

SENATE BILL 1267

C3

EMERGENCY BILL

8lr4093

By: **Senator Middleton**

Constitutional Requirements Complied with for Introduction in the last 35 Days of Session

Introduced and read first time: March 14, 2018

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Health Benefit Exchange – Establishment of a Reinsurance Program**

3 FOR the purpose of repealing the requirement that the Maryland Health Benefit Exchange
4 implement or oversee the implementation of state-specific requirements for
5 transitional reinsurance and risk adjustment under the Affordable Care Act;
6 repealing the prohibition on the Exchange's assuming responsibility for the program
7 corridors for health benefit plans in certain exchanges established under certain
8 provisions of the Affordable Care Act; repealing the requirement that the Exchange
9 operate or oversee the operation of a transitional reinsurance program in accordance
10 with certain regulations for certain coverage years; repealing the requirement that
11 the Exchange operate or oversee the operation of a certain risk adjustment program;
12 repealing the requirement that the Exchange, beginning in a certain year, strongly
13 consider using a certain model for a certain purpose; altering the purposes of the
14 Maryland Health Benefit Exchange Fund; altering the contents of the Fund;
15 providing that certain funds may be used only for the purposes of the State
16 Reinsurance Program; requiring, rather than authorizing, the Exchange, in
17 consultation with the Maryland Insurance Commission and as approved by the
18 Maryland Health Benefit Exchange Board, to establish and implement a State
19 Reinsurance Program to provide reinsurance to certain carriers and that meets
20 certain requirements and is consistent with certain laws; requiring that the Program
21 be designed to mitigate the impact of certain individuals on certain rates; requiring
22 the Exchange, in consultation with the Commissioner and as approved by the Board
23 and based on available funds, to establish certain parameters for reinsurance in
24 certain years; authorizing the Exchange, in consultation with the Commissioner and
25 as approved by the Board, to alter the parameters under certain circumstances;
26 providing that, beginning on a certain date, funding for reinsurance in the individual
27 health insurance market through the Program may be made by using certain funds;
28 requiring that the implementation of the Program for the reinsurance of the
29 individual market be contingent on the U.S. Secretary of Health and Human
30 Services and the U.S. Secretary of the Treasury approving a waiver application

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 under a certain provision of federal law; requiring the Exchange to adopt certain
2 regulations on or before a certain date; requiring the Exchange, in consultation with
3 the Commissioner and as approved by the Board, to submit a waiver and seek certain
4 funding under certain provisions of federal law as soon as practicable but not later
5 than a certain date; authorizing, on or before a certain date, the Commissioner to
6 waive certain statutory requirements under certain circumstances; making this Act
7 an emergency measure; and generally relating to the establishment of a reinsurance
8 program by the Maryland Health Benefit Exchange.

9 BY repealing

10 Article – Insurance

11 Section 31–117

12 Annotated Code of Maryland
13 (2017 Replacement Volume)

14 BY repealing and reenacting, with amendments,

15 Article – Insurance

16 Section 31–107

17 Annotated Code of Maryland
18 (2017 Replacement Volume)

19 BY adding to

20 Article – Insurance

21 Section 31–117 and 31–117.1

22 Annotated Code of Maryland
23 (2017 Replacement Volume)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
25 That Section(s) 31–117 of Article – Insurance of the Annotated Code of Maryland be
26 repealed.

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

29 **Article – Insurance**

30 31–107.

31 (a) There is a Maryland Health Benefit Exchange Fund.

32 (b) (1) The purpose of the Fund is to:

33 (i) provide funding for the operation and administration of the
34 Exchange in carrying out the purposes of the Exchange under this title; and

35 (ii) provide funding for the establishment and operation of the State
36 Reinsurance Program authorized under this title.

1 (2) The operation and administration of the Exchange and the State
2 Reinsurance Program may include functions delegated by the Exchange to a third party
3 under law or by contract.

4 (c) The Exchange shall administer the Fund.

5 (d) (1) The Fund is a special, nonlapsing fund that is not subject to § 7–302 of
6 the State Finance and Procurement Article.

7 (2) The State Treasurer shall hold the Fund separately, and the
8 Comptroller shall account for the Fund.

