

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 803
Finance

(Senator Klausmeier)

**Motor Vehicle Liability Insurance - Personal Injury Protection and Uninsured
Motorist Coverages - Limitation**

This bill authorizes a motor vehicle insurer, in an action for uninsured or underinsured motorist coverage arising out of the same accident or occurrence as an action for personal injury protection (PIP) coverage, to offset benefit payments paid under PIP coverage against benefit payments paid under uninsured or underinsured motorist coverage if damages are incurred for the same elements of loss. The bill's provisions may not be construed to provide less than full indemnification to an insured.

Fiscal Summary

State Effect: Minimal special fund revenue increase for the Maryland Insurance Administration (MIA) from the \$125 rate and form filing fee in FY 2014. Review of filings can be handled with existing MIA budgeted resources.

Maryland Automobile Insurance Fund Effect (MAIF): Nonbudgeted expenditures decrease by approximately \$499,500 in FY 2014 and \$666,000 in subsequent years due to the ability of MAIF to offset PIP coverage benefit payments against benefit payments paid under uninsured or underinsured motorist coverage. No impact on nonbudgeted revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Maryland law requires an owner of a motor vehicle that is required to be registered in the State to maintain insurance for the vehicle during the registration period. The Motor Vehicle Administration (MVA) may not issue or transfer the registration of a motor vehicle unless the owner or prospective owner of the vehicle furnishes evidence satisfactory to MVA that the required insurance is in effect. Maryland drivers are not required to carry proof of insurance. The required insurance, specified under Title 17, Subtitle 1 of the Transportation Article and Title 19, Subtitle 5 of the Insurance Article, must provide for at least:

- the payment of claims for bodily injury or death arising from an accident of up to \$30,000 for any one person and up to \$60,000 for any two or more persons, in addition to interest and costs (liability coverage) (these limits were increased from \$20,000 and \$40,000, respectively under Chapter 441 of 2010 (HB 825), effective January 1, 2011);
- the payment of claims for property of others damaged or destroyed in an accident of up to \$15,000, in addition to interest and costs;
- unless waived, PIP coverage (minimum coverage for medical, hospital, and disability benefits up to \$2,500 for payment of expenses that arise from the accident, lost income, and reimbursement for essential services for care and maintenance of the family or family household); and
- uninsured motorist coverage (unless waived, the amount equals the amount of liability coverage provided under the policy; if waived, the amount equals the minimum required insurance for liability coverage).

Uninsured Motorist Coverage: Uninsured motorist coverage pays for injury and damages caused by an uninsured (or underinsured) or hit-and-run driver. This coverage reimburses the policyholder, members of the policyholder's family, or designated driver for an accident caused by the uninsured motorist. This coverage generally pays for medical bills and wage loss; pain, suffering, and disfigurement; emotional distress; and loss of future earning capacity. Uninsured motorist coverage may also include property damage as long as the insurer's coverage is at least equal to the required coverage under MAIF's Uninsured Division and minimum coverage levels specified in Title 17 of the Transportation Article.

PIP Coverage: Unless waived by the first named insured, an insurer that issues policies of motor vehicle insurance must include PIP coverage. PIP coverage is required to cover

medical, hospital, and disability benefits for the individuals injured in a motor vehicle accident. The minimum medical, hospital, and disability benefit under PIP is \$2,500 for payment of all reasonable and necessary expenses that arise from a motor vehicle accident and are incurred within three years after the accident for specified services and lost income. PIP coverage is payable regardless of who is at fault in an accident. If specified requirements are met, a primary insured may waive PIP coverage for himself or herself. A waiver of PIP coverage by the primary insured is binding on each named insured, each listed driver, and each member of the primary insured's family age 16 or older who resides in the household.

Background: Automobile liability insurance coverage is mandatory in 48 states and the District of Columbia. Only New Hampshire and Wisconsin do not have compulsory automobile insurance liability laws; however, their respective laws require financial responsibility (*i.e.*, enough assets to pay claims against the motorist if the motorist causes an accident and does not have automobile insurance) to operate a vehicle. Further, uninsured motorist coverage is not obligatory in every state; therefore, some insured drivers are not covered when they are hit by an uninsured driver. However, as described above, Maryland law requires drivers to purchase uninsured motorist coverage.

A recent West Virginia Supreme Court of Appeals case held that a "non-duplication" of benefits provision in an uninsured motorist policy which permits an insurer to offset benefits paid under medical payments coverage does not violate West Virginia statute that requires that "no sums payable as a result of underinsured motorists' coverage shall be reduced by payments made under the insured's policy or any other policy." In other words, the nonduplication provision reduced the amount of damages and not the amount of coverage. To permit otherwise would allow for double recovery. (*State Farm Mut. Auto Ins. Co. v. Schatken*, Sept. Term 2012, No. 11-1142)

MAIF Effect: Nonbudgeted expenditures decrease by approximately \$499,500 in fiscal 2014 (accounting for the bill's October 1, 2013 effective date) and \$666,000 in subsequent years to account for MAIF's ability offset PIP coverage benefit payments against benefit payments paid under uninsured or underinsured motorist coverage. Over the past three years MAIF has paid \$22.2 million in PIP benefits. MAIF advises that 10% of these payments were made on claims that had an associated uninsured motorist loss. Further, 90% of the PIP payments with an associated uninsured motorist loss could have been used to offset the uninsured motorist loss payments. Thus, under the bill, the average annual reduction in expenditures based on the past three years is \$666,000.

Additional Information

Prior Introductions: None.

Cross File: HB 764 (Delegate Jameson) - Economic Matters.

Information Source(s): Maryland Insurance Administration, Maryland Automobile Insurance Fund, Maryland Department of Transportation, West Virginia Supreme Court of Appeals, Department of Legislative Services

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