A person is considered a small employer under this subtitle if the
31 person is a nonprofit organization that has been determined by the Internal Revenue
32 Service to be exempt from taxation under § 501(c)(3), (4), or (6) of the Internal
33 Revenue Code and has at least one eligible employee.

34 15-1210.

35 (a) A carrier that offers coverage to a small employer shall:

1 (1) offer coverage to all of its eligible employees and all of their eligible
2 dependents;

3 (2) at the election of the small employer, offer coverage to all of its
4 part-time employees who have a normal workweek of at least 17 1/2 but less than 30
5 hours per week and have been continuously employed for at least 4 consecutive
6 months; AND

7 (3) at the election of the small employer, offer coverage to all of its
8 employees who are covered under another public or private plan of health insurance
9 or another health benefit arrangement[; and

10 (4) establish an annual open enrollment period for self-employed
11 individuals for at least 30 consecutive days in each 12-month period].

12 15-1212.

13 (b) A carrier may cancel or refuse to renew a health benefit plan only:

14 (1) for nonpayment of premiums;

15 (2) for fraud or intentional misrepresentation of material fact by the
16 small employer;

17 (3) for noncompliance with a material plan provision relating to
18 employer contributions or group participation rules;

19 (4) when the carrier elects not to renew:

20 (i) all of its health benefit plans that are issued to small employers
21 in the State; or

22 (ii) the particular health benefit plan for all small employers in the
23 State; or

24 (5) in the case of a health maintenance organization, where there is no
25 longer any enrollee who lives, resides, or works in the health maintenance
26 organization's approved service area.

27 SECTION 2. AND BE IT FURTHER ENACTED, That each individual
28 enrolled on September 30, 2005 in a health benefit plan under Title 15, Subtitle 12 of
29 the Insurance Article ~~after meeting the criteria to be considered a self-employed~~
30 ~~individual or sole proprietor, shall, at the option of the enrollee and subject to the~~
31 ~~payment of all necessary premiums and copayments, be automatically enrolled in the~~
32 ~~Maryland Health Insurance Plan on October 1, 2005~~ may at the option of the enrollee
33 remain covered under the policy issued under the health benefit plan, subject to the
34 termination provisions under § 15-1212(b) of the Insurance Article, provided the
35 enrollee continues to:

36 (1) work and reside in the State; and

1 (2) is a self-employed individual organized as a sole proprietorship or in
2 any other legally recognized manner that a self-employed individual may organize;

3 (i) a substantial part of whose income derives from a trade or
4 business through which the individual has attempted to earn taxable income;

5 (ii) who has filed the appropriate Internal Revenue form or forms
6 and schedule for the previous taxable year; and

7 (iii) for whom a copy of the appropriate Internal Revenue form or
8 forms and schedule has been filed with the carrier.

9 SECTION 3. AND BE IT FURTHER ENACTED, That ~~this Act shall apply to~~
10 ~~health benefit plans under Title 15, Subtitle 12 of the Insurance Article and health~~
11 ~~insurance policies under the Maryland Health Insurance Plan that are issued,~~
12 ~~delivered, or renewed in the State on or after October 1, 2005, on or before September~~
13 ~~1, 2008, the Maryland Insurance Administration and the Maryland Health Insurance~~
14 ~~Plan shall submit a report, in accordance with § 2-1246 of the State Government~~
15 ~~Article, to the Senate Finance Committee and the House Health and Government~~
16 ~~Operations Committee on:~~

17 (a) the effect of excluding self-employed individuals and sole proprietors from
18 the small group market on the availability and affordability of health insurance in the
19 small group market; and

20 (b) the number of self-employed individuals and sole proprietors enrolled in
21 the Maryland Health Insurance Plan.

22 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take
23 effect October 1, 2005. Sections 1 and 2 of this Act shall remain effective for a period
24 of 3 years and, at the end of September 30, 2008, with no further action required by
25 the General Assembly, Sections 1 and 2 of this Act shall be abrogated and of no
26 further force and effect.