

SENATE BILL 401

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By: **Senators Pugh, Conway, Currie, Forehand, Gladden, Harrington, Jones, King, Kramer, Lenett, Madaleno, McFadden, Miller, Muse, Peters, Raskin, Robey, Rosapepe, and Stone**

Introduced and read first time: January 29, 2010

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Automobile Insurance Fund – Acceptance of Premiums on**
3 **Installment Basis**

4 FOR the purpose of authorizing the Maryland Automobile Insurance Fund to accept
5 premiums on an installment basis under certain circumstances; requiring the
6 Maryland Insurance Commissioner to ensure certain provisions of the Fund's
7 installment payment plan; prohibiting the Fund from discriminating among
8 insureds in a certain manner; prohibiting the Fund from paying a higher
9 commission to certain producers; requiring certain written and electronic
10 communications to include a certain statement under certain circumstances;
11 requiring the Executive Director of the Fund, in consultation with the
12 Commissioner and other State agencies, to develop certain criteria for a certain
13 evaluation of the impact and effectiveness of the Fund's installment payment
14 plan; requiring the Fund to determine certain information and the Board of
15 Trustees of the Fund to certify the information to the Board of Directors of the
16 Industry Automobile Insurance Association on or before a certain date each
17 year; requiring the Executive Director of the Fund to submit on or before a
18 certain date each year a certain report to the Commissioner; authorizing the
19 Commissioner to make a certain determination under certain circumstances;
20 requiring the Commissioner to make a certain determination on certain dates;
21 requiring the Commissioner to retain a certain actuary and hold a certain
22 hearing under certain circumstances; requiring a premium finance company, in
23 the event of a certain insurance policy cancellation, to credit to a certain account
24 or refund to a certain insured a certain amount within a certain time; requiring
25 an independent insurance producer to provide a certain disclosure under certain
26 circumstances; requiring the Commissioner to study the enforcement of
27 eligibility criteria for insurance coverage in the Fund; requiring the Fund to
28 provide certain information to the Office of Legislative Audits on or before a
29 certain date; requiring the Office to evaluate the overall costs of the Fund's

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 installment payment plan on or before a certain date; requiring the
 2 Commissioner to submit certain reports; requiring the Office to submit a certain
 3 report; providing for the application of certain provisions of this Act; providing
 4 for the effective dates of this Act; making certain stylistic and conforming
 5 changes; and generally relating to accepting premiums on an installment basis
 6 on policies issued by the Maryland Automobile Insurance Fund.

7 BY repealing and reenacting, without amendments,
 8 Article – Insurance
 9 Section 20–101(a) and (g)
 10 Annotated Code of Maryland
 11 (2006 Replacement Volume and 2009 Supplement)

12 BY repealing and reenacting, with amendments,
 13 Article – Insurance
 14 Section 20–404, 20–507, 23–304, and 23–505.2
 15 Annotated Code of Maryland
 16 (2006 Replacement Volume and 2009 Supplement)

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

19 **Article – Insurance**

20 20–101.

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

22 (g) “Fund” means the Maryland Automobile Insurance Fund.

23 20–404.

24 (a) On or before March 15 of each year, the Fund shall determine and the
 25 Board of Trustees shall certify to the Board of Directors the information required
 26 under subsections (b) [and], (c), **AND (G)(1)** of this section.

27 (b) Subject to subsection (f) of this section, the following information certified
 28 to the Board of Directors shall be separately identified by commercial auto and private
 29 passenger auto results:

30 (1) the statutory operating loss for the immediately preceding
 31 calendar year;

32 (2) a calculation to yield a private passenger auto assessment limit
 33 that is determined by subtracting the year–end total surplus of the Fund for the
 34 immediately preceding calendar year from an amount equal to 25% of the average of

1 net direct written private passenger auto premiums of the Fund for each of the
2 [three] 3 immediately preceding calendar years; and

3 (3) a calculation to yield a commercial auto assessment limit that is
4 determined by subtracting the year-end commercial auto surplus of the Fund for the
5 immediately preceding calendar year from an amount equal to 25% of the average of
6 net direct written commercial auto premiums of the Fund for each of the 3
7 immediately preceding calendar years.

