

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 695

(Delegate Rudolph)

Economic Matters

Finance

Homeowner's Insurance - Anti-Concurrent Causation Clause - Notice and Study

This bill requires an insurer that issues a policy of homeowner's insurance in the State that contains an anti-concurrent causation (ACC) clause to provide a policyholder each year with a specified notice. The bill authorizes the Insurance Commissioner to adopt regulations to implement the bill's provisions.

The bill also requires the House Economic Matters Committee and the Senate Finance Committee to perform a specified study on the handling by insurers and the National Flood Insurance Program of property insurance claims in cases where there are two or more factors that could affect or cause the loss. The study is staffed by the staff of the House Economic Matters Committee and the Senate Finance Committee, and the Maryland Insurance Administration (MIA) must provide all data requested by the committees. The bill requires the committees to issue a final report on the study by December 31, 2013.

The bill takes effect June 1, 2013; however, the bill's provisions relating to the notice apply to all homeowner's insurance policies issued, delivered, or renewed in the State on or after January 1, 2014.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The aforementioned notice must (1) be clear and specific; (2) describe the ACC clause; (3) inform the insured to read the policy for complete information on the exclusions; and (4) state that the insured should communicate with the insurance producer or the insurer for additional information regarding the scope of the exclusions.

The notice is not part of the policy or contract of insurance and does not create a private right of action.

Current Law/Background: An insurer that issues or delivers a homeowner's insurance policy must offer to provide coverage for loss that is caused by or results from water that backs up through sewers or drains and is not caused by the negligence of the insured. However, almost all homeowner's insurance policies exclude losses from flood and surface water. In these circumstances, the only option available to consumers who wish to receive such coverage is to purchase a flood insurance policy through the National Flood Insurance Program (NFIP) or one of its affiliates. State law requires insurers to disclose, at the time of application for purchase of a policy, the exclusion for damage caused by floods and how to obtain coverage from NFIP and the existence of additional optional coverage.

The lack of flood coverage in the majority of homeowner's insurance policies plays an important role in the discussion of ACC clauses. An ACC clause states that a loss caused by a combination of covered and noncovered events will not be covered. An ACC clause may apply to sequential-cause situations and concurrent-cause situations.

In a sequential-cause situation, one event is a proximate cause of another event that causes a loss. For example, when Hurricane Sandy struck New York City in October 2012, a fire destroyed 110 homes in a Queens neighborhood. It was unclear whether this fire was caused by flooding, for which the majority of homeowners in New York flood areas did not have coverage, or wind, a standard risk included in most policies. If flooding is deemed to be the proximate cause of the fire, any fire damage may not be covered by a homeowner's insurance policy with an ACC provision.

In a concurrent-cause situation, two or more causes of a loss happen simultaneously to produce the same injury or damage. If one of these causes is not covered by a policy with an ACC provision, the loss will be excluded. A common example is damage caused by both wind and flood in a storm.

ACC clauses have been present in homeowner's insurance policies for several years but only recently have been used with regularity. For example, according to MIA, no ACC clause was invoked after Tropical Storm Isabel; however, since Hurricane Katrina, ACC clauses have been invoked with regularity. ACC clauses have also been the subject of

numerous recent lawsuits. In a recent case, the Supreme Court of Mississippi, in contrast to two decisions of the United States Court of Appeals from the Fifth Circuit, determined that an ACC clause did not preclude coverage for wind damage that occurred concurrently with flood damage. *See Corban v. United Servs. Auto. Ass'n*, (Miss. Oct. 8, 2009). Legislation proposed in Mississippi to prohibit ACC clauses failed in both 2011 and 2012.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Insurance Administration; Mississippi Supreme Court; EQECAT, Inc.; International Risk Management Institute; *Fire, Casualty, & Surety Bulletins*; Department of Legislative Services

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Analysis by: Michael F. Bender

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