

SENATE BILL 419

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By: **Senators Pugh, Conway, Currie, Forehand, Frosh, Gladden, Harrington, Jones, Lenett, Madaleno, McFadden, Middleton, Miller, Pinsky, Raskin, Rosapepe, and Stone**

Introduced and read first time: February 2, 2009

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 an
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 Fund's Executive Director, in consultation with other State
12 agencies, to develop certain criteria for a certain evaluation of the impact and
13 effectiveness of the Fund's installment payment plan; requiring the Fund to
14 determine certain information and the Board of Trustees of the Fund to certify
15 the information to the Board of Directors of the Industry Automobile Insurance
16 Association on or before a certain date; requiring the Fund to submit on or
17 before a certain date a certain report to the Commissioner; authorizing the
18 Commissioner to make a certain determination under certain circumstances;
19 requiring the Commissioner to make a certain determination on certain dates;
20 requiring the Commissioner to retain a certain actuary and hold a certain
21 hearing under certain circumstances; requiring a premium finance company, in
22 the event of a certain insurance policy cancellation, to credit to a certain account
23 or refund to a certain insured a certain amount within a certain time; requiring
24 an independent insurance producer to provide a certain disclosure; requiring
25 the Commissioner to study the enforcement of eligibility criteria for insurance
26 coverage in the Fund; requiring the Fund to provide certain information to the
27 Office of Legislative Audits on or before a certain date; requiring the Office to
28 evaluate the overall costs of the Fund's installment payment plan on or before a
29 certain date; requiring the Commissioner to submit certain reports; requiring

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 the Office to submit a certain report; providing for the application of certain
2 provisions of this Act; providing for the effective dates of this Act; and generally
3 relating to accepting premiums on an installment basis on policies issued by the
4 Maryland Automobile Insurance Fund.

5 BY repealing and reenacting, without amendments,
6 Article – Insurance
7 Section 20–101(a) and (g)
8 Annotated Code of Maryland
9 (2006 Replacement Volume and 2008 Supplement)

10 BY repealing and reenacting, with amendments,
11 Article – Insurance
12 Section 20–404, 20–507, 23–304, and 23–505.2
13 Annotated Code of Maryland
14 (2006 Replacement Volume and 2008 Supplement)

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

17 **Article – Insurance**

18 20–101.

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

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

21 20–404.

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

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

28 (1) the statutory operating loss for the immediately preceding
29 calendar year;

30 (2) a calculation to yield a private passenger auto assessment limit
31 that is determined by subtracting the year–end total surplus of the Fund for the
32 immediately preceding calendar year from an amount equal to 25% of the average of
33 net direct written private passenger auto premiums of the Fund for each of the three
34 immediately preceding calendar years; and

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

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

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

9 (2) the statutory operating loss, if the assessment limit is greater than
10 the statutory operating loss.

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

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

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

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

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

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

23 **(I) THE PRIOR YEAR–END TOTAL SURPLUS OF THE FUND;**
24 **AND**

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

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

31 **(II) IN MAKING A DETERMINATION AS TO WHETHER THE**
32 **FUND’S SURPLUS IS EXCESSIVE, THE COMMISSIONER SHALL:**

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

3 2. HOLD A PUBLIC HEARING.

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

9 1. THE STATUS OF THE SURPLUS; AND

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

15 (IV) THE RECOMMENDATIONS OF THE COMMISSIONER
16 UNDER SUBPARAGRAPH (III) OF THIS PARAGRAPH SHALL:

17 1. CONSIDER THE TRENDS OF THE:

18 A. ANNUAL YEAR-END TOTAL SURPLUS OF THE
19 FUND; AND

20 B. ANNUAL NET DIRECT WRITTEN PRIVATE
21 PASSENGER AUTO PREMIUMS OF THE FUND; AND

22 2. BE CONSISTENT WITH THE FACT THAT:

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

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

29 C. THE TOTAL SURPLUS GROWS AND DIMINISHES
30 DEPENDING ON EXTERNAL MARKET FORCES.

1 (v) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS
2 PARAGRAPH, THE COMMISSIONER, IN ACCORDANCE WITH THIS PARAGRAPH,
3 SHALL MAKE A DETERMINATION AS TO WHETHER THE FUND'S SURPLUS IS
4 EXCESSIVE AND SUBMIT A REPORT:

5 1. ON OR BEFORE OCTOBER 1, 2009; AND

6 2. ON OR BEFORE OCTOBER 1, 2012, OR 2 YEARS
7 FOLLOWING THE INCEPTION OF THE OFFERING OF AN INSTALLMENT PAYMENT
8 PLAN OPTION BY THE FUND UNDER § 20-507(G) OF THIS TITLE, WHICHEVER IS
9 LATER.

