

**Department of Legislative Services
Maryland General Assembly
2005 Session**

**FISCAL AND POLICY NOTE
Revised**

House Bill 265
Economic Matters

(Delegate Moe)

Finance

**Motor Vehicle Liability Insurance - Hearings on Proposed Actions by Insurers -
Attorney Fees**

This bill specifies that, when the Maryland Insurance Commissioner holds a hearing on an insurer's proposal to cancel or fail to renew a policy, increase a premium, or reduce coverage for private passenger motor vehicle liability insurance, the Commissioner must order payment of reasonable attorney fees incurred by the insured if the Commissioner finds that: (1) the actual reason for the proposed action is not stated in the notice or the proposed action is not in accordance with specified requirements under Maryland law, the insurer's filed rating plan, its underwriting standards, or the lawful terms and conditions of the policy; and (2) the insurer's conduct in maintaining or defending the proceeding was in bad faith or the insurer acted willfully in the absence of a bona fide dispute. The bill requires the notice that the insurer must send to the insured about its proposed action to contain information about the award of attorney's fees.

Fiscal Summary

State Effect: The bill's requirements could be handled with the existing budgeted resources of the Maryland Insurance Administration.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Generally, for private passenger motor vehicle liability insurance or a binder of motor vehicle liability insurance in effect for at least 45 days, an insurer other than the Maryland Automobile Insurance Fund (MAIF) may not: (1) cancel or fail to renew the policy or binder for a reason other than nonpayment of premium; (2) increase a premium for any coverage on the policy; or (3) reduce coverage under the policy.

At least 45 days before the proposed effective date of one of these actions, an insurer must send written notice of its proposed action to the insured. The notice must state: (1) the proposed action; (2) the proposed effective date; (3) the actual reason for the proposed action; (4) the insured's right to replace the insurance through MAIF; (5) the insured's protest and hearing rights; (6) that the insurer must generally maintain the current insurance until the Commissioner makes a final determination; (7) the Commissioner's authority to award reasonable attorney's fees; and (8) if the action is based on a credit score or information from a credit report, specified information about the score or report.

At least 10 days before an insurer proposes to cancel a private passenger motor vehicle liability insurance policy for nonpayment of premium, the insurer must cause to be sent by certificate of mailing a written notice of its intent to cancel.

Based on information in the notice, the Commissioner must either dismiss an insured's complaint or disallow the proposed action. If the party aggrieved by the Commissioner's decision requests, the Commissioner must hold a hearing. If the Commissioner finds the insurer's actions to be justified, the Commissioner must dismiss the protest and allow the action on the later of the action's proposed effective date or 30 days after the determination. If the Commissioner finds the proposed action to be unjustified, the Commissioner must disallow the action and may award reasonable attorney's fees incurred by the insured for representation at the hearing as the Commissioner considers appropriate.

Background: In *Stavely v. State Farm Mutual Auto. Ins. Co.*, 376 Md. 1098 (2003), the Court of Appeals found that this provision seems to contemplate that an insured who prevails should normally be awarded reasonable attorney's fees. The court further stated that an award of attorney's fees should be denied to a prevailing insured by the Commissioner only when a particular case presents significant reasons warranting a denial.

Additional Information

Prior Introductions: A similar bill, SB 644, was introduced during the 2004 session. SB 644 was amended and passed in the Senate. It was referred to the Economic Matters Committee in the House, where it received an unfavorable report.

Cross File: SB 97 (Senator Astle) – Finance.

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

Fiscal Note History: First Reader - February 2, 2005
ncs/ljm Revised - House Third Reader - March 25, 2005
Revised - Enrolled Bill - May 4, 2005

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