

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE

House Bill 1494  
Economic Matters

(Delegate Feldman)

---

Motor Vehicle Insurance - Uninsured Motorist Insurers - Waiver of Defenses

---

This bill specifies that neither the failure of an uninsured motorist insurer to respond to notice of a settlement offer as required by statute nor the consent of an uninsured motorist insurer to acceptance of a settlement offer operates as a waiver of any defense available to the uninsured motorist insurer in an action between the uninsured motorist insurer and the injured person, including defenses available on the issues of liability and damages.

The bill takes effect June 1, 2008.

---

Fiscal Summary

**State Effect:** The bill would not directly affect State finances or operations.

**Local Effect:** The bill would not directly affect local finances or operations.

**Small Business Effect:** Potential minimal.

---

Analysis

**Current Law:** All motor vehicle insurance policies issued, sold, or delivered in the State are required to include coverage for damages and injuries caused by other uninsured vehicles. "Uninsured vehicles" are defined as any vehicles for which the sum of the limits of liability under all valid and collectible liability insurance policies, bonds, and securities applicable to bodily injury or death • is less than the minimum amount of coverage required by law; or • has been reduced by payment to other persons for claims arising from the same occurrence to an amount less than the required minimum.

If an injured person receives a written offer from a motor vehicle insurance liability insurer to settle a claim for bodily injury or death, and the amount of the settlement offer would exhaust the bodily injury or death limits of the applicable liability insurance policies, the injured person is required to send a copy of the liability insurer's written settlement offer to any insurer that provides uninsured motorist coverage for the bodily injury or death. Within 60 days after receipt, the uninsured motorist insurer is required to send written consent to or refusal of acceptance of the settlement offer to the injured person. If the uninsured motorist insurer refuses consent, it must pay to the injured person the amount of the settlement offer, but such payment preserves the uninsured motorist insurer's subrogation rights against the liability insurer and its insured.

**Background:** In an applicable hypothetical situation, innocent drivers A and B are struck and injured by drunk driver D. Driver A has injuries amounting to \$295,000, and driver B has injuries amounting to \$40,000. Driver D has motor vehicle liability insurance coverage, but the limit of coverage is \$300,000. Driver D's insurer pays \$295,000 to driver A, leaving only \$5,000 left to offer as settlement to driver B. Driver B must notify the insurer that provides him with uninsured motorist coverage of this settlement offer, and the insurer must either accept the offer or reject it and pay driver B the same amount. If driver B's insurer rejects the settlement offer and pays him, it may seek to recover the amount in an action against driver D and driver D's insurer. The bill states that if driver B's insurer consents to or fails to respond to the settlement offer, such consent or failure to respond is not a waiver of any defense that driver B's insurer could assert in an action against driver D or driver D's insurer.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 902 (Senator Kelley) – Judicial Proceedings.

**Information Source(s):** Maryland Insurance Administration; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - March 6, 2008  
mcp/ljm

---

Analysis by: Alexander M. Rzasa

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510