

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 644

(Senator Astle)

Finance

Economic Matters

Motor Vehicle Liability Insurance - Hearings on Proposed Actions by Insurers -
Attorney Fees

This bill specifies that the award of attorney's fees is at the sole discretion of the Maryland Insurance Commissioner after finding in a hearing that an insurer's proposal to cancel or fail to renew a policy, increase a premium, or reduce coverage is unjustified. The bill requires the notice that the insurer must send to the insured to contain information about the Commissioner's discretion to award attorney's fees. The bill applies only to private passenger motor vehicle liability insurance.

Fiscal Summary

State Effect: The bill's requirements could be handled with the existing budgeted resources of the Maryland Insurance Administration.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Generally, for private passenger motor vehicle liability insurance or a binder of motor vehicle liability insurance in effect for at least 45 days, an insurer other than the Maryland Automobile Insurance Fund (MAIF) may not: (1) cancel or fail to renew the policy or binder for a reason other than nonpayment of premium; (2) increase a premium for any coverage on the policy; or (3) reduce coverage under the policy. At least 45 days before the proposed effective date of one of these actions, an insurer must send written notice of its proposed action to the insured. The notice must state: (1) the

proposed action; (2) the proposed effective date; (3) the actual reason for the proposed action; (4) the insured's right to replace the insurance through MAIF; (5) the insured's protest and hearing rights; (6) that the insurer must generally maintain the current insurance until the Commissioner makes a final determination; (7) the Commissioner's authority to award reasonable attorney's fees; and (8) if the action is based on a credit score or information from a credit report, specified information about the score or report.

Based on information in the notice, the Commissioner must either dismiss an insured's complaint or disallow the proposed action. If the party aggrieved by the Commissioner's decision requests, the Commissioner must hold a hearing. If the Commissioner finds the insurer's actions to be justified, the Commissioner must dismiss the protest and allow the action on the later of the action's proposed effective date or 30 days after the determination. If the Commissioner finds the proposed action to be unjustified, the Commissioner must disallow the action and may award reasonable attorney's fees incurred by the insured for representation at the hearing as the Commissioner considers appropriate.

In *Stavely v. State Farm Mutual Auto. Ins. Co.*, 376 Md. 1098 (2003), the Court of Appeals found that this provision seems to contemplate that an insured who prevails should normally be awarded reasonable attorney's fees. The *Stavely* Court further stated that an award of attorney's fees should be denied to a prevailing insured by the Commissioner only when a particular case presents significant reasons warranting a denial.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Automobile Insurance Fund, Office of Administrative Hearings, Maryland Insurance Administration, Department of Legislative Services

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Analysis by: Ryan Wilson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