8 (c) The assessment certified to the Board of Directors shall be equal to:

9 (1) subject to subsection (d) of this section, the assessment limit, if the
10 assessment limit is less than or equal to the statutory operating loss; or

11 (2) the statutory operating loss, if the assessment limit is greater than
12 the statutory operating loss.

13 (d) If the calculation under subsection (b)(2) of this section yields a number
14 that is less than or equal to zero, the assessment limit is zero.

15 (e) The statutory operating loss or assessment certified to the Board of
16 Directors may not include:

17 (1) assessment moneys received for a prior year; or

18 (2) moneys transferred between the commercial auto and private
19 passenger auto divisions within the Fund.

20 (f) In a calculation made under this section, income or expenses not clearly
21 attributable to either commercial auto or private passenger auto may be allocated pro
22 rata for that year.

23 **(G) (1) ON OR BEFORE MARCH 31 OF EACH YEAR, THE EXECUTIVE**
24 **DIRECTOR SHALL SUBMIT A REPORT TO THE COMMISSIONER ON:**

25 **(I) THE PRIOR YEAR-END TOTAL SURPLUS OF THE FUND;**
26 **AND**

27 **(II) THE PRIOR YEAR NET DIRECT WRITTEN PRIVATE**
28 **PASSENGER AUTO PREMIUMS OF THE FUND.**

29 **(2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (V) OF THIS**
30 **PARAGRAPH, AS THE COMMISSIONER DETERMINES NECESSARY, THE**
31 **COMMISSIONER MAY MAKE A DETERMINATION AS TO WHETHER THE FUND'S**
32 **SURPLUS IS EXCESSIVE.**

1 **(II) IN MAKING A DETERMINATION AS TO WHETHER THE**
2 **FUND'S SURPLUS IS EXCESSIVE, THE COMMISSIONER SHALL:**

3 **1. RETAIN AN INDEPENDENT ACTUARY IN**
4 **ACCORDANCE WITH § 7-307 OF THIS ARTICLE; AND**

5 **2. HOLD A PUBLIC HEARING.**

6 **(III) IF THE COMMISSIONER DETERMINES THAT THE FUND'S**
7 **SURPLUS IS EXCESSIVE, THE COMMISSIONER SHALL SUBMIT A REPORT, IN**
8 **ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE**
9 **SENATE FINANCE COMMITTEE AND THE HOUSE ECONOMIC MATTERS**
10 **COMMITTEE ON:**

11 **1. THE STATUS OF THE SURPLUS; AND**

12 **2. THE COMMISSIONER'S RECOMMENDATIONS, IN**
13 **ACCORDANCE WITH SUBPARAGRAPH (IV) OF THIS PARAGRAPH, FOR POTENTIAL**
14 **DISTRIBUTIONS OF ANY EXCESS SURPLUS, INCLUDING PREMIUM RATE**
15 **ADJUSTMENTS FOR FUND INSUREDS IN ACCORDANCE WITH § 20-507(D) OF**
16 **THIS TITLE.**

17 **(IV) THE RECOMMENDATIONS OF THE COMMISSIONER**
18 **UNDER SUBPARAGRAPH (III) OF THIS PARAGRAPH SHALL:**

19 **1. CONSIDER THE TRENDS OF THE:**

20 **A. ANNUAL YEAR-END TOTAL SURPLUS OF THE**
21 **FUND; AND**

22 **B. ANNUAL NET DIRECT WRITTEN PRIVATE**
23 **PASSENGER AUTO PREMIUMS OF THE FUND; AND**

24 **2. BE CONSISTENT WITH THE FACT THAT:**

25 **A. SURPLUS FUNDS WERE DERIVED FROM**
26 **COMMERCIAL AUTO AND PRIVATE PASSENGER AUTO PREMIUMS AND THE**
27 **INVESTMENT EARNINGS ON THOSE PREMIUMS;**

