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FISCAL AND POLICY NOTE

Senate Bill 614
Finance

(Senator Astle)

Private Passenger Motor Vehicle Liability Insurance - Enhanced Underinsured
Motorist Coverage

This bill establishes enhanced underinsured motorist (EUIM) coverage in the State and makes conforming changes. The first-named insured under a private passenger motor vehicle liability insurance policy may elect to obtain EUIM coverage *instead* of the uninsured motorist coverage generally required for registered motor vehicles in the State.

The bill applies to all private passenger motor vehicle insurance policies issued, sold, or delivered in the State on or after the bill's October 1, 2015 effective date.

Fiscal Summary

State Effect: Minimal increase in Maryland Insurance Administration special fund revenues in FY 2016 due to \$125 rate and form filings. Review of the filings can be handled with existing resources. General fund revenues increase due to the 2% tax collected on all premiums in the State to the extent that policyholders pay additional premiums by choosing to purchase EUIM coverage; however, the number of policyholders that will purchase this coverage and any corresponding premium tax revenues cannot be reliably estimated at this time.

Maryland Automobile Insurance Fund (MAIF) Effect: Nonbudgeted revenues increase in FY 2016 and subsequent years to the extent that MAIF policyholders pay additional premiums by choosing to purchase EUIM coverage; however, the number of MAIF policyholders that will purchase this coverage and any corresponding premium revenues cannot be reliably estimated at this time. Expenditures increase correspondingly for claim payments due to the additional liability for providing EUIM coverage.

Local Effect: The bill does not materially affect local governmental operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: “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 the liability limits under all valid, collectible, and applicable liability insurance policies, bonds, and securities may be the same or different than the amount of EUIM coverage provided by a policy (including when it has been reduced by payment to other persons of claims arising from the same occurrence).

Establishment of Enhanced Underinsured Motorist Coverage

The first-named insured under a private passenger motor vehicle liability insurance policy may elect to obtain EUIM coverage *instead* of the uninsured motorist coverage generally required for registered motor vehicles in the State. Unless the first-named insured affirmatively makes a change in writing, the election to obtain EUIM coverage applies to all subsequent renewals of coverage and to all other policies and endorsements that extend, change, supersede, or replace an existing private passenger motor vehicle insurance policy issued to the insured. An insured who obtains the EUIM coverage established by the bill under his or her private passenger motor vehicle liability insurance policy is not required to also obtain uninsured motorist coverage.

EUIM does not apply to a motor vehicle liability insurance policy under two circumstances. First, it does not apply when a first-named insured has elected not to obtain the EUIM coverage. Second, it does not apply to a policy that covers a motor vehicle that is exempt from State registration requirements because it is not driven on a highway or to a policy that is exempt from State registration requirements because the covered vehicle is a snowmobile.

Coverage Amount and Related Waiver Provisions

EUIM coverage has to meet certain threshold requirements but may not exceed the amount of liability coverage provided under the policy. Unless waived, the amount of EUIM coverage equals the amount of liability coverage.

EUIM coverage may be waived in a similar manner as uninsured motorist coverage if an insured’s liability coverage (under his or her private passenger motor vehicle liability

insurance) exceeds the amount required by State law. Thus, an insured may obtain EUIM coverage for a lower amount than the liability coverage under the policy. The waiver must be done on a written form that is approved by the Commissioner and include specified information about the nature, extent, benefit, and cost of the coverage being waived. A waiver of EUIM coverage may be on the same form as that for uninsured motorist coverage. An insurer may not refuse to underwrite a person because that person does not waive EUIM coverage.

Liability Requirements, Limits, and Exclusions

Each private passenger motor vehicle liability insurance policy issued, sold, or delivered in the State to an insured who elects to obtain EUIM coverage on or after October 1, 2015, must contain coverage for damages that (1) the insured is entitled to recover from the operator of an underinsured motor vehicle and (2) a surviving relative is entitled to recover from the owner or operator of an underinsured motor vehicle because of the death of an insured. The liability limit for an insurer that provides EUIM coverage is the amount of that coverage without any reduction for 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.