9 (e) The Fund consists of:

10 (1) any user fees or other assessments collected by the Exchange;

11 (2) all revenue deposited into the Fund that is received from the
12 distribution of the premium tax under § 6–103.2 of this article;

13 [(3) all revenue transferred to the Fund before July 1, 2016, from the
14 Maryland Health Insurance Plan Fund;]

15 [(4) (3) income from investments made on behalf of the Fund;

16 [(5) (4) interest on deposits or investments of money in the Fund;

17 [(6) (5) money collected by the Board as a result of legal or other actions
18 taken by the Board on behalf of the Exchange or the Fund;

19 [(7) (6) money donated to the Fund;

20 [(8) (7) money awarded to the Fund through grants; [and]

21 **(8) ANY PASS-THROUGH FUNDS RECEIVED FROM THE FEDERAL**
22 **GOVERNMENT UNDER A WAIVER APPROVED UNDER § 1332 OF THE AFFORDABLE**
23 **CARE ACT;**

24 **(9) ANY FUNDS DESIGNATED BY THE FEDERAL GOVERNMENT TO**
25 **PROVIDE REINSURANCE TO CARRIERS THAT OFFER INDIVIDUAL HEALTH BENEFIT**
26 **PLANS IN THE STATE;**

27 **(10) ANY FUNDS DESIGNATED BY THE STATE TO PROVIDE**
28 **REINSURANCE TO CARRIERS THAT OFFER INDIVIDUAL HEALTH BENEFIT PLANS IN**
29 **THE STATE; AND**

1 [(9) (11) any other money from any other source accepted for the benefit
2 of the Fund.

3 (f) The Fund may be used only:

4 (1) for the operation and administration of the Exchange in carrying out
5 the purposes authorized under this title; and

6 (2) for the establishment and operation of the State Reinsurance Program
7 [authorized under § 31–117 of this title].

8 (g) (1) The Board shall maintain separate accounts within the Fund for
9 Exchange operations and for the State Reinsurance Program.

10 (2) Accounts within the Fund shall contain the money that is intended to
11 support the purpose for which each account is designated.

12 (3) Funds received from the distribution of the premium tax under §
13 6–103.2 of this article shall be placed in the account for Exchange operations and may be
14 used only for the purpose of funding the operation and administration of the Exchange.

15 [(4) Funds transferred from the Maryland Health Insurance Plan Fund
16 before July 1, 2016, shall be placed in the account for the State Reinsurance Program and
17 may be used only for the purpose of funding the State Reinsurance Program.]

18 **(4) THE FOLLOWING FUNDS MAY BE USED ONLY FOR THE PURPOSES**
19 **OF FUNDING THE STATE REINSURANCE PROGRAM:**

20 **(I) ANY PASS–THROUGH FUNDS RECEIVED FROM THE FEDERAL**
21 **GOVERNMENT UNDER A WAIVER APPROVED UNDER § 1332 OF THE AFFORDABLE**
22 **CARE ACT;**

23 **(II) ANY FUNDS DESIGNATED BY THE FEDERAL GOVERNMENT**
24 **TO PROVIDE REINSURANCE TO CARRIERS THAT OFFER INDIVIDUAL HEALTH**
25 **BENEFIT PLANS IN THE STATE; AND**

26 **(III) ANY FUNDS DESIGNATED BY THE STATE TO PROVIDE**
27 **REINSURANCE TO CARRIERS THAT OFFER INDIVIDUAL HEALTH BENEFIT PLANS IN**
28 **THE STATE.**

29 (h) (1) Expenditures from the Fund for the purposes authorized by this
30 subtitle may be made only:

31 (i) with an appropriation from the Fund approved by the General
32 Assembly in the State budget; or

1 (ii) by the budget amendment procedure provided for in Title 7,
2 Subtitle 2 of the State Finance and Procurement Article.

3 (2) Notwithstanding § 7–304 of the State Finance and Procurement Article,
4 if the amount of the distribution from the premium tax under § 6–103.2 of this article
5 exceeds in any State fiscal year the actual expenditures incurred for the operation and
6 administration of the Exchange, funds in the Exchange operations account from the
7 premium tax that remain unspent at the end of the State fiscal year shall revert to the
8 General Fund of the State.

9 (3) If operating expenses of the Exchange may be charged to either State
10 or non–State fund sources, the non–State funds shall be charged before State funds are
11 charged.

12 (i) (1) The State Treasurer shall invest the money of the Fund in the same
13 manner as other State money may be invested.

14 (2) Any investment earnings of the Fund shall be credited to the Fund.

15 (3) Except as provided in subsection (h)(2) of this section, no part of the
16 Fund may revert or be credited to the General Fund or any special fund of the State.

17 (j) A debt or an obligation of the Fund is not a debt of the State or a pledge of
18 credit of the State.

