

Chapter 425

(Senate Bill 784)

AN ACT concerning

Motor Vehicle Insurance – Personal Injury Protection – ~~Optional~~ Rejection of Coverage

FOR the purpose of ~~requiring certain insurers to offer, instead of provide, certain motor vehicle liability insurance coverage for certain medical, hospital, and disability benefits; authorizing a certain first named insured to exclude from certain coverage benefits for certain individuals; providing that an exclusion from certain benefits constitutes an exclusion from all benefits described in certain provisions of law; authorizing certain individuals to recover certain benefits under certain circumstances; requiring an insurer to provide a certain notice to a certain first named insured; prohibiting an insurer from refusing to underwrite a certain person under certain circumstances; providing that an insurer is subject to certain penalties for a certain violation; repealing a requirement that a certain first named insured make a waiver of certain benefits under certain circumstances; repealing certain provisions of law relating to a certain waiver, including what the waiver constitutes, who is bound by the waiver, who may recover benefits if there is a waiver, when the waiver is effective, and how the waiver is made; repealing a requirement that a certain security provide certain personal injury protection benefits under certain circumstances~~ providing that, under certain circumstances, a first named insured under a certain policy of motor vehicle liability insurance is not required to obtain coverage for certain medical, hospital, and disability benefits that must be provided by certain insurers; requiring the Maryland Automobile Insurance Fund to offer a certain first named insured at a certain time the option to reject coverage for certain benefits under certain circumstances; authorizing an insurer other than the Fund to offer a certain first named insured at a certain time the option to reject coverage for certain benefits under certain circumstances; requiring a certain first named insured, at the time of application for a certain policy, to make a certain election; requiring the election to be made on a certain form; authorizing the form to be part of the insurance contract; requiring the form to contain a certain explanation in a certain manner; providing that a certain rejection of coverage for certain benefits is effective until a certain time except under certain circumstances; requiring, on renewal of a certain policy, that a certain insurer provide certain coverage under certain circumstances; altering a certain minimum security requirement; requiring the Maryland Insurance Commissioner to consult with certain insurers, insurance producers, and certain other persons in developing a certain form; requiring the Fund and certain insurers to annually report certain information to the Maryland Insurance Administration; requiring the Administration to compile certain information and, on or before a certain date, report certain findings and recommendations to certain committees of the General Assembly; making conforming changes; providing for the application of this Act; and generally relating

to ~~optional~~ personal injury protection coverage under policies of motor vehicle liability insurance.

BY repealing and reenacting, with amendments,
 Article – Insurance
 Section 19–505
 Annotated Code of Maryland
 (2011 Replacement Volume and 2015 Supplement)

BY ~~repealing~~ repealing and reenacting, without amendments,
 Article – Insurance
 Section 19–506
 Annotated Code of Maryland
 (2011 Replacement Volume and 2015 Supplement)

BY adding to
Article – Insurance
Section 19–506.1
Annotated Code of Maryland
(2011 Replacement Volume and 2015 Supplement)

BY repealing and reenacting, with amendments,
 Article – Transportation
 Section 17–103
 Annotated Code of Maryland
 (2012 Replacement Volume and 2015 Supplement)

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

Article – Insurance

19–505.

(a) ~~(1)~~ ~~Unless waived in accordance with § 19–506 of this subtitle~~ OR REJECTED IN ACCORDANCE WITH § 19–506.1 OF THIS SUBTITLE, each ~~EACH~~ insurer that issues, sells, or delivers a motor vehicle liability insurance policy in the State shall ~~provide~~ OFFER coverage for the medical, hospital, and disability benefits described in this section.

~~(2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, THE COVERAGE UNDER THIS SECTION SHALL PROVIDE BENEFITS~~ for each of the following individuals:

~~{(1)}~~ ~~(I)~~ except for individuals specifically excluded under § 27-609 of this article:

~~{(i)}~~ ~~1.~~ the first named insured, and any family member of the first named insured who resides in the first named insured’s household, who is injured in any motor vehicle accident, including an accident that involves an uninsured motor vehicle or a motor vehicle the identity of which cannot be ascertained; and

~~{(ii)}~~ ~~2.~~ any other individual who is injured in a motor vehicle accident while using the insured motor vehicle with the express or implied permission of the named insured;

~~{(2)}~~ ~~(H)~~ an individual who is injured in a motor vehicle accident while occupying the insured motor vehicle as a guest or passenger; and

~~{(3)}~~ ~~(HH)~~ an individual who is injured in a motor vehicle accident that involves the insured motor vehicle:

~~{(i)}~~ ~~1.~~ as a pedestrian; or

~~{(ii)}~~ ~~2.~~ while in, on, or alighting from a vehicle that is operated by animal or muscular power.