An insurer may exclude benefits under EUIM coverage for an insured or family member of the insured that resides in the insured's household and is injured when struck as a pedestrian by (1) an underinsured motor vehicle (owned by the named insured or an immediate family member residing in the insured's household) or (2) an insured motor vehicle being driven by a driver excluded under the insured motor vehicle's policy. An insurer may also exclude benefits for any other individual who has applicable insurance for an injury that occurs when the named insured, family member, or other individual is occupying or struck as a pedestrian by the insured motor vehicle while it is operated or used by an individual excluded from coverage.

Enhanced Underinsured Motorist Coverage Payments

If an injured person receives a written offer from a motor vehicle liability insurer or its agent to settle a claim for bodily injury or death, and the amount of the settlement offer (combined with any other settlements related to the same occurrence) would exhaust the limits of the applicable insurance policies, the injured person must send, by certified mail, a copy of the settlement offer to his or her EUIM insurer. The EUIM insurer must then consent or refuse to accept the settlement offer within 60 days after receiving notice. Even so, within 30 days of refusing to accept the settlement offer, the EUIM insurer must pay the amount of the settlement offer to the injured person. Such a payment preserves the EUIM insurer's subrogation rights against the motor vehicle liability insurer and its insured. Acceptance of the settlement offer does not limit the EUIM insurer's right to raise

any issue related to liability or damages in an action against the EUIM insurer and does not constitute an admission by the uninsured motorist insurer to any issue raised in an action against the EUIM insurer.

General Provisions

Any EUIM coverage must be in the form and subject to any conditions that the Insurance Commissioner approves. Excess coverage insurance policies may include EUIM coverage. Any EUIM coverage is primary to any right to recovery an insured may have from the uninsured division of MAIF. Existing protections to cover an insured in the event that an insurer becomes insolvent or otherwise unable to pay claims apply to EUIM coverage. Any provision in a private passenger motor vehicle liability insurance policy (about coverage for damages sustained by the insured as a result of the operation of an underinsured motor vehicle) that requires a dispute between the insured and the insurer to be submitted to a binding arbitration is prohibited and is of no legal effect if the policy is issued on or after October 1, 2015.

Current Law:

Required Securities: Maryland law requires an owner of a motor vehicle that is required to be registered in the State to maintain insurance for the vehicle during the registration period. The security required must provide at least 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;
- for property of others damaged or destroyed in an accident of up to \$15,000;
- unless waived, for personal injury protection of \$2,500 per person; and
- for uninsured motorist coverage (unless waived, the amount equals the amount of liability coverage provided under the policy; if waived, the amount equals the minimum required insurance for liability coverage).

Uninsured Motorist Coverage: Uninsured motorist coverage pays for injury and damages caused by an uninsured or hit-and-run driver. This coverage reimburses the policyholder, members of the policyholder's family, or designated driver for an accident caused by the uninsured motorist. This coverage generally pays for medical bills and wage loss; pain, suffering, and disfigurement; emotional distress; and loss of future earning capacity. Uninsured motorist coverage may also include property damage as long as the insurer's coverage is at least equal to the required coverage under MAIF's Uninsured Division and minimum coverage levels specified in Title 17 of the Transportation Article.

If an insured's liability coverage under his or her private passenger motor vehicle liability insurance exceeds the amount required by State law, the insured may choose to partially

waive the required uninsured motorist coverage; this must be done on a written form that is approved by the Commissioner and include specified information about the nature, extent, benefit, and cost of the level of uninsured motorist coverage being waived. The waiver allows any uninsured motorist coverage to meet the minimum required insurance for liability coverage; otherwise, uninsured motorist coverage must equal the liability coverage of the policy.

Uninsured Motorist Task Force: Chapter 41 of 2014 established the Task Force to Study Methods to Reduce the Rate of Uninsured Drivers. The task force must study and make recommendations regarding (1) the rate of uninsured drivers in the State and other states and the ways in which the rate is calculated by the Motor Vehicle Administration and other entities; (2) the deterrents and incentives that are used in the State and in other states, or that could be used in the State, to reduce the rate of uninsured drivers; and (3) methods to lower the cost of insurance as a way to reduce the rate of uninsured drivers and promote economic and job opportunities associated with vehicle ownership. A final report is due December 31, 2015.

Duplication of Benefits: A person may not recover benefits related to the required securities for motor vehicle liability insurance from more than one motor vehicle liability insurance policy or insurer on a duplicative or supplemental basis.

