

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

House Bill 729 (Chairman, Economic Matters Committee)
(By Request – Departmental – Insurance Administration, Maryland)
Economic Matters Finance

**Insurance - Property and Casualty - Personal Automobile Liability Insurance -
Coverage and Premiums**

This departmental bill repeals the current provisions governing the cancellation, nonrenewal, premium increase, or reduction in coverage of personal motor vehicle liability insurance. Instead, the bill establishes separate provisions governing: (1) cancellations and nonrenewals; and (2) premium increases or reductions in coverage.

Fiscal Summary

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

Local Effect: None.

Small Business Effect: MIA has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. The attached assessment does not reflect amendments to the bill.

Analysis

Bill Summary: Generally, at least 45 days before taking any action, an insurer must send written notice, in duplicate (rather than triplicate as currently required) to the insured. The notice must state the actual reason for taking the action. The notice must include at a minimum: (1) specified information about the action if it is due to an accident or a violation of a motor vehicle law; (2) the date of occurrence and a description if the action is due to a nonaccident-related claim; and (3) if the action is due

to some other reason or to a violation of the insurer's underwriting standards or the terms and conditions of the policy, the insured's action that is the basis for the insurer's action.

Cancellations and Nonrenewals

The bill retains the general prohibition against canceling or failing to renew a policy or binder in effect for at least 45 days for a reason other than nonpayment of premium. The requirements do not apply if the failure to renew is part of a plan of withdrawal from the market that: (1) is approved by the Maryland Insurance Commissioner; and (2) provides each first named insured at least 45 days' written notice of the plan, sent by certificate of mailing.

The notice must be sent by certified mail and advise of the insured's right to replace coverage through the Maryland Automobile Insurance Fund (MAIF). The notice must also indicate whether the insured's action: (1) disqualifies the insured under the insurer's rating plan or underwriting standards; or (2) violates the terms and conditions of the policy.

The notice must state the conditions under which the Commissioner must order payment of attorney fees in resolving a dispute regarding the policy.

A statement contained in the notice generally does not constitute grounds for a civil action.

If the notice contains an offer to continue or renew the policy with an exclusion, the offer must include the names of the individuals excluded and the premium amount if the policy is renewed without the excluded individuals.

An individual may protest by signing a single copy of the notice and delivering it to the Commissioner within 30 days after the notice's mailing date. The Commissioner must notify the insurer of the protest. Filing stays the action pending the Commissioner's determination, and the insurer must maintain the coverage and premium until the Commissioner issues a determination.

Based on the information in the notice, the Commissioner must determine whether the protest has merit and issue a determination either disallowing or allowing the proposed action. If the Commissioner finds that the action is in accordance with the insurer's rating plan, its underwriting standards, or the policy's terms and conditions, the Commissioner must dismiss the protest and allow the action at the later of: (1) the action's proposed effective date; or (2) 30 days after issuing the determination. If the Commissioner finds the opposite to be so, the Commissioner must uphold the protest and

disallow the proposed action. A determination must be in writing and takes effect 30 days after it is issued.

A party aggrieved by the determination may request a hearing. The Commissioner must order the insurer to pay reasonable attorney fees if the Commissioner upholds a named insured's protest and disallows the action of an insurer and finds that: (1) the insurer's conduct in maintaining or defending the proceeding was in bad faith; or (2) the insurer acted willfully in the absence of a bona fide dispute. An aggrieved party may seek judicial review.

Premium Rate Increases and Reductions in Coverage

The required notice about a premium increase or reduction in coverage must be sent by certificate of mailing. For a premium increase of more than 15%, the notice must include information about the insured's right to protest and request a hearing. The insured is not obligated to pay the increase but is obligated to pay the undisputed amount. For an increase of 15% or less, the notice must include a statement that the insured has the right to protest. The insured must pay any premium due. For a reduction in coverage, the notice must include information about the insured's right to protest and request a hearing.

If the notice contains an offer to continue or renew the policy with an exclusion, the offer must include the names of the individuals excluded and the premium amount if the policy is renewed without the excluded individuals.

The notice must state the conditions under which the Commissioner must order payment of attorney fees in resolving a dispute regarding the policy.

An individual may protest by signing a single copy of the notice and delivering it to the Commissioner within 30 days after the notice's mailing date. The Commissioner must notify the insurer of the protest. For an increase of more than 15%, filing stays the action pending the Commissioner's determination, and the insurer must maintain the coverage and premium until the Commissioner issues a determination. For an increase of 15% or less, the protest does not stay the action.

Based on the information in the notice, the Commissioner must determine whether the protest has merit and issue a determination either disallowing or allowing the proposed action. If the Commissioner finds that the action is in accordance with the insurer's rating plan, the Commissioner must dismiss the protest and allow the action at the later of: (1) the action's proposed effective date; or (2) 30 days after issuing the determination. If the Commissioner finds the reason for the provided action is not stated or finds the proposed action not to be in accordance with the insurer's rating plan, the

Commissioner must uphold the protest and disallow the action. A determination must be in writing and takes effect 30 days after it is issued.

For a premium increase of more than 15%, a party aggrieved by the determination may request a hearing. The Commissioner must order the insurer to pay reasonable attorney fees if the Commissioner upholds a named insured's protest and disallows the action of an insurer and finds that: (1) the insurer's conduct in maintaining or defending the proceeding was in bad faith; or (2) the insurer acted willfully in the absence of a bona fide dispute. An aggrieved party may seek judicial review.

For a premium increase of 15% or less, the Commissioner must order the insurer, within 30 days after the determination, to return any disallowed premium and pay 10% interest per year from the date the premium was received to the date it was returned. The Commissioner's determination is final and no administrative hearing is available. However, an aggrieved party may seek judicial review.

The provisions do not apply to an allowable general rate increase or reduction in coverage or an increase in premium due to: (1) a change in vehicle usage; (2) a change in territory; (3) a request by a named insured that results in a change in coverage, decrease in deductible, or other policy change; (4) the removal or reduction of a discount if the discount is not removed or reduced because of an accident, a violation of a motor vehicle law, the insured's claims history, or a reclassification, including an assignment, placement, or transfer of an insured within or among affiliates within an insurance holding company system; or (5) any other cause for a premium increase for which the Commissioner waives the notice requirement. The provisions also do not apply to MAIF.

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 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. For cancellation or nonrenewal, the notice must be by certified mail. For a cancellation for nonpayment of premium and all other notices, the notice must be by certificate of mailing.

An individual may protest by signing two copies of the notice and sending them to the Commissioner within 30 days after the notice's mailing date. Except for a premium increase of 15% or less for the entire policy, the protest stays the proposed action until the Commissioner makes a final determination. 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 so requests, the Commissioner must hold a hearing, except for a premium increase of 15% or less for the entire policy. 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.

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 Comments: This bill's provision governing a transfer of an insured within an insurance holding company system is similar to HB 158, which is also a departmental bill.

Additional Information

Prior Introductions: A bill containing a provision relating to the Commissioner's discretion to award attorney's fees at a hearing, SB 644, was introduced during the 2004 session. It 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: None.

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

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