

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 531

(Senator Middleton)

Finance

Economic Matters

Property and Casualty Insurance - Underwriting Period - Discovery of Material
Risk Factor

This bill requires an insurer that discovers a material risk factor during the 45-day underwriting period to recalculate the policy or binder premium based on the material risk factor if the risk continues to meet the underwriting standards of the insurer in accordance with the insurer's rates and supplementary rating information filed with the Insurance Commissioner.

The bill takes effect October 1, 2013, and applies to all policies and contracts of personal insurance, commercial property insurance, and commercial liability insurance issued, delivered, or renewed in the State on or after that date.

Fiscal Summary

State Effect: The bill's changes can be handled with existing budgeted resources. However, if the number of complaints received by the Maryland Insurance Administration (MIA) increases significantly, it may be necessary to hire additional personnel. No impact on revenues.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill defines "material risk factor" as a risk factor that (1) was incorrectly recorded or not disclosed by the insured in an application for insurance;

(2) was in existence on the date of the application; and (3) modifies the premium charged on the policy or binder in accordance with the rates and supplementary rating information filed by the insurer under Title 11, Subtitle 3 of the Insurance Article.

“Material risk factor” does not include information that constitutes a material misrepresentation or a change initiated by an insured, including any request by the insured that results in a change in coverage, deductible, or other change to a policy.

The bill requires an insurer that recalculates a risk based on the discovery of a material risk factor to provide written notice, on a form approved by the Commissioner, informing the insured of (1) the amount of the recalculated premium; (2) the reason for the increase or reduction in the premium; and (3) the insured’s right to terminate the policy. An insurer must also provide written notice of its ability to recalculate the premium from the effective date of the policy during the underwriting period.

The notice requirements for a premium increase for a policy of private passenger motor vehicle liability insurance do not apply to any increase in premium – due to discovery and recalculation of a material risk factor – made by an insurer during the 45-day underwriting period.

Current Law/Background: Generally, an insurer of a private passenger motor vehicle liability insurance policy must send written notice of a premium increase to an insured’s last known address by certificate of mail at least 45 days before the effective date of the increase.

A binder or policy is subject to a 45-day underwriting period beginning on the effective date of coverage. Binders are a written or oral acknowledgment that an insurance applicant has accepted an insurer’s offer to purchase insurance coverage. During this underwriting period, an insurer may cancel a binder or policy if the risk does not meet the underwriting standards of the insurer. An insurer must provide notice of this ability either at the time of application or when a binder or policy is issued.

In 2006, MIA released a bulletin to address the discovery of a previously unknown risk factor during the 45-day underwriting period. MIA advised that, if the carrier discovers the risk factor and still determines that an insured is eligible for coverage but not on the terms previously quoted, the carrier should cancel the binder or policy in accordance with this section and offer to re-write the insurance on the new terms. This bill is intended to eliminate the need to cancel the insurance and to instead authorize the insurer to simply recalculate the premium.

A notice of cancellation must be in writing, be sent by certificate of mail to the named insured’s last known address, and be mailed at least 15 days before the cancellation’s effective date. The notice must also clearly and specifically state the insurer’s actual

reason for the cancellation. If the cancellation is for nonpayment of premium, the notice must be sent at least 10 days before the cancellation's effective date and state the insurer's intent to cancel due to nonpayment.

If a binder or other contract is for temporary insurance, the binder or other contract may be made orally or in writing and, unless superseded by the clear and express terms of the binder, is considered to include all the policy's usual terms and the applicable endorsements designated in the binder.

The bill is in response to *Insurance Commissioner for State v. State Farm Fire & Casualty Company*, No. 41, (September Term 2010) a recent Maryland Court of Appeals decision. In *State Farm*, the court ruled that an insurer is not required to cancel a binder or policy when an underwriting investigation reveals that the risk does not adhere to the insurer's underwriting standards. The court further ruled that the standard requirements for an insurer of a private passenger motor vehicle liability insurance policy to provide notice of a premium increase do not apply to binders.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Insurance Administration, Maryland Court of Appeals, www.nationwide.com, Department of Legislative Services

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