

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

House Bill 954 (Delegate Barkley)
 Economic Matters

Property and Casualty Insurance - Vessel Liability Coverage - Required

This bill requires a vessel to have a minimum amount of security if the vessel meets specified requirements. A violator of the bill’s provision requiring vessel liability coverage is guilty of a misdemeanor and, on conviction, punishable by a fine up to \$1,000 for a first violation and a fine up to \$5,000 and/or imprisonment for up to one year for a subsequent violation that occurs within two years of a prior violation. The bill authorizes the Insurance Commissioner and the Department of Natural Resources (DNR) to adopt regulations to carry out the bill’s provisions.

Fiscal Summary

State Effect: DNR special fund expenditures increase by \$91,800 in FY 2014 for a full-time position to enter and verify a vessel’s insurance information and reprogramming of the boating database. Future year expenditures reflect annualization, elimination of one-time-only costs, and inflation. DNR special fund revenues are not impacted. Maryland Insurance Administration (MIA) special fund revenues increase in FY 2014 and subsequent years from the \$125 rate and form filing fee. MIA advises the bill’s requirements can be handled within existing budgeted resources. General fund revenues increase – potentially significantly – in FY 2014 and subsequent years due to the imposition of a 2% premium tax on additional vessel insurance policies sold in the State. General fund revenues and expenditures may increase minimally due to the bill’s penalty provision.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
GF Revenue	-	-	-	-	-
SF Revenue	-	-	-	-	-
SF Expenditure	\$91,800	\$51,700	\$54,100	\$56,700	\$59,300
Net Effect	(\$91,800)	(\$51,700)	(\$54,100)	(\$56,700)	(\$59,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential minimal increase in expenditures due to the bill's penalty provision.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill requires a vessel to have a minimum amount of security if the vessel is principally operated in the waters of the State and (1) exceeds 16 feet in length and is not a kayak or canoe; (2) has propelling machinery exceeding 7.5 horsepower, whether or not the machinery is the principal source of propulsion for the vessel; or (3) is a personal watercraft.

The minimum amount of security must provide for at least (1) the payment of claims for bodily injury or death arising from accident of up to \$50,000 for any one person and up to \$100,000 for any two or more persons, in addition to interest and costs; (2) the payment of claims for property of others damaged or destroyed in an accident of up to \$45,000, in addition to interest and costs; (3) unless waived, the payment of medical, hospital, and disability benefits up to \$2,500; and (4) specified amounts for uninsured vessel coverage.

Generally, the acceptable form of security is a policy of vessel liability insurance written by an insurer authorized to write the policy by the State. However, DNR may accept another form of security, including self-insurance, if DNR determines that the above minimum coverage is met.

Personal Injury Protection (PIP) Benefits: Unless waived, the bill requires each insurer that issues, sells, or delivers a vessel liability insurance policy in the State to provide coverage for the medical, hospital, and disability benefits for each of the following individuals injured in any vessel accident (1) generally, the first named insured and any family member of the first named insured who resides with the first named insured; (2) generally, any other individual using the insured vessel with the express or implied permission of the insured; (3) an individual occupying the insured vessel as a guest or passenger; and (4) an individual who is in, on, or alighting from a vessel that is operated by animal or muscular power.

The minimum medical, hospital, and disability benefits provided by an insurer must include up to \$2,500 for:

- payment of all reasonable and necessary expenses that arise from a vessel accident and that are incurred within three years after the accident for necessary

prosthetic devices and ambulance, dental, funeral, hospital, medical, professional nursing, surgical, and X-ray services;

- if the injured individual was earning or producing income when the accident occurred, payment of benefits for 85% of income lost within three years after, and resulting from, a vessel accident; and
- reimbursements of reasonable and necessary expenses incurred within three years after a vessel accident for essential services ordinarily performed for the care and maintenance of the family or family household by an individual who was injured in the accident and not earning or producing income when the accident occurred.

