

SENATE BILL 949

C4

9lr2339
CF HB 1317

By: **Senators Kelley, Astle, and Middleton**
Introduced and read first time: February 18, 2009
Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Automobile Insurance Fund – Eligibility for Insurance Coverage –**
3 **Take-Out Program**

4 FOR the purpose of establishing a take-out program of insurance coverage for certain
5 persons insured under the Maryland Automobile Insurance Fund; providing
6 that certain provisions of law relating to the authority of the Fund to sell, issue,
7 and deliver a certain policy of insurance, and relating to entitlement to certain
8 continuation of coverage from the Fund, are subject to certain provisions of this
9 Act; requiring the Maryland Insurance Commissioner, instead of the Fund, to
10 certify the eligibility of a person for insurance from the Fund; establishing
11 certain qualifications that certain insurers must meet to be included on a
12 certain take-out list; requiring a certain insurer to provide certain notice if it
13 wishes to be included on the take-out list; requiring, under certain
14 circumstances and within a certain period of time, the Commissioner to include
15 a certain insurer on the take-out list and the Fund to include certain
16 information in a certain notice to certain insureds; providing for the removal of
17 a take-out insurer from the take-out list under certain circumstances and in a
18 certain manner; providing that the provisions of this Act are not in effect under
19 certain circumstances; requiring the Commissioner to provide certain notice
20 under certain circumstances when certain provisions of this Act are in effect
21 and when they are not in effect; providing that a person that has been insured
22 continuously by the Fund for a certain number of years is not eligible for
23 insurance from the Fund except under certain circumstances; requiring the
24 Fund to provide certain notice to certain insureds that have been insured by the
25 Fund for certain periods of time; authorizing a fund producer to place certain
26 coverage with a take-out insurer under certain circumstances; prohibiting a
27 fund producer from binding coverage with a take-out insurer except under
28 certain circumstances; authorizing a take-out insurer to require a fund
29 producer to enter into a certain agreement; authorizing a fund producer to place
30 certain coverage with a take-out insurer without a certain appointment;
31 prohibiting a take-out insurer from refusing to offer certain coverage unless

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 certain conditions are met; prohibiting a take-out insurer from paying a fund
 2 producer a commission that is less than a certain amount; authorizing a
 3 take-out insurer to pay a fund producer a transfer fee in a certain amount;
 4 providing that a certain fund producer shall retain ownership of certain
 5 expiration and renewal rights and shall receive a certain commission in a
 6 certain amount at each renewal of certain coverage; requiring a take-out
 7 insurer that refuses to offer certain coverage, or that offers the coverage, to
 8 provide certain notice to the Fund and a certain fund producer; prohibiting the
 9 Fund from continuing coverage under certain circumstances for certain
 10 take-out candidates unless the Fund has received certain notice; requiring the
 11 Commissioner to conduct a certain examination of the Fund to determine
 12 certain compliance; exempting certain premiums from a certain premium tax
 13 for a certain period of time; defining certain terms; providing for the application
 14 of this Act; and generally relating to eligibility for insurance coverage under the
 15 Maryland Automobile Insurance Fund.

16 BY repealing and reenacting, with amendments,
 17 Article – Insurance
 18 Section 20–502 and 20–508
 19 Annotated Code of Maryland
 20 (2006 Replacement Volume and 2008 Supplement)

21 BY adding to
 22 Article – Insurance
 23 Section 20–521
 24 Annotated Code of Maryland
 25 (2006 Replacement Volume and 2008 Supplement)

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

28 **Article – Insurance**

29 20–502.

