

SENATE BILL 844

C4

4r1846
CF 4r1704

By: **Senator Astle**

Introduced and read first time: January 31, 2014

Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Private Passenger Motor Vehicle Liability Insurance – Underinsured Motorist Excess Coverage

FOR the purpose of providing for a certain alternative limitation on certain liability for an insurer that provides certain uninsured motorist coverage under certain circumstances; requiring certain insurers to offer certain underinsured motorist excess coverage under certain circumstances; providing for the characteristics of that underinsured motorist excess coverage, including what the coverage protects, how the coverage obligates the issuer, and how the selection of the coverage applies to certain policies and endorsements; providing for waivers of certain coverage in certain manners under certain circumstances; establishing a certain exception to a certain limitation on duplicate or supplemental recovery of certain benefits; defining a certain term; providing for the application of this Act; and generally relating to private passenger motor vehicle liability insurance and underinsured motorist excess coverage.

BY repealing and reenacting, without amendments,

Article – Insurance

Section 19–509(a)

Annotated Code of Maryland

(2011 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,

Article – Insurance

Section 19–509(g), 19–510, and 19–513

Annotated Code of Maryland

(2011 Replacement Volume and 2013 Supplement)

BY adding to

Article – Insurance

Section 19–509.2

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Annotated Code of Maryland
(2011 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Transportation
Section 17–103(b)
Annotated Code of Maryland
(2012 Replacement Volume and 2013 Supplement)

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

Article – Insurance

19–509.

(a) In this section, “uninsured motor vehicle” means a motor vehicle:

(1) the ownership, maintenance, or use of which has resulted in the bodily injury or death of an insured; and

(2) for which the sum of the limits of liability under all valid and collectible liability insurance policies, bonds, and securities applicable to bodily injury or death:

(i) is less than the amount of coverage provided under this section; or

(ii) has been reduced by payment to other persons of claims arising from the same occurrence to an amount less than the amount of coverage provided under this section.

(g) The limit of liability for an insurer that provides uninsured motorist coverage under this section is:

(1) the amount of that coverage less the amount paid to the insured, that exhausts any applicable liability insurance policies, bonds, and securities, on behalf of any person that may be held liable for the bodily injuries or death of the insured; **OR**

(2) **IF THE INSURED HAS ELECTED TO PURCHASE UNDERINSURED MOTORIST EXCESS COVERAGE UNDER § 19–509.2 OF THIS SUBTITLE, THE AMOUNT OF THE UNINSURED MOTORIST COVERAGE UNDER THIS SECTION IN ADDITION TO THE AMOUNT PAID TO THE INSURED, THAT EXHAUSTS ANY APPLICABLE LIABILITY POLICIES, BONDS, AND SECURITIES, ON BEHALF OF ANY**

PERSON THAT MAY BE HELD LIABLE FOR THE BODILY INJURIES OR DEATH OF THE INSURED.

19-509.2.

(A) IN THIS SECTION, "UNDERINSURED MOTOR VEHICLE" MEANS A MOTOR VEHICLE:

(1) THE OWNERSHIP, MAINTENANCE, OR USE OF WHICH HAS RESULTED IN THE BODILY INJURY OR DEATH OF AN INSURED; AND

(2) FOR WHICH THE SUM OF PAYMENTS RECEIVED BY OR ON BEHALF OF THE INSURED FROM OR ON BEHALF OF THE OWNER OR OPERATOR OF THE MOTOR VEHICLE IS LESS THAN THE FAIR, JUST, AND REASONABLE DAMAGES SUSTAINED BY THE INSURED.

(B) (1) EACH INSURER THAT ISSUES, SELLS, OR DELIVERS MOTOR VEHICLE LIABILITY INSURANCE IN THE STATE SHALL OFFER UNDERINSURED MOTORIST EXCESS COVERAGE WITH LIMITS THAT AT LEAST EQUAL THE AMOUNTS REQUIRED BY TITLE 17 OF THE TRANSPORTATION ARTICLE.

(2) THE UNDERINSURED MOTORIST EXCESS COVERAGE SHALL REQUIRE AN ADDITIONAL PREMIUM.

(3) AN INSURED MAY PURCHASE UNDERINSURED MOTORIST EXCESS COVERAGE INSTEAD OF THE UNINSURED MOTORIST COVERAGE REQUIRED UNDER TITLE 17 OF THE TRANSPORTATION ARTICLE.