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

12 **Article – Insurance**

13 20-507.

14 (a) Subject to the approval of the Commissioner, the Executive Director shall
15 determine the premiums to be charged on policies issued by the Fund.

16 (b) (1) Except as provided in subsection (c) of this section, the provisions
17 of Title 11, Subtitle 2 of this article apply to the determination of premiums by the
18 Executive Director.

19 (2) Notwithstanding Title 11, Subtitle 2 of this article or any other
20 provision of this title, the Executive Director may base premiums on one or both of the
21 following items:

22 (i) the number of points accumulated by an insured or
23 applicant for insurance under the point system provided for in Title 16, Subtitle 4 of
24 the Transportation Article; or

25 (ii) the prior claims experience of an insured or applicant for
26 insurance.

27 (c) (1) Premiums for all commercial coverage shall be determined in
28 accordance with this section and § 20-508 of this subtitle.

29 (2) Notwithstanding paragraph (1) of this subsection, the rating
30 principles under subsection (d) of this section may not be used to determine the
31 premium for commercial coverage.

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

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

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

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

8 (i) provide directly or indirectly for the financing of premiums;
9 or

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

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

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

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

21 **(II) IN APPROVING THE FUND'S PLAN FOR ACCEPTING**
22 **PREMIUMS ON AN INSTALLMENT BASIS, THE COMMISSIONER SHALL ENSURE**
23 **THAT THE FUND'S INSTALLMENT PAYMENT PLAN:**

24 **1. REQUIRES AN INSURED'S INITIAL PREMIUM**
25 **PAYMENT TO BE NO LESS THAN 25% OF THE TOTAL PREMIUM;**

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

30 **3. OFFERS NO MORE THAN SIX INSTALLMENT**
31 **PAYMENTS ON THE 12-MONTH POLICY;**

32 **4. ALLOWS INSUREDS TO MAKE AN INITIAL PREMIUM**
33 **PAYMENT AND INSTALLMENT PAYMENTS IN ANY COMMERCIALY ACCEPTABLE**

1 FORM, WHICH SHALL INCLUDE PAYMENT BY CHECK, CREDIT CARD, OR
2 ELECTRONIC TRANSFER; AND

3 5. ALLOWS THE FUND TO IMPOSE AN
4 ADMINISTRATIVE PROCESSING FEE ON INSUREDS PARTICIPATING IN THE
5 INSTALLMENT PAYMENT PLAN OF NO MORE THAN \$8 PER INSTALLMENT
6 PAYMENT.

7 (2) THE FUND MAY NOT DISCRIMINATE AMONG INSUREDS BY
8 CHARGING A DIFFERENT WRITTEN OR EARNED PREMIUM BASED ON THE
9 PAYMENT OPTION SELECTED BY AN INSURED OR ON WHETHER THE FUND
10 PRODUCER IS EMPLOYED BY A PUBLIC ENTITY OR A PRIVATE ENTITY.

11 (3) THE FUND MAY NOT PAY A HIGHER COMMISSION TO A FUND
12 PRODUCER THAT PLACES AN INSURED IN AN INSTALLMENT PAYMENT PLAN
13 OVER ANY OTHER PAYMENT OPTION, INCLUDING A PREMIUM FINANCE
14 AGREEMENT.

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

21 (II) THE STATEMENT SHALL STATE THAT THE APPLICANT
22 OR INSURED HAS THE FOLLOWING PAYMENT OPTIONS:

- 23 1. THE FUND'S INSTALLMENT PAYMENT PLAN;
24 2. A PREMIUM FINANCE AGREEMENT; OR
25 3. PAYMENT OF THE POLICY IN FULL.

26 (III) THE STATEMENT SHALL BE INCLUDED ON WRITTEN OR
27 ELECTRONIC COMMUNICATIONS AT THE TIME THE APPLICANT OR INSURED:

- 28 1. IS ISSUED A NEW POLICY;
29 2. IS ISSUED A REISSUANCE, REWRITE, OR RENEWAL
30 OF AN EXISTING POLICY; OR
31 3. INCURS ADDITIONAL PREMIUMS UNDER AN
32 EXISTING POLICY.