30 (a) [On] **SUBJECT TO § 20–521 OF THIS SUBTITLE**, ON payment of the
 31 premium set by the Fund, the Fund is authorized to and shall sell, issue, and deliver a
 32 policy that provides the security required under § 17–103 of the Transportation Article
 33 to a person:

34 (1) that owns a covered vehicle registered with the Motor Vehicle
 35 Administration, has a license issued by the Motor Vehicle Administration to drive a
 36 covered vehicle, or is a lessee under a “lease not intended as security”, as defined in §
 37 11–127.1(b) of the Transportation Article;

38 (2) that does not owe to the Fund:

1 (i) an unpaid premium with respect to a policy that has expired
2 or been canceled; or

3 (ii) a claim payment obtained by fraud;

4 (3) that:

5 (i) has attempted in good faith to obtain a policy that provides
6 the security required under § 17–103 of the Transportation Article from at least two
7 Association members and has been rejected or refused the policy by two Association
8 members for any reason other than nonpayment of premiums; or

9 (ii) has had a policy that provides the security required under §
10 17–103 of the Transportation Article canceled or nonrenewed by an Association
11 member for any reason other than nonpayment of premiums; and

12 (4) that meets the requirements of subsection (b) of this section.

13 (b) To be eligible for a policy issued under this subtitle, a person must:

14 (1) be domiciled in the State;

15 (2) own, lease, or rent a primary place of residence in the State and,
16 regardless of the person's domicile, reside in the State for more than 1 year;

17 (3) maintain a main or branch office or warehouse facility in the State,
18 and base and operate motor vehicles intrastate in the State;

19 (4) have filed as a State resident for income tax purposes; or

20 (5) have a nonresident permit issued under § 13–402.1(e) of the
21 Transportation Article.

22 (c) (1) Except as provided in paragraph (2) of this subsection, this section
23 does not apply to a person to the extent that the person:

24 (i) leases a covered vehicle that is a private passenger vehicle
25 to an individual who does not meet the requirements of subsection (b) of this section;
26 or

27 (ii) garages the covered vehicle principally outside of the State.

28 (2) This section applies to a person described in paragraph (1) of this
29 subsection who is:

30 (i) a member, on active duty, of the armed forces of the United
31 States or the United States Public Health Service; or

1 (ii) a student enrolled in an accredited school, college, or
2 university or serving a medical internship.

3 (d) The eligibility of [an applicant] **A PERSON** for insurance from the Fund
4 shall be certified at a time and in a manner approved by the [Fund] **COMMISSIONER**.

5 (e) (1) If a prospective insured fails to qualify under this section, any
6 policy issued is void and a commission may not be paid by the Fund to a fund
7 producer.

8 (2) (i) Subject to the provisions of subparagraph (ii) of this
9 paragraph, if a person fails to meet the requirements of subsection (b) of this section,
10 the Fund may charge and collect the greater of:

11 1. a policy processing fee to cover its expenses; or

12 2. the amount that the person would have received after
13 the Fund returns to a fund producer, or any other person other than the person who
14 fails to meet the requirements of subsection (b) of this section, any gross unearned
15 premiums that are due under the policy.

16 (ii) Prior to charging and collecting a policy processing fee or the
17 amount allowed under subparagraph (i) of this paragraph, the Fund shall refer to the
18 Insurance Fraud Division in the Administration for investigation and possible
19 prosecution of the person who fails to meet the requirements of subsection (b) of this
20 section.

21 20-508.

22 (a) **[A SUBJECT TO § 20-521 OF THIS SUBTITLE, A** policyholder is
23 entitled to continuation of coverage from the Fund at rates that are reasonably
24 comparable to those charged by standard insurers and approved by the Commissioner
25 if, for 3 continuous years of coverage under a policy issued by the Fund, the
26 policyholder has not:

27 (1) been charged with a moving traffic violation;

28 (2) had a chargeable traffic accident; and

29 (3) been assessed more than one point by the Motor Vehicle
30 Administration.

31 (b) A policyholder who meets the requirements of subsection (a) of this
32 section is not entitled to a safe driver credit as defined in the rules and rate schedules
33 of the Fund filed with the Commissioner.