(C) UNDERINSURED MOTORIST EXCESS COVERAGE UNDER THIS SECTION SHALL PROVIDE PROTECTION FOR INSURED PERSONS WHO ARE LEGALLY ENTITLED TO RECOVER DAMAGES FROM THE OWNER OR OPERATOR OF AN UNDERINSURED MOTOR VEHICLE.

(D) (1) EACH INSURER SHALL BE OBLIGATED TO PAY TO THE INSURED, UP TO THE LIMITS OF THE POLICY'S UNDERINSURED MOTORIST EXCESS COVERAGE, AFTER THE LIMITS OF LIABILITY UNDER ALL THE BODILY INJURY LIABILITY BONDS OR INSURANCE POLICIES APPLICABLE AT THE TIME OF THE ACCIDENT HAVE BEEN EXHAUSTED BY PAYMENT OF JUDGMENTS OR SETTLEMENTS.

(2) IF THE INSURED PURCHASES UNDERINSURED MOTORIST EXCESS COVERAGE UNDER THIS SECTION, THEN THE UNDERINSURED MOTORIST

EXCESS COVERAGE MAY NOT BE REDUCED BECAUSE OF ANY PAYMENT BY OR ON BEHALF OF THE PARTY AT FAULT OR BY ANY THIRD PARTY.

(E) UNLESS A NAMED INSURED AFFIRMATIVELY MAKES A CHANGE IN WRITING, THE SELECTION OF COVERAGE UNDER THIS SECTION APPLIES TO ALL SUBSEQUENT RENEWALS OF COVERAGE AND TO ALL OTHER POLICIES OR ENDORSEMENTS THAT EXTEND, CHANGE, SUPERSEDE, OR REPLACE AN EXISTING POLICY OF PRIVATE PASSENGER MOTOR VEHICLE INSURANCE ISSUED TO THE NAMED INSURED.

19-510.

(a) This section applies only when:

(1) the liability coverage under a policy or binder of private passenger motor vehicle liability insurance exceeds the amount required under § 17-103 of the Transportation Article; OR

(2) AN INSURER ISSUES, SELLS, OR DELIVERS A PRIVATE PASSENGER MOTOR VEHICLE LIABILITY INSURANCE POLICY IN THE STATE THAT DOES NOT OFFER UNDERINSURED MOTORIST EXCESS COVERAGE UNDER § 19-509.2 OF THIS SUBTITLE.

(b) (1) If the first named insured under a policy or binder of private passenger motor vehicle liability insurance does not wish to obtain uninsured motorist coverage in the same amount as the liability coverage provided under the policy or binder, **OR UNDERINSURED MOTORIST EXCESS COVERAGE UNDER § 19-509.2 OF THIS SUBTITLE**, the first named insured shall make an affirmative written waiver of having uninsured motorist coverage in the same amount as the liability coverage **OR UNDERINSURED MOTORIST EXCESS COVERAGE UNDER § 19-509.2 OF THIS SUBTITLE**.

(2) If the first named insured does not make an affirmative written waiver under this section, the insurer shall provide uninsured motorist coverage in an amount equal to the amount of the liability coverage provided under the policy or binder **OR UNDERINSURED MOTORIST EXCESS COVERAGE UNDER § 19-509.2 OF THIS SUBTITLE**.

(3) THE FIRST NAMED INSURED SHALL MAKE A SEPARATE AFFIRMATIVE WRITTEN WAIVER OF:

(I) UNINSURED MOTORIST COVERAGE IN THE SAME AMOUNT OF LIABILITY COVERAGE PROVIDED UNDER A POLICY OR BINDER; AND

(II) UNDERINSURED MOTORIST EXCESS COVERAGE UNDER § 19-509.2 OF THIS SUBTITLE.

(4) A FIRST NAMED INSURED MAY WAIVE UNINSURED MOTORIST COVERAGE IN THE SAME AMOUNT OF LIABILITY COVERAGE PROVIDED UNDER A POLICY OR BINDER, UNDERINSURED MOTORIST EXCESS COVERAGE UNDER § 19-509.2 OF THIS SUBTITLE, OR BOTH, IF:

(I) THE WAIVER IS MADE IN ACCORDANCE WITH THIS SECTION; AND

(II) THE RESULTING COVERAGE OTHERWISE CONFORMS WITH STATE LAW.

(c) A waiver made under this section is not effective unless, prior to the waiver, the insurer gives the first named insured written notice of the nature, extent, benefit, and cost of the level of the uninsured motorist coverage being waived.

(d) (1) A waiver made under this section shall be made on the form that the Commissioner requires.