~~(3) (I) SUBJECT TO SUBPARAGRAPH (H) OF THIS PARAGRAPH, THE FIRST NAMED INSURED MAY EXCLUDE FROM THE COVERAGE DESCRIBED IN THIS SECTION BENEFITS FOR:~~

~~1. EACH NAMED INSURED;~~

~~2. EACH LISTED DRIVER; AND~~

~~3. EACH MEMBER OF THE FIRST NAMED INSURED’S FAMILY RESIDING IN THE FIRST NAMED INSURED’S HOUSEHOLD WHO IS AT LEAST 16 YEARS OLD.~~

~~(H) AN EXCLUSION FROM BENEFITS UNDER THIS PARAGRAPH CONSTITUTES AN EXCLUSION FROM ALL OF THE BENEFITS DESCRIBED IN THIS SECTION, WHETHER PROVIDED UNDER:~~

~~1. THE FIRST NAMED INSURED’S POLICY;~~

~~2. ANY OTHER MOTOR VEHICLE LIABILITY INSURANCE POLICY ISSUED IN THE STATE; OR~~

~~3. ANOTHER FORM OF SECURITY USED IN PLACE OF A MOTOR VEHICLE LIABILITY INSURANCE POLICY AS AUTHORIZED UNDER § 17-103 OF THE TRANSPORTATION ARTICLE.~~

~~(III) AN INDIVIDUAL LISTED IN SUBPARAGRAPH (I) 2 OR 3 OF THIS PARAGRAPH MAY RECOVER THE BENEFITS DESCRIBED IN THIS SECTION UNDER ANOTHER MOTOR VEHICLE LIABILITY INSURANCE POLICY IF THAT INDIVIDUAL:~~

~~1. IS THE FIRST NAMED INSURED UNDER THE OTHER POLICY;~~

~~2. HAS NOT EXCLUDED THE BENEFITS DESCRIBED IN THIS SECTION UNDER THE OTHER POLICY; AND~~

~~3. IS NOT A NAMED INSURED UNDER ANY OTHER MOTOR VEHICLE LIABILITY INSURANCE POLICY UNDER WHICH AN EXCLUSION OF THE BENEFITS DESCRIBED IN THIS SECTION IS IN EFFECT.~~

~~(IV) AN INSURER SHALL PROVIDE THE FIRST NAMED INSURED WRITTEN NOTICE OF THE NATURE, EXTENT, AND COST OF THE COVERAGE THAT WOULD BE PROVIDED UNDER THE POLICY IF NOT EXCLUDED BY THE FIRST NAMED INSURED UNDER THIS PARAGRAPH.~~

(b) (1) In this subsection, “income” means:

(i) wages, salaries, tips, commissions, professional fees, and other earnings from work or employment;

(ii) earnings from a business or farm owned individually, jointly, or in partnership; and

(iii) to the extent earnings are paid or payable in property or services instead of in cash, the reasonable value of the property or services.

(2) The minimum medical, hospital, and disability benefits provided by an insurer under this section shall include up to \$2,500 for:

(i) payment of all reasonable and necessary expenses that arise from a motor vehicle accident and that are incurred within 3 years after the accident for necessary prosthetic devices and ambulance, dental, funeral, hospital, medical, professional nursing, surgical, and X-ray services;

(ii) payment of benefits for 85% of income lost:

1. within 3 years after, and resulting from, a motor vehicle accident; and

2. by an injured individual who was earning or producing income when the accident occurred; and

(iii) payments made in reimbursement of reasonable and necessary expenses incurred within 3 years after a motor vehicle accident for essential services ordinarily performed for the care and maintenance of the family or family household by an individual who was injured in the accident and not earning or producing income when the accident occurred.

(3) As a condition of providing loss of income benefits under this subsection, an insurer may require the injured individual to furnish the insurer with reasonable medical proof of the injury causing loss of income.