1 (IV) THE STATEMENT SHALL STATE THAT THE APPLICANT
2 OR INSURED SHOULD CONSULT A FUND PRODUCER WHO WILL FULLY DESCRIBE
3 THE TERMS OF EACH PAYMENT OPTION.

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

8 (II) THE EVALUATION SHALL INCLUDE THE IMPACT OF THE
9 PLAN ON:

- 10 1. THE COST OF AUTOMOBILE INSURANCE;
- 11 2. THE NUMBER OF INSURED AND UNINSURED
12 MOTORISTS IN THE STATE;
- 13 3. THE NUMBER OF POLICIES IN FORCE BY
14 GEOGRAPHIC AREA;
- 15 4. THE DURATION OF POLICIES IN FORCE; AND
- 16 5. THE FREQUENCY OF PAYMENT METHODS USED BY
17 INSUREDS, INCLUDING THE FUND'S INSTALLMENT PAYMENT PLAN, PREMIUM
18 FINANCE AGREEMENTS, AND CASH AND CREDIT CARD PAYMENTS.

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

- 22 1. THE EVALUATION CRITERIA DEVELOPED UNDER
23 PARAGRAPH (5)(I) OF THIS SUBSECTION; AND
- 24 2. THE LIMITATIONS OF THE TERMS OF THE PLAN
25 UNDER PARAGRAPH (1)(II)1 AND 3 OF THIS SUBSECTION.

26 (6) (I) ON RECEIPT OF THE REPORT UNDER PARAGRAPH
27 (5)(III) OF THIS SUBSECTION, THE COMMISSIONER SHALL MAKE A
28 DETERMINATION ON THE IMPACT AND EFFECTIVENESS OF THE FUND'S
29 INSTALLMENT PAYMENT PLAN, INCLUDING A REVIEW OF COMPLAINTS
30 RECEIVED BY THE COMMISSIONER RELATING TO THE FUND'S INSTALLMENT
31 PAYMENT PLAN AND TO PREMIUM FINANCE AGREEMENTS.

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

5 **1. THE IMPACT AND EFFECTIVENESS OF THE FUND'S**
6 **INSTALLMENT PAYMENT PLAN; AND**

7 **2. THE COMMISSIONER'S DETERMINATION UNDER §**
8 **20-404(G)(2)(I) OF THIS TITLE.**

9 23-505.2.

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

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

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

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

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

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

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

1 **Article – Insurance**

2 23–304.

3 (A) The finance charge shall be computed:

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

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

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

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

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

17 (2) **ANY UNEARNED FINANCE CHARGES, CALCULATED BY THE**
18 **ACTUARIAL METHOD.**

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

20 (a) On or before December 31, 2009, the Maryland Insurance Commissioner
21 shall study the enforcement of eligibility criteria for insurance coverage in the
22 Maryland Automobile Insurance Fund and submit a report, in accordance with §
23 2–1246 of the State Government Article, to the Senate Finance Committee and the
24 House Economic Matters Committee.

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

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

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

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

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

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

5 (a) On or before March 1, 2011, the Maryland Automobile Insurance Fund
6 shall provide to the Office of Legislative Audits a report on the Fund's installment
7 payment plan from its inception of the offering of the installment payment plan
8 through December 31, 2010, which includes:

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

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

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

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

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

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

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

25 (b) On or before June 30, 2011, the Office of Legislative Audits shall evaluate
26 the overall costs of the Fund's installment payment plan and submit a report, in
27 accordance with § 2-1246 of the State Government Article, to the Senate Finance
28 Committee and the House Economic Matters Committee.

29 SECTION 6. AND BE IT FURTHER ENACTED, That Section 2 of this Act
30 shall take effect October 1, 2009, and shall apply to all policies and contracts issued by
31 the Maryland Automobile Insurance Fund on or after October 1, 2009.

32 SECTION 7. AND BE IT FURTHER ENACTED, That Section 3 of this Act
33 shall take effect July 1, 2010, and shall apply to all premium finance agreements
34 entered into on or after July 1, 2010.

1 SECTION 8. AND BE IT FURTHER ENACTED, That, except as provided in
2 Sections 6 and 7 of this Act, this Act shall take effect July 1, 2009.