(2) The form may be part of the insurance contract.

(3) The form shall clearly and concisely explain in 10 point boldface type:

(i) the nature, extent, benefit, and cost of the level of the uninsured motorist coverage that would be provided under the policy if not waived by the first named insured;

(ii) that a failure of the first named insured to make a waiver requires an insurer to provide uninsured motorist coverage in an amount equal to the amount of the liability coverage provided under the policy or binder of private passenger motor vehicle liability insurance **AND UNDERINSURED MOTORIST EXCESS COVERAGE UNDER § 19-509.2 OF THIS SUBTITLE;**

(iii) that an insurer may not refuse to underwrite a person because the person refuses to waive the excess uninsured motorist coverage under this section; and

(iv) that a waiver made under this section must be an affirmative written waiver.

(4) Subject to the Commissioner's approval, a waiver made under this section may be made on the same form as the waiver made under § 19-506 of this subtitle.

(e) A waiver made under this section by a person that is insured continuously by an insurer or by the Maryland Automobile Insurance Fund is effective until the waiver is withdrawn in writing.

(f) (1) An insurer may not refuse to underwrite a person because the person refuses to waive the excess uninsured motorist coverage under this section.

(2) An insurer that violates this subsection is subject to the penalties provided by §§ 4–113 and 4–114 of this article.

19–513.

(a) This section does not prohibit a nonprofit health service plan or an authorized insurer, with the approval of the Commissioner, from providing medical, hospital, and disability benefits in connection with motor vehicle accidents.

(b) [Notwithstanding] **EXCEPT AS PROVIDED IN §§ 19–509(G)(2) AND 19–509.2 OF THIS SUBTITLE, AND NOTWITHSTANDING** any other provision of this subtitle, a person may not recover benefits under the coverages described in §§ 19–504, 19–505, 19–509, and 19–512 of this subtitle from more than one motor vehicle liability insurance policy or insurer on a duplicative or supplemental basis.

(c) (1) The insurer of a motor vehicle for which the coverage described in § 19–505 of this subtitle is in effect shall pay the benefits described in § 19–505 of this subtitle to an individual who is injured in a motor vehicle accident:

(i) while occupying the insured motor vehicle; or

(ii) by the insured motor vehicle as a pedestrian, while in, on, or alighting from a vehicle powered by animal or muscular power, or while on or alighting from an animal.

(2) An insurer may not pay benefits under paragraph (1) of this subsection to an individual who is in violation of § 17–103 of the Transportation Article.

(d) (1) The insurer under a policy that contains the coverages described in §§ 19–505 and 19–509 of this subtitle shall pay the benefits described in §§ 19–505 and 19–509 to an individual insured under the policy who is injured in a motor vehicle accident:

(i) while occupying a motor vehicle for which the coverages described in §§ 19–505 and 19–509 of this subtitle are not in effect; or

(ii) by a motor vehicle for which the coverages described in §§ 19–505 and 19–509 of this subtitle are not in effect as a pedestrian, while in, on, or

alighting from a vehicle powered by animal or muscular power, or while on or alighting from an animal.

(2) Benefits payable under paragraph (1) of this subsection shall be reduced to the extent of any medical or disability benefits coverage that is:

(i) applicable to the motor vehicle for which the coverages described in §§ 19–505 and 19–509 of this subtitle are not in effect; and

(ii) collectible from the insurer of that motor vehicle.

(e) Benefits payable under the coverages described in §§ 19–505 and 19–509 of this subtitle shall be reduced to the extent that the recipient has recovered benefits under the workers' compensation laws of a state or the federal government for which the provider of the workers' compensation benefits has not been reimbursed.

Article – Transportation

17–103.

(b) The security required under this subtitle shall provide for at least:

(1) The payment of claims for bodily injury or death arising from an accident of up to \$30,000 for any one person and up to \$60,000 for any two or more persons, in addition to interest and costs;

(2) The payment of claims for property of others damaged or destroyed in an accident of up to \$15,000, in addition to interest and costs;

(3) Unless waived, the benefits described under § 19–505 of the Insurance Article as to basic required primary coverage;

(4) The benefits required under § 19–509 OR § 19–509.2 of the Insurance Article as to required additional coverage; and

(5) For vehicles subject to the provisions of § 25–111.1 of this article, the security requirements adopted under 49 C.F.R., Part 387.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act applies to each policy of private passenger motor vehicle insurance issued, sold, or delivered in the State on or after October 1, 2014.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.