28 **B. AN ADEQUATE LEVEL OF SURPLUS PROTECTS THE**
29 **DRIVING PUBLIC FROM AN ASSESSMENT AUTHORIZED UNDER THIS SUBTITLE;**
30 **AND**

1 (d) In reviewing rates filed by the Fund, the Commissioner shall consider not
2 only the rating principles under Title 11, Subtitle 2 of this article but also the
3 statutory purpose of the Fund under § 20–301 of this title.

4 (e) (1) The Motor Vehicle Administration and Executive Director may
5 arrange for the Motor Vehicle Administration to collect premiums on policies issued by
6 the Fund when the Motor Vehicle Administration issues a driver’s license or certificate
7 of registration.

8 (2) A premium collected under this subsection shall be paid to the
9 State Treasurer for the account of the Fund.

10 (f) (1) The Fund may not:

11 (i) provide directly or indirectly for the financing of premiums;
12 or

13 (ii) **EXCEPT AS PROVIDED IN SUBSECTION (G) OF THIS**
14 **SECTION, accept premiums on an installment basis.**

15 (2) A premium may be financed only by a premium finance company
16 registered with the Commissioner in accordance with § 23–201 of this article.

17 (3) If a prospective insured’s initial payment to the Fund, a fund
18 producer, or premium finance company is not honored, a policy or endorsement issued
19 in reliance on that payment is void.

20 **(G) (1) (I) SUBJECT TO THE APPROVAL OF THE COMMISSIONER**
21 **AND IN ACCORDANCE WITH THIS SUBSECTION, THE FUND MAY ACCEPT**
22 **PREMIUMS ON AN INSTALLMENT BASIS ONLY ON 12-MONTH PERSONAL LINES**
23 **POLICIES.**

24 **(II) IN APPROVING THE FUND’S PLAN FOR ACCEPTING**
25 **PREMIUMS ON AN INSTALLMENT BASIS, THE COMMISSIONER SHALL ENSURE**
26 **THAT THE FUND’S INSTALLMENT PAYMENT PLAN:**

27 **1. REQUIRES AN INSURED’S INITIAL PREMIUM**
28 **PAYMENT TO BE NO LESS THAN 15% OF THE TOTAL PREMIUM;**

29 **2. IS STRUCTURED AND ADMINISTERED TO ENSURE**
30 **THAT THE FUND AT NO TIME PROVIDES INSURANCE COVERAGE TO AN INSURED**
31 **FOR A PERIOD DURING WHICH THE FUND HAS NOT RECEIVED THE**
32 **ACTUARIALLY JUSTIFIED PREMIUM PAYMENT;**

1 **3. OFFERS NO MORE THAN NINE INSTALLMENT**
2 **PAYMENTS ON THE 12-MONTH POLICY;**

3 **4. ALLOWS INSUREDS TO MAKE AN INITIAL PREMIUM**
4 **PAYMENT AND INSTALLMENT PAYMENTS IN ANY COMMERCIALY ACCEPTABLE**
5 **FORM, WHICH SHALL INCLUDE PAYMENT BY CHECK, CREDIT CARD, OR**
6 **ELECTRONIC TRANSFER; AND**

7 **5. ALLOWS THE FUND TO IMPOSE AN**
8 **ADMINISTRATIVE PROCESSING FEE ON INSUREDS PARTICIPATING IN THE**
9 **INSTALLMENT PAYMENT PLAN OF NO MORE THAN \$8 PER INSTALLMENT**
10 **PAYMENT.**

11 **(2) THE FUND MAY NOT DISCRIMINATE AMONG INSUREDS BY**
12 **CHARGING A DIFFERENT WRITTEN OR EARNED PREMIUM BASED ON THE**
13 **PAYMENT OPTION SELECTED BY AN INSURED OR ON WHETHER THE FUND**
14 **PRODUCER IS EMPLOYED BY A PUBLIC ENTITY OR A PRIVATE ENTITY.**