(c) (1) An insurer may exclude from the coverage described in this section benefits for:

(i) an individual, otherwise insured under the policy, who:

1. intentionally causes the motor vehicle accident resulting in the injury for which benefits are claimed;

2. is a nonresident of the State and is injured as a pedestrian in a motor vehicle accident that occurs outside of the State;

3. is injured in a motor vehicle accident while operating or voluntarily riding in a motor vehicle that the individual knows is stolen; or

4. is injured in a motor vehicle accident while committing a felony or while violating § 21-904 of the Transportation Article; or

(ii) the named insured or a family member of the named insured who resides in the named insured's household for an injury that occurs while the named insured or family member is occupying an uninsured motor vehicle owned by:

1. the named insured; or

2. an immediate family member of the named insured who resides in the named insured's household.

(2) In the case of motorcycles, mopeds, or motor scooters, an insurer may:

(i) exclude the economic loss benefits described in this section; or

(ii) offer the economic loss benefits with deductibles, options, or specific exclusions.

~~(D) (1) AN INSURER MAY NOT REFUSE TO UNDERWRITE A PERSON BECAUSE THE PERSON REFUSES TO MAKE AN EXCLUSION OF COVERAGE UNDER SUBSECTION (A)(3) OF THIS SECTION.~~

~~(2) AN INSURER THAT VIOLATES THIS SUBSECTION IS SUBJECT TO THE PENALTIES PROVIDED BY §§ 4-113 AND 4-114 OF THIS ARTICLE.~~

§19-506.

(a) (1) If the first named insured does not wish to obtain the benefits described in § 19-505 of this subtitle, the first named insured shall make an affirmative written waiver of those benefits.

(2) If the first named insured does not make an affirmative written waiver under this section, the insurer shall provide the coverage described in § 19-505 of this subtitle.

(b) (1) A waiver made under this section constitutes a waiver of all the benefits described in § 19-505 of this subtitle, whether provided under:

(i) the first named insured's policy;

(ii) any other motor vehicle liability insurance policy issued in the State; or

(iii) another form of security used in place of a motor vehicle liability insurance policy as authorized under § 17-103 of the Transportation Article.

(2) Subject to paragraph (3) of this subsection, a waiver made under this section is binding on the following individuals covered by the policy:

(i) each named insured;

(ii) each listed driver; and

(iii) each member of the first named insured's family residing in the first named insured's household who is at least 16 years old.

(3) An individual listed in paragraph (2)(ii) or (iii) of this subsection may recover the benefits described in § 19-505 of this subtitle under another motor vehicle liability insurance policy if that individual:

(i) is the first named insured under the other policy;

(ii) has not waived the benefits described in § 19–505 of this subtitle under the other policy; and

(iii) is not a named insured under any other motor vehicle liability insurance policy under which a waiver of the benefits described in § 19–505 of this subtitle is in effect.

(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, and cost of the coverage described in § 19–505 of this subtitle.

(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, and cost of the coverage that would be provided under the policy if not waived by the first named insured;

(ii) each effect of a waiver as stated in subsection (b) of this section;

(iii) that a failure of the first named insured to make a waiver requires an insurer to provide the coverage described in § 19–505 of this subtitle;

(iv) that an insurer may not refuse to underwrite a person because the person refuses to waive the coverage described in § 19–505 of this subtitle; and

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

(e) A waiver made under this section by a person that is insured continuously by the Maryland Automobile Insurance Fund or the insurer 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 coverage described in § 19–505 of this subtitle.

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

19–506.1.

(A) (1) NOTWITHSTANDING §§ 19-505 AND 19-506 OF THIS SUBTITLE, A FIRST NAMED INSURED IS NOT REQUIRED TO OBTAIN COVERAGE FOR THE BENEFITS DESCRIBED IN §§ 19-505 AND 19-506 OF THIS SUBTITLE UNDER A MOTOR VEHICLE LIABILITY INSURANCE POLICY THAT:

(I) PROVIDES COVERAGE THAT DOES NOT EXCEED THE MINIMUM LIABILITY COVERAGE SPECIFIED IN § 17-103(B) OF THE TRANSPORTATION ARTICLE; AND

(II) 1. SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IS ISSUED, SOLD, OR DELIVERED BY THE MARYLAND AUTOMOBILE INSURANCE FUND; OR

2. SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, IS ISSUED, SOLD, OR DELIVERED BY AN INSURER OTHER THAN THE MARYLAND AUTOMOBILE INSURANCE FUND.

