

CHAPTER 336

(Senate Bill 959)

AN ACT concerning

Injured Workers' Insurance Fund – Regulation and Status

FOR the purpose of requiring the Injured Workers' Insurance Fund to ~~be operate in a manner similar to an authorized domestic workers' compensation insurer under certain provisions of the Insurance Article; requiring the Maryland Insurance Commissioner to issue and renew certain certificates of authority to the Fund in accordance with certain provisions of law;~~ providing that the Fund is subject to certain provisions of law to the same extent as certain insurers and must be regulated in a certain manner; ~~providing that certain provisions of law control in the event of a certain conflict; requiring the Fund to operate as an authorized domestic insurer;~~ specifying the role and mission of the Fund; altering the requirement that the Fund keep certain reserves and surplus; specifying that members of the Board for the Fund are entitled to reimbursement for certain reasonable expenses; altering the frequency for payment of Board members; altering the manner in which the Board may carry out certain provisions of law; repealing certain obsolete provisions of law; requiring the Maryland Insurance Commissioner, as part of a certain examination, to determine whether certain rate making practices produce actuarially sound rates; altering the requirement that the Board for the Fund adopt a certain schedule of premium rates in a certain manner; making certain conforming changes; providing that certain provisions of law do not apply to certain employees of the Fund hired on or before a certain date; and generally relating to the regulation and status of the Injured Workers' Insurance Fund.

BY renumbering

Article – Labor and Employment

Section 10–105 and 10–106, respectively

to be Section 10–107 and 10–108, respectively

Annotated Code of Maryland

(2008 Replacement Volume)

BY repealing and reenacting, without amendments,

Article – Labor and Employment

Section 10–101 and 10–104

Annotated Code of Maryland

(2008 Replacement Volume)

BY repealing and reenacting, with amendments,

Article – Labor and Employment

Section ~~10-104~~, 10-112(d), 10-114(a), 10-121, 10-122, 10-125, and 10-130
10-130, 10-131, and 10-133(a)

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 FOR TITLE 3, SUBTITLE 1, TITLE 6, SUBTITLE 1, TITLE 8, SUBTITLE 3, AND TITLE 11 OF THE INSURANCE ARTICLE AND 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~~ AN AUTHORIZED DOMESTIC 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.~~

(B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, THE FUND SHALL REGISTER WITH THE COMMISSIONER AND BE SUBJECT TO THE PROVISIONS OF TITLE 8, SUBTITLE 3 OF THE INSURANCE ARTICLE IF THE FUND OPERATES AS AN ADMINISTRATOR, AS DEFINED IN § 8-301 OF THE INSURANCE ARTICLE.

10-106.

(A) ~~THE~~ SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE FUND SHALL OPERATE AS IN A MANNER SIMILAR TO AN AUTHORIZED DOMESTIC WORKERS' COMPENSATION INSURER. ~~AND~~

(B) THE FUND SHALL:

(1) SERVE AS A COMPETITIVE ~~FORCE~~ INSURER IN THE MARKETPLACE;

(2) GUARANTEE THE AVAILABILITY OF WORKERS' COMPENSATION INSURANCE IN THE STATE; ~~AND~~

(3) SERVE AS THE WORKERS' COMPENSATION INSURER OF LAST RESORT; AND

(4) ENGAGE ONLY IN THE BUSINESS OF WORKERS' COMPENSATION INSURANCE IN ACCORDANCE WITH STATE LAW.

10-112.

(d) (1) Each member of the Board is entitled to:

(i) the salary provided in the budget of the Board; and

(ii) reimbursement for REASONABLE expenses [under the Standard State Travel Regulations,];

1. INCURRED IN THE PERFORMANCE OF THE BOARD MEMBER'S DUTIES; AND

2. as provided in the budget of the Board.

(2) Each member of the Board shall be paid [semimonthly] BIWEEKLY.

10-114.

(a) The Board may adopt any [regulation] **POLICY** to carry out this subtitle.

10-121.

The Board shall keep[:

(1) a catastrophe surplus sufficient to cover catastrophic hazards for which the Fund writes coverage; and

(2) reserves sufficient to:

(i) meet anticipated losses of the Fund; and

(ii) carry to maturity policies that the Fund issues] **RESERVES AND SURPLUS IN ACCORDANCE WITH THE INSURANCE ARTICLE.**

10-122.

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

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

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

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

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

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

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

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

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

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

[10-123.

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

10-125.

(a) The Fund shall be[:

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

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

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

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

(iii) Title 9 (Impaired Entities); and

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

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

(2) Any order issued under this subsection:

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

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

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

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

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

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

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

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

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

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

(2) for calendar year 2002, the required risk based capital for the Fund shall be 60% of the requirement for each action level set forth in §§ 4–305 through 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, AT LEAST 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 WHETHER THE FUND'S RATE MAKING PRACTICES PRODUCE ACTUARIALLY SOUND RATES.

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

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

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

1. its level of hazard; and

2. incentives to prevent injuries to employees.

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

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

(ii) encourages the prevention of injuries; and

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

(3) The Board may set minimum premium rates.

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

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

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

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

[(e)] (1) Except as provided in paragraph (2) of this subsection, the Board may not increase the policy rate of an employer on renewal of a policy by more than

20% unless the Board notifies the employer in writing at least 45 days before the effective date of the policy rate increase.

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

10-131.

An employer shall apply for insurance under this subtitle in accordance with the [regulations] **POLICIES** of the Board.

10-133.

(a) The Board shall adopt [regulations] **POLICIES** that provide procedures and standards for the payment of premiums.

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

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

Approved by the Governor, May 7, 2009.