15 **(3) THE FUND MAY NOT PAY A HIGHER COMMISSION TO A FUND**
16 **PRODUCER THAT PLACES AN INSURED IN AN INSTALLMENT PAYMENT PLAN**
17 **OVER ANY OTHER PAYMENT OPTION, INCLUDING A PREMIUM FINANCE**
18 **AGREEMENT.**

19 **(4) (I) IN ACCORDANCE WITH THIS PARAGRAPH, WRITTEN AND**
20 **ELECTRONIC COMMUNICATIONS, INCLUDING THE FUND'S WEBSITE, AFFECTING**
21 **THE PLACEMENT OF COVERAGE BY THE FUND OR A FUND PRODUCER SHALL**
22 **INCLUDE A STATEMENT, ON A FORM APPROVED BY THE COMMISSIONER,**
23 **ADVISING AN APPLICANT OR AN INSURED OF THE PAYMENT OPTIONS**
24 **AVAILABLE TO THE APPLICANT OR THE INSURED.**

25 **(II) THE STATEMENT SHALL STATE THAT THE APPLICANT**
26 **OR INSURED HAS THE FOLLOWING PAYMENT OPTIONS:**

27 **1. THE FUND'S INSTALLMENT PAYMENT PLAN;**

28 **2. A PREMIUM FINANCE AGREEMENT; OR**

29 **3. PAYMENT OF THE POLICY IN FULL.**

30 **(III) THE STATEMENT SHALL BE INCLUDED IN WRITTEN OR**
31 **ELECTRONIC COMMUNICATIONS AT THE TIME THE APPLICANT OR INSURED:**

32 **1. IS ISSUED A NEW POLICY;**

1 **2. IS ISSUED A REISSUANCE, REWRITE, OR RENEWAL**
2 **OF AN EXISTING POLICY; OR**

3 **3. INCURS ADDITIONAL PREMIUMS UNDER AN**
4 **EXISTING POLICY.**

5 **(IV) THE STATEMENT SHALL STATE THAT THE APPLICANT**
6 **OR INSURED SHOULD CONSULT A FUND PRODUCER WHO WILL FULLY DESCRIBE**
7 **THE TERMS OF EACH PAYMENT OPTION.**

8 **(5) (I) THE EXECUTIVE DIRECTOR, IN CONSULTATION WITH**
9 **THE COMMISSIONER AND OTHER STATE AGENCIES AS APPROPRIATE, SHALL**
10 **DEVELOP CRITERIA FOR EVALUATING THE IMPACT AND EFFECTIVENESS OF THE**
11 **FUND'S INSTALLMENT PAYMENT PLAN.**

12 **(II) THE EVALUATION SHALL INCLUDE THE IMPACT OF THE**
13 **PLAN ON:**

14 **1. THE COST OF AUTOMOBILE INSURANCE;**

15 **2. THE NUMBER OF INSURED AND UNINSURED**
16 **MOTORISTS IN THE STATE;**

17 **3. THE NUMBER OF POLICIES IN FORCE BY**
18 **GEOGRAPHIC AREA;**

19 **4. THE DURATION OF POLICIES IN FORCE; AND**

20 **5. THE FREQUENCY OF PAYMENT METHODS USED BY**
21 **INSUREDS, INCLUDING THE FUND'S INSTALLMENT PAYMENT PLAN, PREMIUM**
22 **FINANCE AGREEMENTS, AND CASH AND CREDIT CARD PAYMENTS.**

23 **(III) ON OR BEFORE MARCH 31 OF EACH YEAR, THE FUND**
24 **SHALL REPORT TO THE COMMISSIONER ON THE IMPACT AND EFFECTIVENESS**
25 **OF THE FUND'S INSTALLMENT PAYMENT PLAN FOR THE PRIOR YEAR BASED ON:**