(2) THE MARYLAND AUTOMOBILE INSURANCE FUND SHALL OFFER A FIRST NAMED INSURED, AT THE TIME OF APPLICATION FOR A POLICY DESCRIBED IN PARAGRAPH (1)(I) OF THIS SUBSECTION, THE OPTION TO REJECT COVERAGE FOR THE BENEFITS DESCRIBED IN §§ 19-505 AND 19-506 OF THIS SUBTITLE IF, PRIOR TO THE APPLICATION, THE APPLICANT HAS NOT BEEN INSURED CONTINUOUSLY BY THE MARYLAND AUTOMOBILE INSURANCE FUND FOR AT LEAST 1 YEAR.

(3) AN INSURER OTHER THAN THE MARYLAND AUTOMOBILE INSURANCE FUND MAY OFFER A FIRST NAMED INSURED, AT THE TIME OF APPLICATION FOR A POLICY DESCRIBED IN PARAGRAPH (1)(I) OF THIS SUBSECTION, THE OPTION TO REJECT COVERAGE FOR THE BENEFITS DESCRIBED IN §§ 19-505 AND 19-506 OF THIS SUBTITLE IF:

(I) PRIOR TO THE APPLICATION, THE APPLICANT WAS INSURED BY AN INSURER OTHER THAN THE MARYLAND AUTOMOBILE INSURANCE FUND; AND

(II) THE INSURER UNDER THE PRIOR POLICY CANCELED THE POLICY BEFORE THE END OF THE POLICY'S TERM.

(B) AT THE TIME OF APPLICATION FOR A POLICY DESCRIBED IN SUBSECTION (A)(1)(I) OF THIS SECTION, THE FIRST NAMED INSURED SHALL ELECT IN WRITING TO:

(1) OBTAIN COVERAGE FOR THE BENEFITS DESCRIBED IN § 19-505 OF THIS SUBTITLE;

(2) WAIVE COVERAGE FOR THE BENEFITS DESCRIBED IN § 19-505 OF THIS SUBTITLE IN ACCORDANCE WITH § 19-506 OF THIS SUBTITLE; OR

(3) REJECT COVERAGE FOR THE BENEFITS DESCRIBED IN §§ 19-505 AND 19-506 OF THIS SUBTITLE IN ACCORDANCE WITH THIS SECTION.

(C) (1) THE ELECTION UNDER SUBSECTION (B) OF 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) THAT THE FIRST NAMED INSURED MUST ELECT IN WRITING TO:

1. OBTAIN COVERAGE FOR THE BENEFITS DESCRIBED IN § 19-505 OF THIS SUBTITLE;

2. WAIVE COVERAGE FOR THE BENEFITS DESCRIBED IN § 19-505 OF THIS SUBTITLE IN ACCORDANCE WITH § 19-506 OF THIS SUBTITLE; OR

3. REJECT COVERAGE FOR THE BENEFITS DESCRIBED IN §§ 19-505 AND 19-506 OF THIS SUBTITLE IN ACCORDANCE WITH THIS SECTION;

(II) THE NATURE, EXTENT, AND COST OF COVERAGE FOR THE BENEFITS DESCRIBED IN §§ 19-505 AND 19-506 OF THIS SUBTITLE IF NOT REJECTED BY THE FIRST NAMED INSURED;

(III) THAT THE ELECTION TO REJECT COVERAGE FOR THE BENEFITS DESCRIBED IN §§ 19-505 AND 19-506 OF THIS SUBTITLE IN ACCORDANCE WITH THIS SECTION IS EFFECTIVE UNTIL THE END OF THE POLICY'S TERM UNLESS THE FIRST NAMED INSURED:

1. WITHDRAWS THE REJECTION IN WRITING;

2. OBTAINS A MOTOR VEHICLE LIABILITY INSURANCE POLICY FOR THE INSURED MOTOR VEHICLE FROM ANOTHER INSURER; OR

3. INCREASES ANY COVERAGE UNDER THE POLICY TO AN AMOUNT THAT EXCEEDS THE MINIMUM LIABILITY COVERAGE SPECIFIED IN § 17-103(B) OF THE TRANSPORTATION ARTICLE; AND

(IV) THAT ON RENEWAL OF THE POLICY, UNLESS THE FIRST NAMED INSURED NOTIFIES THE INSURER IN WRITING THAT THE FIRST NAMED INSURED WISHES TO OBTAIN COVERAGE FOR THE BENEFITS DESCRIBED IN § 19-505 OF THIS SUBTITLE, THE INSURER SHALL PROVIDE THE COVERAGE DESCRIBED IN § 19-506 OF THIS SUBTITLE.

