

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 281 (Senator Frosh)
Judicial Proceedings

**Civil Actions - Contract Actions Against Maryland Automobile Insurance Fund -
Limitation on Actions**

This bill extends the statute of limitations for a claim against the Maryland Automobile Insurance Fund (MAIF) arising out of an insurance policy issued by it. The claim must be made three years from the later of the date on which the claim arose or the completion of the contract that gives rise to the claim.

Fiscal Summary

State Effect: The bill does not affect State governmental operations or finances.

MAIF Effect: Potentially significant increase in nonbudgeted expenditures if the bill results in additional claims against MAIF. The extent to which the bill may result in more claims against MAIF is unknown, but MAIF advises that such claims are exceedingly rare. No impact on revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: A claim based on a written contract entered into by a State official or employee acting within his or her scope of authority is barred unless the claimant files suit within one year after the later of the date on which the claim arose or the completion of the contract that gives rise to the claim.

Unless otherwise provided by State law, the State, its officers, and its units may not raise the defense of sovereign immunity in a contract action, in a court of the State, based on a written contract that an official or employee executed for the State or one of its units while the official or employee was acting within the scope of his or her authority.

Background: Created by the General Assembly in 1972, MAIF provides automobile liability insurance to residents of the State who are unable to obtain policies in the private insurance market. In other states, private insurance companies share in insuring those unable to obtain insurance (known as the residual market) through an assigned risk plan in their respective state.

MAIF must issue a policy for motor vehicle liability insurance if an applicant pays a premium and:

- owns a covered vehicle registered with the Motor Vehicle Administration (MVA), has a license issued by MVA to drive a covered vehicle, or is a lessee under a “lease not intended as security” as defined by Maryland law;
- does not owe to MAIF (1) an unpaid premium with respect to a policy that has expired or been canceled; or (2) a claim payment obtained by fraud;
- has made at least two good faith efforts to obtain a policy from two separate members of the Industry Automobile Insurance Association or has had a policy canceled or nonrenewed by an association member for a reason other than nonpayment; and
- meets specified residency requirements.

MAIF may not issue a policy if a person does not meet these requirements, including applicants who either lease a private passenger vehicle to an individual who does not meet the residency requirements or garages the vehicle principally outside the State. There are specified exceptions for armed forces members on active duty and students.

Generally, a civil action, including a contract action, must be filed within three years from the date it accrues.

This bill responds to the decision of the Court of Special Appeals in *Daughton v. MAIF*, 198 Md. App. 486 (2011), in which the court held that (1) MAIF is an agency or instrumentality of the State for purposes of sovereign immunity when it acts in its role as an insurance provider; and (2) the one-year filing deadline in § 12-202 of the State Government Article is not a mere statute of limitations but sets forth a condition to the

action itself. Accordingly, the court held that the claimant's action against MAIF for breach of contract and declaratory judgment for failure to pay her personal injury protection (PIP) claim within 30 days and to pay interest on the late payment, as statutorily required, was barred because she did not file it within one year after MAIF paid her PIP benefits more than 30 days after she submitted her claim.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Insurance Administration, Judiciary (Administrative Office of the Courts), Maryland Automobile Insurance Fund, Department of Legislative Services

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