

# SENATE BILL 959

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By: **Senator Middleton**

Introduced and read first time: February 20, 2009

Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **Injured Workers' Insurance Fund – Regulation and Status**

3 FOR the purpose of requiring the Injured Workers' Insurance Fund to be an  
4 authorized insurer under certain provisions of the Insurance Article; requiring  
5 the Maryland Insurance Commissioner to issue and renew certain certificates of  
6 authority to the Fund in accordance with certain provisions of law; providing  
7 that the Fund is subject to certain provisions of law to the same extent as  
8 certain insurers and must be regulated in a certain manner; providing that  
9 certain provisions of law control in the event of a certain conflict; requiring the  
10 Fund to operate as an authorized domestic insurer; specifying the role and  
11 mission of the Fund; altering the requirement that the Fund keep certain  
12 reserves and surplus; repealing certain obsolete provisions of law; requiring the  
13 Commissioner, as part of a certain examination, to determine whether certain  
14 rate making practices produce actuarially sound rates; altering the requirement  
15 that the Board for the Fund adopt a certain schedule of premium rates in a  
16 certain manner; providing that certain provisions of law do not apply to certain  
17 employees of the Fund hired on or before a certain date; and generally relating  
18 to the regulation and status of the Injured Workers' Insurance Fund.

19 BY renumbering

20 Article – Labor and Employment  
21 Section 10–105 and 10–106, respectively  
22 to be Section 10–107 and 10–108, respectively  
23 Annotated Code of Maryland  
24 (2008 Replacement Volume)

25 BY repealing and reenacting, without amendments,

26 Article – Labor and Employment  
27 Section 10–101  
28 Annotated Code of Maryland  
29 (2008 Replacement Volume)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



BY repealing and reenacting, with amendments,  
Article – Labor and Employment  
Section 10–104, 10–121, 10–122, 10–125, and 10–130  
Annotated Code of Maryland  
(2008 Replacement Volume)

BY adding to  
Article – Labor and Employment  
Section 10–105 and 10–106  
Annotated Code of Maryland  
(2008 Replacement Volume)

BY repealing  
Article – Labor and Employment  
Section 10–123  
Annotated Code of Maryland  
(2008 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
MARYLAND, That Section(s) 10–105 and 10–106, respectively, of Article – Labor and  
Employment of the Annotated Code of Maryland be renumbered to be Section(s)  
10–107 and 10–108, respectively.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
read as follows:

### **Article – Labor and Employment**

10–101.

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

(b) “Administration” means the Maryland Insurance Administration.

(c) “Board” means the Board for the Injured Workers’ Insurance Fund.

(d) “Commissioner” means the Maryland Insurance Commissioner.

(e) “Fund” means the Injured Workers’ Insurance Fund.

(f) “Policyholder” means an employer who holds a policy of insurance under  
this subtitle.

(g) (1) “Wage” means all earnings that are due to an employee for  
employment.

(2) “Wage” includes:

(i) a bonus;

(ii) overtime pay;

(iii) a share of profits; and

(iv) if, at the time of hiring, an employer and employee set a dollar value for board or a similar advantage, the advantage.

10-104.

(A) There is an Injured Workers' Insurance Fund.

(B) (1) **THE FUND SHALL BE AN AUTHORIZED INSURER UNDER TITLE 4 OF THE INSURANCE ARTICLE.**

(2) **IN ACCORDANCE WITH TITLE 4, SUBTITLE 1 OF THE INSURANCE ARTICLE, THE COMMISSIONER SHALL ISSUE AND RENEW CERTIFICATES OF AUTHORITY TO THE FUND TO WRITE WORKERS' COMPENSATION INSURANCE.**

(3) **THE FUND HAS ALL THE POWERS, PRIVILEGES, DUTIES, AND RESPONSIBILITIES IMPOSED ON AND GRANTED TO AUTHORIZED INSURERS.**

10-105.

(A) **EXCEPT AS OTHERWISE PROVIDED BY LAW, THE FUND:**

(1) **EXCEPT FOR TITLE 6, SUBTITLE 1 AND TITLE 11 OF THE INSURANCE ARTICLE, IS SUBJECT TO THE INSURANCE ARTICLE TO THE SAME EXTENT AS ANY OTHER AUTHORIZED WORKERS' COMPENSATION INSURER; AND**

(2) **SHALL BE REGULATED IN THE SAME MANNER AS AN AUTHORIZED STOCK INSURER.**

(B) **IN THE EVENT OF A CONFLICT BETWEEN THIS ARTICLE AND THE INSURANCE ARTICLE OR ANOTHER LAW OF THIS STATE APPLICABLE TO A NONLIFE INSURANCE COMPANY, THIS ARTICLE CONTROLS.**

10-106.

**THE FUND SHALL OPERATE AS AN AUTHORIZED DOMESTIC INSURER AND SHALL:**

- 1                   (1)    **SERVE AS A COMPETITIVE FORCE IN THE MARKETPLACE;**  
2                   (2)    **GUARANTEE THE AVAILABILITY OF WORKERS' COMPENSATION**  
3 **INSURANCE IN THE STATE; AND**  
4                   (3)    **SERVE AS THE WORKERS' COMPENSATION INSURER OF LAST**  
5 **RESORT.**  
6    10–121.