(D) (1) A REJECTION OF COVERAGE FOR THE BENEFITS DESCRIBED IN §§ 19-505 AND 19-506 OF THIS SUBTITLE IN ACCORDANCE WITH THIS SECTION IS EFFECTIVE UNTIL THE END OF THE POLICY'S TERM UNLESS THE FIRST NAMED INSURED:

(I) WITHDRAWS THE REJECTION IN WRITING;

(II) OBTAINS A MOTOR VEHICLE LIABILITY INSURANCE POLICY FOR THE INSURED MOTOR VEHICLE FROM ANOTHER INSURER; OR

(III) INCREASES ANY COVERAGE UNDER THE POLICY TO AN AMOUNT THAT EXCEEDS THE MINIMUM LIABILITY COVERAGE SPECIFIED IN § 17-103(B) OF THE TRANSPORTATION ARTICLE.

(2) ON RENEWAL OF THE POLICY, UNLESS THE FIRST NAMED INSURED NOTIFIES THE INSURER IN WRITING THAT THE FIRST NAMED INSURED WISHES TO OBTAIN COVERAGE FOR THE BENEFITS DESCRIBED IN § 19-505 OF THIS SUBTITLE, THE INSURER SHALL PROVIDE THE COVERAGE DESCRIBED IN § 19-506 OF THIS SUBTITLE.

Article – Transportation

17-103.

(a) (1) Except as provided in paragraph (2) of this subsection, the form of security required under this subtitle is a vehicle liability insurance policy written by an insurer authorized to write these policies in this State.

(2) The Administration may accept another form of security in place of a vehicle liability insurance policy if it finds that the other form of security adequately provides the benefits required by subsection (b) of this section.

(3) The Administration shall, by regulation, assess each self-insurer an annual sum which may not exceed \$750, and which shall be used for actuarial studies and audits to determine financial solvency.

(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 **UNDER § 19-506 OF THE INSURANCE ARTICLE OR REJECTED UNDER § 19-506.1 OF THE INSURANCE ARTICLE**, the benefits described under § 19-505 of the Insurance Article as to basic required primary coverage;

~~¶~~(4) The benefits required under § 19-509 of the Insurance Article as to required additional coverage; and

~~¶(5) ¶(4)~~ 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 the Maryland Insurance Commissioner shall consult with insurers, insurance producers, and any other person that the Commissioner determines is appropriate in developing the form required under § 19-506.1(c) of the Insurance Article, as enacted by Section 1 of this Act, including use of the form by written and electronic means.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Automobile Insurance Fund and other insurers that offer first named insureds the option to elect to reject coverage for the benefits described in §§ 19-505 and 19-506 of the Insurance Article in accordance with § 19-506.1 of the Insurance Article, as enacted by Section 1 of this Act, shall report to the Maryland Insurance Administration, on an annual basis as determined by the Maryland Insurance Commissioner, for policies subject to this Act that are issued, sold, or delivered beginning on the effective date of this Act through October 31, 2019, on:

(1) the number of first named insureds who were eligible to make an election under § 19-506.1(b) of the Insurance Article, as enacted by Section 1 of this Act;

(2) the number of first named insureds who elected to obtain coverage for the benefits described in §§ 19-505 and 19-506 of the Insurance Article, and the number of first named insureds who elected to reject those benefits, under § 19-506.1(b) of the Insurance Article, as enacted by Section 1 of this Act; and

(3) any other related information that the Commissioner requires.

(b) The Maryland Insurance Administration shall:

(1) compile the information received from the Maryland Automobile Insurance Fund and other insurers under subsection (a) of this section; and

(2) on or before December 1, 2019, report to the Senate Finance Committee and the House Economic Matters Committee, in accordance with § 2-1246 of the State Government Article, its findings and any recommendations.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall apply to all motor vehicle liability insurance policies subject to this Act that are issued, sold, or delivered in the State on or after October 1, 2016.

SECTION ~~2~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2016.

Approved by the Governor, May 10, 2016.