26 **1. THE EVALUATION CRITERIA DEVELOPED UNDER**
27 **SUBPARAGRAPH (I) OF THIS PARAGRAPH; AND**

28 **2. THE LIMITATIONS OF THE TERMS OF THE PLAN**
29 **UNDER PARAGRAPH (1)(II)1 AND 3 OF THIS SUBSECTION.**

30 **(6) (I) ON RECEIPT OF THE REPORT UNDER PARAGRAPH**
31 **(5)(III) OF THIS SUBSECTION, THE COMMISSIONER SHALL MAKE A**

1 DETERMINATION ON THE IMPACT AND EFFECTIVENESS OF THE FUND'S
2 INSTALLMENT PAYMENT PLAN, INCLUDING A REVIEW OF COMPLAINTS
3 RECEIVED BY THE COMMISSIONER RELATING TO THE FUND'S INSTALLMENT
4 PAYMENT PLAN AND TO PREMIUM FINANCE AGREEMENTS.

5 (II) ON OR BEFORE DECEMBER 1 OF EACH YEAR, THE
6 COMMISSIONER SHALL SUBMIT A REPORT, IN ACCORDANCE WITH § 2-1246 OF
7 THE STATE GOVERNMENT ARTICLE, TO THE SENATE FINANCE COMMITTEE
8 AND THE HOUSE ECONOMIC MATTERS COMMITTEE ON:

9 1. THE IMPACT AND EFFECTIVENESS OF THE FUND'S
10 INSTALLMENT PAYMENT PLAN; AND

11 2. THE COMMISSIONER'S DETERMINATION UNDER §
12 20-404(G)(2)(I) OF THIS TITLE.

13 23-505.2.

14 (a) An insurer that markets through independent insurance producers as
15 defined in this article may not discriminate, intimidate, or retaliate against an
16 insurance producer or insured that uses premium financing by denying the insurance
17 producer or insured the same rights accorded to insurance producers or insureds who
18 pay premiums in a different manner.

19 (b) (1) With respect to personal lines automobile insurance **OTHER THAN**
20 **INSURANCE WRITTEN THROUGH THE MARYLAND AUTOMOBILE INSURANCE**
21 **FUND**, an independent insurance producer, who directly or indirectly has an
22 ownership interest in a premium finance company, shall provide a disclosure to be
23 signed by the insured comparing the costs and terms of premium financing with the
24 insurer's alternative payment plan.

25 (2) **WITH RESPECT TO PERSONAL LINES AUTOMOBILE**
26 **INSURANCE WRITTEN THROUGH THE MARYLAND AUTOMOBILE INSURANCE**
27 **FUND**, AN INDEPENDENT INSURANCE PRODUCER SHALL PROVIDE A
28 DISCLOSURE TO BE SIGNED BY THE INSURED COMPARING THE COSTS AND
29 TERMS OF PREMIUM FINANCING WITH THE FUND'S ALTERNATIVE PAYMENT
30 PLAN.

31 (c) The disclosure required by subsection (b) of this section shall:

32 (1) state the total amount to be paid by the insured under the
33 premium finance agreement during the policy term, including premium, any down
34 payment, and all interest, fees, and charges incident to the premium finance
35 agreement and resulting extension of credit; and

1 (2) state the total amount to be paid by the insured under the
2 insurer's alternative payment plan during the policy term, including premium, any
3 down payment, and all fees and charges incident to the alternative payment plan.

4 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland
5 read as follows:

6 **Article – Insurance**

7 23–304.

8 **(A)** The finance charge shall be computed:

9 (1) on the amount of the entire premium loan advanced, including any
10 taxes or fees that are financed under § 23–301.1 of this subtitle, after subtracting any
11 down payment on the premium loan made by the insured;

12 (2) from the inception date of the insurance contract or from the due
13 date of the premium, disregarding any grace period or credit allowed for payment of
14 the premium, through the date when the final installment under the premium finance
15 agreement is payable; and

16 (3) at a rate not exceeding 1.15% for each 30 days, charged in advance.