1 (c) In determining eligibility for rates that are reasonably comparable to
2 those charged by standard insurers, the Fund may not consider:

3 (1) a lapse in coverage of 30 days or less; and

4 (2) the addition of a driver to the policy who has certified in a manner
5 approved by the Fund for the immediately preceding 3 continuous years that the
6 driver has not had a moving traffic violation, has not been assessed more than one
7 point, and has not had a chargeable traffic accident.

8 **20-521.**

9 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
10 MEANINGS INDICATED.

11 (2) "MINIMUM REQUIRED COVERAGE" MEANS THE SECURITY
12 REQUIRED UNDER § 17-103 OF THE TRANSPORTATION ARTICLE.

13 (3) "TAKE-OUT CANDIDATE" MEANS A PERSON THAT RECEIVES
14 THE WRITTEN NOTICE DESCRIBED IN SUBSECTION (D) OF THIS SECTION.

15 (4) "TAKE-OUT INSURER" MEANS AN ASSOCIATION MEMBER
16 INCLUDED ON THE TAKE-OUT LIST.

17 (5) "TAKE-OUT LIST" MEANS THE LIST OF TAKE-OUT INSURERS
18 MAINTAINED BY THE COMMISSIONER IN ACCORDANCE WITH SUBSECTION (B) OF
19 THIS SECTION.

20 (B) (1) TO BE INCLUDED ON THE TAKE-OUT LIST MAINTAINED BY
21 THE COMMISSIONER, AN ASSOCIATION MEMBER SHALL:

22 (I) FILE A RATING PLAN THAT ENABLES THE ASSOCIATION
23 MEMBER TO OFFER THE MINIMUM REQUIRED COVERAGE TO PERSONS INSURED
24 BY THE FUND; AND

25 (II) ELECT TO PERMIT A FUND PRODUCER TO PLACE
26 COVERAGE FOR A TAKE-OUT CANDIDATE IN ACCORDANCE WITH SUBSECTION
27 (E) OF THIS SECTION.

28 (2) (I) AN ASSOCIATION MEMBER THAT MEETS THE
29 QUALIFICATIONS OF PARAGRAPH (1) OF THIS SUBSECTION SHALL NOTIFY THE
30 COMMISSIONER AND THE FUND IN WRITING IF IT WISHES TO BE INCLUDED ON
31 THE TAKE-OUT LIST AS A TAKE-OUT INSURER.

1 **(II) WITHIN 30 DAYS AFTER RECEIVING THE WRITTEN**
2 **NOTICE DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH:**

3 **1. THE COMMISSIONER SHALL INCLUDE THE**
4 **ASSOCIATION MEMBER ON THE TAKE-OUT LIST AS A TAKE-OUT INSURER: AND**

5 **2. THE FUND SHALL INCLUDE THE NAME AND**
6 **ADDRESS OF THE ASSOCIATION MEMBER IN THE WRITTEN NOTICE PROVIDED**
7 **TO INSUREDS UNDER SUBSECTION (D) OF THIS SECTION.**

8 **(3) (I) A TAKE-OUT INSURER SHALL NOTIFY THE**
9 **COMMISSIONER AND THE FUND IN WRITING IF THE TAKE-OUT INSURER WISHES**
10 **TO BE REMOVED FROM THE TAKE-OUT LIST.**

11 **(II) WITHIN 30 DAYS AFTER RECEIVING THE WRITTEN**
12 **NOTICE DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH:**

13 **1. THE COMMISSIONER SHALL REMOVE THE**
14 **TAKE-OUT INSURER FROM THE TAKE-OUT LIST; AND**

15 **2. THE FUND MAY NOT INCLUDE THE NAME AND**
16 **ADDRESS OF THE ASSOCIATION MEMBER IN THE WRITTEN NOTICE PROVIDED**
17 **TO INSUREDS UNDER SUBSECTION (D) OF THIS SECTION.**