Background: EUIM coverage differs from the standard uninsured motorist coverage required by State law because uninsured motorist coverage does not pay unless the limits of liability under all valid and collectible liability insurance policies *is less* than the uninsured motorist coverage. Conversely, EUIM coverage pays *in addition* to the limits of liability under all other valid and collectible liability insurance policies.

The following example illustrates the difference in the total amount a driver may recover, depending on whether he or she has uninsured motorist coverage (required under current law) or EUIM coverage (established by the bill). Under both types of insurance, a driver may only receive *up to* the total amount of his or her injuries. In the example, Driver A (the at-fault driver) hits Driver B's vehicle, which causes Driver B to have \$80,000 in injuries. Driver A only has \$30,000 in liability coverage, while Driver B has \$50,000 in either uninsured motorist or EUIM coverage. In this circumstance, Driver B receives the following payments from Driver A's liability coverage and Driver B's own coverage.

Driver B has Uninsured Motorist Coverage

- \$30,000 from the at-fault driver’s liability coverage
- \$20,000 from his/her own uninsured motorist coverage (\$50,000 own coverage – \$30,000 from at-fault driver)

Total Recovered by Driver B: \$50,000
(Cannot receive, in total, more than limit of any policy)

Driver B has EUIM Coverage

- \$30,000 from the at-fault driver’s liability coverage
- \$50,000 from his/her own EUIM coverage (paid up to the limit of own coverage)

Total Recovered by Driver B: \$80,000
(May use full amount of own coverage to cover injuries sustained)

Automobile liability insurance coverage is mandatory in 49 states and the District of Columbia. Only New Hampshire does not have compulsory automobile insurance liability laws; however, its laws require financial responsibility (*i.e.*, enough assets to pay claims against the motorist if the motorist causes an accident and does not have automobile insurance) to operate a vehicle. Further, uninsured motorist coverage is not obligatory in every state; therefore, some insured drivers are not covered when they are hit by an uninsured driver.

A recent West Virginia Supreme Court of Appeals case held that a “non-duplication” of benefits provision in an uninsured motorist policy which permits an insurer to offset benefits paid under medical payments coverage does not violate West Virginia statute that requires that “no sums payable as a result of underinsured motorists’ coverage shall be reduced by payments made under the insured’s policy or any other policy.” In other words, the nonduplication provision reduced the amount of damages and not the amount of coverage. To permit otherwise would allow for double recovery. (*State Farm Mut. Auto Ins. Co. v. Schatken*, Sept. Term 2012, No. 11-1142.)

MAIF Fiscal Effect: Nonbudgeted revenues increase in fiscal 2016 and subsequent years to the extent that MAIF policyholders choose to purchase EUIM coverage instead of uninsured motorist coverage as a result of the bill. MAIF reports that policyholders pay, on average, \$75 per year for uninsured motorist coverage; MAIF also reports that EUIM coverage will be slightly more expensive than uninsured motorist coverage to account for additional liabilities and the cost will most likely range between \$110 and \$150 depending on jurisdiction. MAIF expenditures increase correspondingly based on the number of policyholders who purchase EUIM coverage due to the additional liabilities. Any expenditure increase depends on the number of MAIF policyholders who purchase EUIM coverage and are also involved in accidents and collisions that result in personal injury and include an underinsured motorist. The number of MAIF policyholders that will experience this type of accident or collision, and any corresponding expenditures, cannot be reliably estimated at this time.

For illustrative purposes, if it is assumed that EUIM coverage will cost an average of \$130 per year and 10% of MAIF policyholders (approximately 6,000) purchase EUIM coverage rather than uninsured motorist coverage, MAIF would receive \$330,000 in increased premium revenue.

State Fiscal Effect: General fund revenues increase due to the 2% tax collected on all premiums in the State to the extent that policyholders pay additional premiums by choosing to purchase EUIM coverage instead of uninsured motorist coverage; however, the number of policyholders that will purchase this coverage, and any corresponding premium tax revenues, cannot be reliably estimated at this time.

For illustrative purposes, using the above assumption that MAIF will receive \$330,000 in additional premium revenue, general fund revenues increase by \$6,600 due to policyholders purchasing EUIM coverage. Because MAIF only captures about 2% of all motor vehicle insurance policies in the State, general fund revenues may increase minimally based on the insurance choices of other motor vehicle insurance policyholders in the State.

Additional Information

Prior Introductions: None.

Cross File: HB 1093 (Delegates Barkley and Aumann) - Economic Matters.

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

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