19 **31–117.**

20 **(A) THE EXCHANGE, IN CONSULTATION WITH THE COMMISSIONER AND AS**
21 **APPROVED BY THE BOARD, SHALL ESTABLISH AND IMPLEMENT A STATE**
22 **REINSURANCE PROGRAM:**

23 **(1) TO PROVIDE REINSURANCE TO CARRIERS THAT OFFER**
24 **INDIVIDUAL HEALTH BENEFIT PLANS IN THE STATE;**

25 **(2) THAT MEETS THE REQUIREMENTS OF A WAIVER APPROVED**
26 **UNDER § 1332 OF THE AFFORDABLE CARE ACT; AND**

27 **(3) THAT IS CONSISTENT WITH STATE AND FEDERAL LAW.**

28 **(B) THE STATE REINSURANCE PROGRAM SHALL BE DESIGNED TO**
29 **MITIGATE THE IMPACT OF HIGH–RISK INDIVIDUALS ON RATES IN THE INDIVIDUAL**
30 **INSURANCE MARKET INSIDE AND OUTSIDE THE EXCHANGE.**

31 **(C) (1) BASED ON AVAILABLE FUNDS, THE EXCHANGE, IN CONSULTATION**
32 **WITH THE COMMISSIONER AND AS APPROVED BY THE BOARD, SHALL ESTABLISH**
33 **REINSURANCE PAYMENT PARAMETERS FOR CALENDAR YEAR 2019 AND EACH**

1 SUBSEQUENT CALENDAR YEAR THAT INCLUDE:

2 (I) AN ATTACHMENT POINT;

3 (II) A COINSURANCE RATE; AND

4 (III) A COINSURANCE CAP.

5 (2) THE EXCHANGE, IN CONSULTATION WITH THE COMMISSIONER
6 AND AS APPROVED BY THE BOARD, MAY ALTER THE PARAMETERS ESTABLISHED IN
7 ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION AS NECESSARY TO
8 SECURE FEDERAL APPROVAL FOR A WAIVER SUBMITTED IN ACCORDANCE WITH §
9 31-117.1(A) OF THIS TITLE.

10 (D) BEGINNING JANUARY 1, 2019, FUNDING FOR REINSURANCE IN THE
11 INDIVIDUAL MARKET THROUGH THE STATE REINSURANCE PROGRAM MAY BE MADE
12 BY USING:

13 (1) ANY PASS-THROUGH FUNDS RECEIVED FROM THE FEDERAL
14 GOVERNMENT UNDER A WAIVER APPROVED UNDER § 1332 OF THE AFFORDABLE
15 CARE ACT;

16 (2) ANY FUNDS DESIGNATED BY THE FEDERAL GOVERNMENT TO
17 PROVIDE REINSURANCE TO CARRIERS THAT OFFER INDIVIDUAL HEALTH BENEFIT
18 PLANS IN THE STATE; AND

19 (3) ANY FUNDS DESIGNATED BY THE STATE TO PROVIDE
20 REINSURANCE TO CARRIERS THAT OFFER INDIVIDUAL HEALTH BENEFIT PLANS IN
21 THE STATE.

22 (E) THE IMPLEMENTATION OF A STATE REINSURANCE PROGRAM FOR
23 REINSURANCE IN THE INDIVIDUAL MARKET SHALL BE CONTINGENT ON APPROVAL
24 FROM THE U.S. SECRETARY OF HEALTH AND HUMAN SERVICES AND THE U.S.
25 SECRETARY OF THE TREASURY OF A STATE INNOVATION WAIVER APPLICATION
26 UNDER § 1332 OF THE AFFORDABLE CARE ACT.

27 (F) ON OR BEFORE JANUARY 1, 2019, THE EXCHANGE SHALL ADOPT
28 REGULATIONS IMPLEMENTING THE PROVISIONS OF THIS SECTION.

29 31-117.1.

30 (A) AS SOON AS PRACTICABLE BUT NOT LATER THAN JULY 1, 2018, THE
31 EXCHANGE, IN CONSULTATION WITH THE COMMISSIONER AND AS APPROVED BY
32 THE BOARD, SHALL SUBMIT A STATE INNOVATION WAIVER APPLICATION UNDER §

1 **1332 OF THE AFFORDABLE CARE ACT TO ESTABLISH A PROGRAM FOR**
2 **REINSURANCE AND SEEK FEDERAL PASS-THROUGH FUNDING.**

3 **(B) ON OR BEFORE DECEMBER 31, 2018, THE COMMISSIONER MAY WAIVE**
4 **ANY NOTIFICATION OR OTHER REQUIREMENTS THAT APPLY TO A CARRIER UNDER**
5 **THIS ARTICLE IN CALENDAR YEAR 2018 DUE TO THE IMPLEMENTATION OF A WAIVER**
6 **APPROVED UNDER § 1332 OF THE AFFORDABLE CARE ACT.**

7 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency
8 measure, is necessary for the immediate preservation of the public health or safety, has
9 been passed by a ye and nay vote supported by three-fifths of all the members elected to
10 each of the two Houses of the General Assembly, and shall take effect from the date it is
11 enacted.