18 **(4) THE COMMISSIONER SHALL MAINTAIN A LIST OF**
19 **ASSOCIATION MEMBERS THAT WISH TO BE INCLUDED ON THE TAKE-OUT LIST**
20 **AS TAKE-OUT INSURERS.**

21 **(5) (I) ON ANY DATE ON WHICH THE TAKE-OUT LIST INCLUDES**
22 **FEWER THAN THREE TAKE-OUT INSURERS, THE PROVISIONS OF THIS SECTION**
23 **ARE NOT IN EFFECT.**

24 **(II) THE COMMISSIONER SHALL NOTIFY THE FUND IN**
25 **WRITING:**

26 **1. WHEN THE PROVISIONS OF THIS SECTION**
27 **INITIALLY ARE IN EFFECT; AND**

28 **2. WHENEVER THE MINIMUM NUMBER OF TAKE-OUT**
29 **INSURERS IS NOT INCLUDED ON THE TAKE-OUT LIST AND THE PROVISIONS OF**
30 **THIS SECTION ARE NOT IN EFFECT.**

1 (C) A PERSON THAT HAS BEEN INSURED CONTINUOUSLY BY THE FUND
2 FOR 2 YEARS OR MORE IS NOT ELIGIBLE FOR INSURANCE FROM THE FUND
3 UNLESS TWO TAKE-OUT INSURERS HAVE:

4 (1) REFUSED TO OFFER THE PERSON THE MINIMUM REQUIRED
5 COVERAGE BECAUSE THE PERSON DOES NOT SATISFY THE TAKE-OUT
6 INSURERS' ELIGIBILITY OR UNDERWRITING STANDARDS; OR

7 (2) OFFERED THE PERSON THE MINIMUM REQUIRED COVERAGE
8 FOR A PREMIUM THAT IS MORE THAN THE PREMIUM CHARGED TO THE PERSON
9 BY THE FUND FOR THE MINIMUM REQUIRED COVERAGE.

10 (D) (1) AT LEAST 60 DAYS BEFORE THE EXPIRATION OR
11 ANNIVERSARY DATE OF A POLICY ISSUED BY THE FUND, THE FUND SHALL
12 PROVIDE THE INSURED WITH WRITTEN NOTICE THAT STATES:

13 (I) IF THE INSURED HAS BEEN INSURED CONTINUOUSLY BY
14 THE FUND FOR 1 YEAR OR MORE AS OF THE EXPIRATION OR ANNIVERSARY
15 DATE OF THE POLICY ISSUED BY THE FUND:

16 1. THE NAMES AND ADDRESSES OF THE TAKE-OUT
17 INSURERS ON THE TAKE-OUT LIST; AND

18 2. THAT THE TAKE-OUT INSURERS ON THE
19 TAKE-OUT LIST OFFER THE MINIMUM REQUIRED COVERAGE TO PERSONS
20 INSURED BY THE FUND AND MAY BE ABLE TO OFFER THE INSURED A
21 COMPETITIVE RATE QUOTATION; AND

22 (II) IF THE INSURED HAS BEEN INSURED CONTINUOUSLY BY
23 THE FUND FOR 2 YEARS OR MORE AS OF THE EXPIRATION OR ANNIVERSARY
24 DATE OF THE POLICY ISSUED BY THE FUND:

25 1. THAT THE INSURED MUST SATISFY THE
26 ELIGIBILITY REQUIREMENT OF SUBSECTION (C) OF THIS SECTION BY THE
27 EXPIRATION OR ANNIVERSARY DATE OF THE POLICY ISSUED BY THE FUND; AND

28 2. THAT THE FUND WILL NOT PROVIDE THE
29 MINIMUM REQUIRED COVERAGE TO THE INSURED AFTER THE EXPIRATION OR
30 ANNIVERSARY DATE OF THE POLICY ISSUED BY THE FUND UNLESS THE FUND
31 HAS RECEIVED WRITTEN NOTICE FROM TWO TAKE-OUT INSURERS THAT
32 ESTABLISHES THAT THE INSURED IS ELIGIBLE FOR COVERAGE BY THE FUND IN
33 ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION.

