

CHAPTER 612

(Senate Bill 679)

AN ACT concerning

Injured Workers' Insurance Fund – Regulation by the Maryland Insurance Commissioner

FOR the purpose of removing the Injured Workers' Insurance Fund from exceptions to certain provisions of law; providing that the Fund is subject to examination in accordance with certain provisions of law; ~~providing that the Fund is subject to certain provisions of law regarding rate making and rating;~~ authorizing the Maryland Insurance Commissioner to enforce certain provisions of law to which the Fund is subject; ~~removing a prohibition that an order of the Commissioner may not include a requirement that the Fund increase rates;~~ removing a prohibition that the Commissioner may not take any action to enforce certain provisions of law; ~~removing a requirement that certain information submitted by the Fund to the Governor comply as closely as possible to a certain form;~~ requiring the Board for the Fund to determine a schedule of premium rates in accordance with certain provisions of law; ~~requiring the Board for the Fund to adjust certain classes and rates in accordance with certain provisions of law;~~ requiring the Maryland Insurance Administration to conduct a certain study and identify certain of provisions of law; requiring the Administration to report to certain committees of the General Assembly on or before a certain date; making a stylistic change; and generally relating to regulation of the Injured Workers' Insurance Fund.

~~BY repealing and reenacting, with amendments,
Article – Insurance
Section 11-202 and 11-303
Annotated Code of Maryland
(2003 Replacement Volume and 2007 Supplement)~~

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section 10-125(a) through (c), 10-126, and 10-130
Annotated Code of Maryland
(1999 Replacement Volume and 2007 Supplement)

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

~~Article – Insurance~~

~~11-202.~~

- (a) (1) ~~This subtitle applies to all types of insurers.~~
- (2) ~~Except as provided in subsection (b) of this section, this subtitle applies to:~~
- (i) ~~property insurance;~~
 - (ii) ~~casualty insurance;~~
 - (iii) ~~surety insurance;~~
 - (iv) ~~marine insurance; and~~
 - (v) ~~wet marine and transportation insurance.~~
- (b) ~~This subtitle does not apply to:~~
- (1) ~~reinsurance, except as provided in § 11-222 of this subtitle;~~
 - (2) ~~insurance of vessels or craft or their cargoes, marine protection and indemnity insurance, or insurance of other risks commonly insured under policies of marine insurance, as distinguished from inland marine insurance;~~
 - (3) ~~insurance against loss of or damage to aircraft including their accessories and equipment, or insurance against liability, other than workers' compensation insurance or employer's liability insurance, arising out of the ownership, maintenance, or use of aircraft; OR~~
 - (4) ~~title [insurance; or~~
 - (5) ~~the Injured Workers' Insurance Fund] INSURANCE.~~
- (c) ~~If a kind of insurance, subdivision or combination of kinds of insurance, or type of coverage is subject to this subtitle and is also subject to regulation by another rate regulatory provision of the statutes of the State, an insurer to which both provisions are otherwise applicable shall file with the Commissioner a designation as to which rate regulatory provision is applicable to it with respect to that kind of insurance, subdivision or combination of kinds of insurance, or type of coverage.~~

~~11-303.~~

- (a) ~~Notwithstanding Subtitle 2 of this title, this subtitle applies to the establishment of rates for all types of insurance except:~~

- ~~(1) life insurance;~~
- ~~(2) annuities;~~
- ~~(3) health insurance;~~
- ~~(4) marine insurance described in § 11-202(b)(2) of this title;~~
- ~~(5) aircraft insurance described in § 11-202(b)(3) of this title;~~
- ~~(6) reinsurance;~~
- ~~(7) insurance provided under the Maryland Automobile Insurance Fund;~~
- ~~(8) [insurance provided under the Injured Workers' Insurance Fund;~~
- ~~(9)] title insurance;~~
- ~~[(10)] (9) medical malpractice insurance;~~
- ~~[(11)] (10) any form or plan of insurance regulated under § 27-217 of this article; and~~
- ~~[(12)] (11) surety insurance.~~

~~(b) If and to the extent that the Commissioner finds that the application of any or all of the provisions of this subtitle is unnecessary to achieve the purposes of this subtitle, the Commissioner by rule may exempt a person or class of persons or a line or lines of insurance from any or all of those provisions.~~

Article - Labor and Employment

10-125.