7           The Board shall keep[:

- 8                   (1)    a catastrophe surplus sufficient to cover catastrophic hazards for  
9 which the Fund writes coverage; and  
10                  (2)    reserves sufficient to:  
11                          (i)    meet anticipated losses of the Fund; and  
12                          (ii)   carry to maturity policies that the Fund issues] **RESERVES**  
13 **AND SURPLUS IN ACCORDANCE WITH THE INSURANCE ARTICLE.**  
14    10–122.

15           (a)    [If, at any time, the amount of money in the Fund exceeds the amount  
16 that the Board considers necessary for immediate use, the excess shall be invested in  
17 any investment authorized under Title 5, Subtitle 6 of the Insurance Article for  
18 insurance companies.

19           (b)] (1)   [(i)] Consistent with minority business purchasing standards  
20 applicable to units of State government under the State Finance and Procurement  
21 Article and consistent with the fiduciary duties of the Board, the Board shall attempt  
22 to use to the greatest extent feasible minority business enterprises to provide  
23 brokerage and investment management services to the Board.

24                          [(ii)] (2)   For purposes of this [subsection] **SECTION**, brokerage  
25 and investment management services shall include services relating to all allocated  
26 asset classes.

27                          [(2) (i)] (B) (1) To assist it in achieving the goal described under  
28 [paragraph (1)] **SUBSECTION (A)** of this [subsection] **SECTION**, the Board shall  
29 undertake measures to remove any barriers that limit full participation by minority  
30 business enterprises in brokerage and investment management services opportunities  
31 afforded by the Fund.

1                    [(ii)] (2)        The measures undertaken by the Board shall include  
2 the use of a wide variety of media, including the Board's website, to provide notice to a  
3 broad and varied range of potential providers about the brokerage and investment  
4 management services opportunities afforded by the Fund.

5                    [(3)] (C)        In conjunction with the Governor's Office of Minority Affairs,  
6 the Board shall develop guidelines to assist it in identifying and evaluating qualified  
7 minority business enterprises in order to help the Fund achieve the objective for  
8 greater use of minority business enterprises for brokerage and investment  
9 management services.

10                   [(4)] (D)        On or before September 1 each year, the Board shall submit  
11 a report to the Governor's Office of Minority Affairs and, subject to § 2-1246 of the  
12 State Government Article, the General Assembly on:

13                   [(i)] (1)        the identity of the minority business enterprise  
14 brokerage and investment management services firms used by the Board in the  
15 immediately preceding fiscal year;

16                   [(ii)] (2)        the percentage and dollar value of the Fund assets  
17 that are under the investment control of minority business enterprise brokerage and  
18 investment management services firms; and

19                   [(iii)] (3)        the measures the Board undertook in the immediately  
20 preceding fiscal year in accordance with [paragraph (2)(ii)] **SUBSECTION (B)(2)** of  
21 this [subsection] **SECTION**.

22 [10-123.

23                   If the Board determines that the financial condition of the Fund warrants a  
24 dividend declaration, the Board may declare for policyholders a dividend in the form of  
25 a cash refund or a credit.]

26 10-125.

27                   (a)        The Fund shall be[:

28                   (1)]        examined by the Commissioner in accordance with Title 2, Subtitle  
29 2 (Enforcement) of the Insurance Article[; and

30                   (2)        subject to the following provisions of the Insurance Article:

31                   (i)        Title 4, Subtitle 3 (Risk Based Capital Standards for  
32 Insurers) as provided in subsection (d) of this section;

33                   (ii)       Title 5, Subtitles 1, 2, 4, and 9 (Assets and Liabilities,  
34 Reserves, Valuation of Assets and Reinsurance);

1 (iii) Title 9 (Impaired Entities); and

2 (iv) §§ 3–124 (Bulk Reinsurance – Stock Insurers), 4–115 (Home  
3 Office; Location of Accounting Records and Assets), 4–116 (Annual and Interim  
4 Statements; Audited Financial Reports), and 4–118 (Qualified Independent Certified  
5 Public Accountants)].

6 [(b) (1) The Commissioner may enforce any provision of the Insurance  
7 Article to which the Fund is subject under subsections (a) and (c) of this section.

8 (2) Any order issued under this subsection:

9 (i) may not include a requirement that the Fund increase rates;  
10 and

11 (ii) shall be subject to Title 2, Subtitle 2 of the Insurance Article.

12 (3) The Commissioner shall report to the Board on the results of any  
13 examination conducted under subsection (a)(1) of this section.

14 (c) (1) The Commissioner may examine or review the Fund for compliance  
15 with:

16 (i) Title 12, Subtitle 1 of the Insurance Article (Policy Forms  
17 and Provisions);

18 (ii) except for § 19–403 (Setting Premium Rates), Title 19,  
19 Subtitle 4 of the Insurance Article (Workers' Compensation Insurance); and

20 (iii) Title 27 of the Insurance Article (Unfair Trade Practices and  
21 Other Prohibited Practices).