1 **(2) THE WRITTEN NOTICE REQUIRED BY PARAGRAPH (1) OF THIS**
2 **SUBSECTION SHALL BE IN PRINTED IN 12 POINT BOLD TYPE.**

3 **(3) A COPY OF THE NOTICE DESCRIBED IN PARAGRAPH (1) OF**
4 **THIS SUBSECTION SHALL BE MAILED OR DELIVERED TO THE FUND PRODUCER**
5 **THAT BOUND THE INSURED'S COVERAGE WITH THE FUND DURING THE MOST**
6 **RECENT COVERAGE PERIOD.**

7 **(E) (1) A FUND PRODUCER MAY PLACE THE MINIMUM REQUIRED**
8 **COVERAGE FOR A TAKE-OUT CANDIDATE WITH A TAKE-OUT INSURER IF:**

9 **(I) THE FUND PRODUCER:**

10 1. **OWNS THE EXPIRATION AND RENEWAL RIGHTS OF**
11 **THE POLICY ISSUED BY THE FUND TO THE TAKE-OUT CANDIDATE; OR**

12 2. **IS AUTHORIZED BY THE TAKE-OUT CANDIDATE TO**
13 **PLACE THE MINIMUM REQUIRED COVERAGE WITH A TAKE-OUT INSURER; AND**

14 **(II) THE TAKE-OUT CANDIDATE:**

15 1. **HAS BEEN INSURED CONTINUOUSLY BY THE FUND**
16 **FOR 1 YEAR OR MORE;**

17 2. **SATISFIES THE TAKE-OUT INSURER'S ELIGIBILITY**
18 **AND UNDERWRITING STANDARDS;**

19 3. **SUBMITS AN APPLICATION TO THE FUND**
20 **PRODUCER FOR THE MINIMUM REQUIRED COVERAGE; AND**

21 4. **PAYS THE APPROPRIATE PREMIUM.**

22 **(2) (I) A FUND PRODUCER THAT PLACES THE MINIMUM**
23 **REQUIRED COVERAGE WITH A TAKE-OUT INSURER MAY NOT BIND COVERAGE**
24 **WITH THE TAKE-OUT INSURER UNLESS AUTHORIZED TO DO SO BY THE**
25 **TAKE-OUT INSURER.**

26 **(II) BEFORE ACCEPTING AN APPLICATION FROM A FUND**
27 **PRODUCER UNDER THIS SUBSECTION, A TAKE-OUT INSURER MAY REQUIRE THE**
28 **FUND PRODUCER TO ENTER INTO AN AGREEMENT THAT SETS FORTH THE**
29 **TERMS AND CONDITIONS UNDER WHICH THE FUND PRODUCER MAY PLACE THE**
30 **MINIMUM REQUIRED COVERAGE FOR A TAKE-OUT CANDIDATE WITH THE**
31 **TAKE-OUT INSURER.**

1 (III) A FUND PRODUCER MAY PLACE THE MINIMUM
2 REQUIRED COVERAGE WITH A TAKE-OUT INSURER IN ACCORDANCE WITH THIS
3 SECTION WITHOUT AN APPOINTMENT BY THE TAKE-OUT INSURER UNDER §
4 10-103(D) OF THIS ARTICLE.

5 (3) A TAKE-OUT INSURER MAY NOT REFUSE TO OFFER A
6 TAKE-OUT CANDIDATE THE MINIMUM REQUIRED COVERAGE UNLESS THE
7 TAKE-OUT CANDIDATE DOES NOT SATISFY THE TAKE-OUT INSURER'S
8 ELIGIBILITY OR UNDERWRITING STANDARDS.