(a) [Except as provided in subsection (b) of this section, the] **THE** Fund shall be:

(1) examined by the Commissioner in accordance with [§§ 2-205 and 2-207 through 2-209] **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) TITLE 11, SUBTITLES 2 AND 3 (PRIOR APPROVAL RATE MAKING AND COMPETITIVE RATING); AND~~

~~(iv)~~ ~~(v)~~ §§ 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 [not take any action to] enforce any provision of the Insurance Article to which the Fund is subject under [subsection (a)] **SUBSECTIONS (A) AND (C)** of this section [except:

(i) the Commissioner may issue an order under Title 9 (Impaired Entities) of the Insurance Article; and

(ii) the Commissioner may take action authorized under §§ 4-305, 4-306, 4-307, and 4-308 of the Insurance Article relating to risk based capital standards for insurers].

(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 may not take any action to enforce any provision of the Insurance Article under which the Commissioner has examined or reviewed compliance under this subsection.

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

~~10-126.~~

~~(a) Within 90 days after the close of each fiscal year, the Board shall submit to the Governor an annual report that includes a detailed statement of:~~

- ~~(1) the condition and expenses of the Fund in detail;~~
- ~~(2) growth of the Fund;~~
- ~~(3) changes in earned premiums of the Fund;~~
- ~~(4) changes in the number of policyholders of the Fund;~~
- ~~(5) the degree of the Fund's personnel flexibility;~~
- ~~(6) trends in the overall market share; and~~
- ~~(7) trends in the premium to expense ratio.~~

~~(b) [(1)] On or before October 1 of each year, the Fund shall submit to the Governor:~~

~~[(i)] (1) a copy of each policy form that the Fund will use during the next calendar year;~~

~~[(ii)] (2) the schedule of premium rates that the Fund will charge for the next calendar year;~~

~~[(iii)] (3) information about provision for claim payment, as defined in § 11-330(a) of the Insurance Article, for each class for which the Fund writes coverage; and~~

~~[(iv)] (4) other information that the Governor requests about premium rates, including classes, financial information, and losses.~~

~~[(2) (i) Information required under paragraph (1)(ii) through (iv) of this subsection shall be submitted on the form that the Governor requires.~~

~~(ii) The form shall conform as closely as possible to the form that a rating organization uses to comply with §§ 11-307, 11-329, and 11-330 of the Insurance Article.]~~

~~10-130.~~

~~(a) The Board shall adopt, by regulation, a schedule of premium rates, as provided in this section.~~

~~(b) [(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.] IN ACCORDANCE WITH TITLE 11 OF THE INSURANCE ARTICLE.~~

~~(e) (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) (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] **IN ACCORDANCE WITH TITLE 11 OF THE INSURANCE ARTICLE.**~~

~~(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.~~

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) (1) The Maryland Insurance Administration shall study the impact of subjecting the Injured Workers' Insurance Fund to the provisions of law regarding rate making, rating, and rate review that are enforced by the Administration for other property and casualty insurers.

(2) The study shall include:

(i) an analysis of whether the Fund's current rate making practices produce actuarially sound rates;

(ii) a determination of the cost impact to the Fund for the Fund to be required to file rates with a rating organization; and

(iii) a comparison of the experience rating plan used by the Fund for small employers as compared to the experience rating plan established by a rating organization for small employers.

(b) The Administration shall identify other provisions of law relating to consumer protections and financial soundness that are enforced by the Administration and are applicable to other property and casualty insurers, but are not applicable to the Fund.

(c) In conducting its study and identification of other provisions of law under subsections (a) and (b) of this section, the Administration shall seek input, as appropriate, from the Injured Workers' Insurance Fund, the National Council on Compensation Insurance, Inc., the Maryland Association of Counties, the Maryland Municipal League, representatives of small businesses, and any other person that the Administration considers appropriate.

(d) On or before December 1, 2008, the Administration shall report, in accordance with § 2-1246 of the State Government Article, its findings and recommendations on how rates should be established for the Injured Workers' Insurance Fund to the Senate Finance Committee and the House Economic Matters Committee.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2008.

Approved by the Governor, May 22, 2008.