

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 457
Finance

(Senator Zirkin)

Liability Insurance - Reservation of Rights for Failure to Cooperate - Prohibition

This bill prohibits an insurer from disclaiming coverage on a liability insurance policy on the ground that the insured or claimant of the policy has breached the policy by (1) failing to cooperate with the insurer or (2) not giving the insurer required notice.

Fiscal Summary

State Effect: Minimal increase in Maryland Insurance Administration (MIA) special fund revenues in FY 2016 due to \$125 rate and form filings. Review of the filings can be handled with existing resources. To the extent the bill results in increased insurance premiums, general fund revenues increase due to the 2% tax collected on all insurance premiums paid in the State.

Maryland Automobile Insurance Fund (MAIF) Effect: Nonbudgeted expenditures increase by approximately \$1.6 million annually to pay additional claims that would have otherwise been denied due to noncooperation. MAIF advises that these costs result in higher premiums for MAIF's insureds.

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

Small Business Effect: Minimal.

Analysis

Current Law: Generally, an insurer may not disclaim coverage on a liability insurance policy on the ground that the insured or claimant of the policy has breached the policy by (1) failing to cooperate with the insurer or (2) not giving the insurer required notice. In

either instance, coverage may be disclaimed *only if* the insurer establishes by a preponderance of the evidence that the lack of cooperation or notice has resulted in actual prejudice to the insurer.

Title 6 of the Insurance Article imposes a 2% premium tax on each authorized insurance company, surplus lines broker, or unauthorized insurance company that sells, or an individual who independently procures, any type of insurance coverage upon a risk that is located in the State. Revenues generally accrue to the general fund.

Background: If an insurer disclaims coverage, it means that the insurer refuses to accept an insured's insurance claim on an existing policy. Insurance companies are able to disclaim coverage for a variety of reasons, depending on the policy, such as failure to cooperate, misrepresentation in the original application, failure to make timely premium payments, or if the event that occurs is not covered by the insured's insurance policy.

MIA advises that, on occasion, insurers disclaim liability claims from a third party against an insured individual because of the insured's failure to cooperate with the insurer.

MAIF Effect: MAIF advises that about 30 property damage and 10 bodily injury claims are denied per month due to noncooperation; these denials save MAIF about \$78,000 from property damage claims and \$56,940 from bodily injury claims each month. Therefore, MAIF expenditures increase by approximately \$134,940 per month and \$1.6 million annually as a result of the bill. MAIF further advises that the increased costs result in higher premiums for MAIF's insureds.

State Revenues: MIA advises that the bill could result in additional claim payments made by insurers in the State, as well as an increase in policy cancellations since an insured's failure to cooperate has a direct economic impact on an insurer as a result of the bill. To the extent that insurers in the State begin to charge higher premiums to recoup costs for additional claims as a result of the bill, general fund revenues increase due to the 2% premium tax. *For illustrative purposes only*, if the bill results in MAIF collecting \$1.6 million in additional premiums each year, general fund revenues increase by \$32,000 annually from that source alone.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - March 16, 2015
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