9 (4) A TAKE-OUT INSURER:

10 (I) MAY NOT PAY A FUND PRODUCER THAT PLACES
11 COVERAGE UNDER THIS SUBSECTION A COMMISSION THAT IS LESS THAN THE
12 LOWEST COMMISSION THE TAKE-OUT INSURER PAYS AN INSURANCE PRODUCER
13 THAT IS AUTHORIZED TO BIND COVERAGE WITH THE TAKE-OUT INSURER; AND

14 (II) MAY PAY A FUND PRODUCER THAT PLACES COVERAGE
15 UNDER THIS SUBSECTION A TRANSFER FEE IN AN AMOUNT NOT EXCEEDING \$25.

16 (5) A FUND PRODUCER THAT PLACES COVERAGE UNDER THIS
17 SUBSECTION SHALL:

18 (I) RETAIN OWNERSHIP OF THE EXPIRATION AND RENEWAL
19 RIGHTS OF THE POLICY ISSUED BY THE TAKE-OUT INSURER; AND

20 (II) AT EACH RENEWAL, RECEIVE A COMMISSION FROM THE
21 TAKE-OUT INSURER THAT IS NOT LESS THAN THE LOWEST COMMISSION THE
22 TAKE-OUT INSURER PAYS AN INSURANCE PRODUCER THAT IS AUTHORIZED TO
23 BIND COVERAGE WITH THE TAKE-OUT INSURER.

24 (F) (1) IF A TAKE-OUT INSURER REFUSES TO OFFER THE MINIMUM
25 REQUIRED COVERAGE TO A TAKE-OUT CANDIDATE, THE TAKE-OUT INSURER
26 SHALL PROVIDE WRITTEN NOTICE OF THE REFUSAL TO THE FUND AND THE
27 FUND PRODUCER.

28 (2) IF A TAKE-OUT INSURER OFFERS THE MINIMUM REQUIRED
29 COVERAGE TO A TAKE-OUT CANDIDATE, THE TAKE-OUT INSURER SHALL
30 PROVIDE WRITTEN NOTICE OF THE OFFER, INCLUDING THE RATE QUOTATION,
31 TO THE FUND AND THE FUND PRODUCER.

32 (3) THE FUND MAY NOT CONTINUE COVERAGE AT EXPIRATION OR
33 PERMIT COVERAGE TO CONTINUE PAST THE ANNIVERSARY DATE FOR A
34 TAKE-OUT CANDIDATE THAT HAS BEEN INSURED CONTINUOUSLY BY THE FUND

1 FOR 2 YEARS OR MORE UNLESS THE FUND HAS RECEIVED WRITTEN NOTICE
2 FROM TWO TAKE-OUT INSURERS UNDER PARAGRAPH (1) OR PARAGRAPH (2) OF
3 THIS SUBSECTION THAT ESTABLISHES THAT THE TAKE-OUT CANDIDATE IS
4 ELIGIBLE FOR COVERAGE BY THE FUND IN ACCORDANCE WITH SUBSECTION (C)
5 OF THIS SECTION.

6 (4) THE COMMISSIONER SHALL EXAMINE THE FUND AT LEAST
7 ONCE EVERY 2 YEARS TO DETERMINE THE FUND'S COMPLIANCE WITH
8 PARAGRAPH (3) OF THIS SUBSECTION.

9 (G) IF A TAKE-OUT CANDIDATE PURCHASES THE MINIMUM REQUIRED
10 COVERAGE FROM A TAKE-OUT INSURER AT THE EXPIRATION OF COVERAGE BY
11 THE FUND, THE PREMIUM RECEIVED BY THE TAKE-OUT INSURER FOR THE
12 MINIMUM REQUIRED COVERAGE DURING THE 12 MONTHS FOLLOWING THE
13 EXPIRATION OF COVERAGE BY THE FUND IS NOT SUBJECT TO THE TAX IMPOSED
14 BY § 6-102 OF THIS ARTICLE.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all
16 policies and contracts issued by the Maryland Automobile Insurance Fund on or after
17 the effective date of this Act.

18 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2009.