17 **(B) IN THE EVENT OF A CANCELLATION OF A MARYLAND AUTOMOBILE**
18 **INSURANCE FUND POLICY, THE PREMIUM FINANCE COMPANY, WITHIN 15 DAYS**
19 **AFTER RECEIPT OF THE UNEARNED PREMIUM ON THE POLICY OF AN INSURED,**
20 **SHALL CREDIT TO THE INSURED'S ACCOUNT OR REFUND TO THE INSURED:**

21 **(1) ANY UNEARNED PREMIUMS DUE UNDER THE POLICY; AND**

22 **(2) ANY UNEARNED FINANCE CHARGES, CALCULATED BY THE**
23 **ACTUARIAL METHOD.**

24 SECTION 4. AND BE IT FURTHER ENACTED, That:

25 (a) On or before December 31, 2010, the Maryland Insurance Commissioner
26 shall study the enforcement of eligibility criteria for insurance coverage in the
27 Maryland Automobile Insurance Fund and submit a report, in accordance with §
28 2–1246 of the State Government Article, to the Senate Finance Committee and the
29 House Economic Matters Committee.

30 (b) The study required under subsection (a) of this section shall include:

31 (1) the effectiveness of current procedures to enforce the requirement
32 that applicants be declined coverage by at least two private automobile insurers;

1 (2) the number and percentage of Fund insureds with continuous
2 coverage in the Fund for a period of more than 1 year; and

3 (3) the number and percentage of Fund insureds with continuous
4 coverage in the Fund for a period of more than 1 year and with no moving violations or
5 chargeable accidents.

6 (c) The report required under subsection (a) of this section shall include the
7 Commissioner's findings and recommendations to encourage Fund insureds to obtain
8 coverage from private insurers.

9 SECTION 5. AND BE IT FURTHER ENACTED, That:

10 (a) On or before March 1, 2012, the Maryland Automobile Insurance Fund
11 shall provide to the Office of Legislative Audits a report on the Fund's installment
12 payment plan from its inception of the offering of the installment payment plan
13 through December 31, 2011, that includes:

14 (1) the number and cost of full-time and part-time Fund employees
15 used;

16 (2) the costs of establishing the program, including consultants and
17 vendors, new software purchased, modified, or developed internally, and new
18 hardware and other physical plant added;

19 (3) the costs of operating the program, including printing, mailing,
20 payment processing, and management;

21 (4) the reduction in investment income caused by implementation of
22 the installment payment plan billing;

23 (5) the amount of earned but uncollected premium and costs
24 associated with collecting bad debt;

25 (6) the payment methods used by insureds, including the extent to
26 which insureds use the Fund's installment payment plan, premium finance
27 agreements, credit cards, and cash payments; and

28 (7) any other pertinent information the Office requests from the Fund
29 or the Maryland Insurance Commissioner.

30 (b) On or before June 30, 2012, the Office of Legislative Audits shall evaluate
31 the overall costs of the Fund's installment payment plan and submit a report, in
32 accordance with § 2-1246 of the State Government Article, to the Senate Finance
33 Committee and the House Economic Matters Committee.

1 SECTION 6. AND BE IT FURTHER ENACTED, That Section 3 of this Act
2 shall take effect July 1, 2011, and shall apply to all premium finance agreements
3 entered into on or after July 1, 2011.

4 SECTION 7. AND BE IT FURTHER ENACTED, That Section 2 of this Act
5 shall take effect October 1, 2010, and shall apply to all policies and contracts issued by
6 the Maryland Automobile Insurance Fund on or after October 1, 2010.

7 SECTION 8. AND BE IT FURTHER ENACTED, That, except as provided in
8 Sections 6 and 7 of this Act, this Act shall take effect July 1, 2010.