22 (2) The Commissioner shall report to the Board on the results of any  
23 examination or review conducted under this subsection.

24 (d) With respect to any risk based capital calculation under Title 4, Subtitle  
25 3 of the Insurance Article, the Fund shall be subject to the following reductions:

26 (1) for calendar year 2001, the required risk based capital for the Fund  
27 shall be 50% of the requirement for each action level set forth in §§ 4–305 through  
28 4–308 of the Insurance Article;

29 (2) for calendar year 2002, the required risk based capital for the Fund  
30 shall be 60% of the requirement for each action level set forth in §§ 4–305 through  
31 4–308 of the Insurance Article;

(3) for calendar year 2003, the required risk based capital for the Fund shall be 70% of the requirement for each action level set forth in §§ 4-305 through 4-308 of the Insurance Article;

(4) for calendar year 2004, the required risk based capital for the Fund shall be 85% of the requirement for each action level set forth in §§ 4-305 through 4-308 of the Insurance Article; and

(5) for calendar year 2005, the required risk based capital for the Fund shall be 100% of the requirement for each action level set forth in §§ 4-305 through 4-308 of the Insurance Article.

(e) For calendar years 2002 through 2005:

(1) if the Fund's risk based capital does not equal or exceed the phase-in level required under subsection (b) of this section, the provisions of §§ 4-305 through 4-308 of the Insurance Article applicable to that level shall apply;

(2) (i) if the Fund's risk based capital equals or exceeds the phase-in level required under subsection (b) of this section, but is less than 100% of the company action level required under Title 4, Subtitle 3 of the Insurance Article, the Fund shall file a status report concerning the Fund's November 2, 2001 risk based capital plan; and

(ii) the status report shall state whether the annual results meet or exceed the results projected in the risk based capital plan and shall describe any appropriate modification or adjustment to the plan; and

(3) if the Fund's risk based capital equals or exceeds 100% of the company action level required under Title 4, Subtitle 3 of the Insurance Article, the Fund may not be required to file a risk based capital plan for that year.]

**(B) AS PART OF AN EXAMINATION UNDER § 2-205 OF THE INSURANCE ARTICLE, THE COMMISSIONER SHALL, ONCE EVERY 5 YEARS, DETERMINE WHETHER THE FUND'S RATE MAKING PRACTICES PRODUCE ACTUARIALLY SOUND RATES.**

10-130.

(a) The Board shall adopt[, by regulation,] a schedule of premium rates[, as provided in this section] **IN ACCORDANCE WITH SOUND ACTUARIAL PRACTICES AND SHALL ENSURE THAT THE RATES ARE NOT EXCESSIVE, INADEQUATE, OR UNFAIRLY DISCRIMINATORY.**

**(B) THE COMMISSIONER SHALL REVIEW THE FUND'S RATES AS PART OF AN EXAMINATION UNDER § 2-205 OF THE INSURANCE ARTICLE TO DETERMINE**

1 **WHETHER THE FUND'S RATE MAKING PRACTICES PRODUCE ACTUARIALLY**  
2 **SOUND RATES.**

3 [(b)] (C) (1) The Board shall determine the schedule by:

4 (i) classifying all of the policyholders on the basis of the  
5 respective level of hazard of their enterprises; and

6 (ii) setting a premium rate for each class on the basis of:

7 1. its level of hazard; and

8 2. incentives to prevent injuries to employees.

9 (2) To determine the schedule, the Board shall use the rating system  
10 that, in the opinion of the Board:

11 (i) most accurately measures the level of hazard for each  
12 policyholder on the basis of the number of injuries that occur in the enterprises of the  
13 policyholder;

14 (ii) encourages the prevention of injuries; and

15 (iii) ensures the solvency of the Fund from year to year.

16 (3) The Board may set minimum premium rates.

17 [(c)] (D) (1) The Board shall state premium rates as a percentage of the  
18 gross annual wages of employees to whom Title 9 of this article applies.

19 (2) For employees who work partly in and partly outside the State, the  
20 premium shall be based on wages for employment in the State.

21 [(d)] (E) (1) Except as provided in paragraph (2) of this subsection, the  
22 schedule of premium rates in effect at the beginning of a calendar year remains in  
23 effect for the year.

24 (2) The Board shall adjust classes and rates as often as the Board  
25 determines to be just and advantageous to meet the criteria under subsection (b)(2) of  
26 this section and to reflect changes in levels of hazards.

27 [(e)] (1) Except as provided in paragraph (2) of this subsection, the Board  
28 may not increase the policy rate of an employer on renewal of a policy by more than  
29 20% unless the Board notifies the employer in writing at least 45 days before the  
30 effective date of the policy rate increase.



1                   (2)    This subsection does not apply to an increase based on the  
2   experience of the employer.]

3           SECTION 3. AND BE IT FURTHER ENACTED, That the requirements of Title  
4   10 of the Insurance Article do not apply to employees of the Fund who were hired on or  
5   before January 1, 1990.

6           SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
7   October 1, 2009.