The aggregate benefits payable to an individual may not exceed the maximum limits stated in the policy.

The bill authorizes an insurer, as a condition of providing loss of income benefits, to require the injured individual to furnish the insurer with reasonable medical proof of the injury causing loss of income.

An insurer may exclude from coverage an individual who either intentionally causes a vessel accident or is injured while operating a stolen vessel or committing a felony. An insurer may also exclude the named insured or a family member of the named insured (who resides in the named insured's household) for an injury that occurs while that individual is occupying a specified uninsured vessel.

The bill authorizes a first named insured to make an affirmative written waiver of the aforementioned benefits. The bill imposes specified notice requirements that an insurer must meet before a waiver by a first named insured is effective. Such waiver constitutes a waiver for the first named insured's policy, any other vessel liability insurance policy issued in the State, or another form of security used in place of a policy but approved by DNR. The waiver is binding on each named insured, each listed operator, and each member of the first named insured's family that is age 16 or older and residing in the first named insured's household. Each listed operator and specified family member may recover benefits if specified requirements are met.

The bill prohibits an insurer from refusing to underwrite a person because the person refuses to waive the coverage. An insurer that violates the bill's provisions relating to the waiver of medical, hospital, and disability benefits is subject to the Insurance Commissioner's enforcement authority.

The aforementioned benefits are payable without regard to (1) the fault or nonfault of the named insured or the recipient of benefits in causing or contributing to the vessel accident and (2) any collateral source of medical, hospital, or wage continuation benefits. The bill

authorizes an insurer or insurers to coordinate, subject to a decision by the named insured, to prevent duplication of benefits if an insured has both coverage with medical, hospital, and disability benefits as well a collateral source of medical, hospital, or wage continuation benefits, subject to the appropriation reductions in premiums for one or both of the policies approved by the Commissioner.

The bill prohibits an insurer from imposing a surcharge or retiering a policy containing the benefits for a claim or payment made under the coverage. At the time the policy is issued, the insurer must provide the policyholder with written notice of this prohibition. An insurer that provides the aforementioned benefits does not have a right of subrogation and does not have a claim against any other person or insurer to recover any benefits paid because of the alleged fault of the other person in causing or contributing to a vessel accident.

The bill requires that an insurer make all payments of the medical, hospital, and disability benefits periodically as claims for the benefits arise and within 30 days after the insurer receives satisfactory proof of claim. The insurer may place a statute of limitations provision in the policy. When an insurer receives written notice from an insured that a vessel accident has occurred, the insurer must notify the insured by mail of the latest date on which a claim for the benefits may be filed. The insurer is not required to send any notice informing the insured of any first-party claim for benefits other than the aforementioned benefits. A late payment of benefits bears simple interest at the rate of 1.5% per month.

Uninsured Vessel: The bill defines “uninsured vessel” as a vessel (1) the ownership, maintenance, or use of which has resulted in the bodily injury or death of an insured and (2) for which the sum of the liability limits under all applicable policies is a specified amount.

Each vessel liability insurance policy issued, sold, or delivered in the State after January 1, 2014, must contain coverage for damages, subject to the policy limits, that:

- the insured is entitled to recover from the owner or operator of an uninsured vessel because of bodily injuries sustained in a vessel accident arising out of the ownership, maintenance, or use of the uninsured vessel; and
- a surviving relative of the insured is entitled to recover from the owner or operator of an uninsured vessel because the insured died as a result of a vessel accident arising out of the ownership, maintenance, or use of the uninsured vessel.

The bill requires that the uninsured vessel coverage be in the form and subject to the conditions that the Commissioner approves. Unless waived, the uninsured vessel

coverage contained in a vessel liability insurance policy must equal the amount of liability coverage provided under the policy. Regardless of a waiver, the uninsured vessel coverage may never exceed the amount of liability coverage.

If an injury occurs when the named insured or a family member is occupying an uninsured vessel owned by the named insured or an immediately family member of the named insured (who resides in the named insured's household), an insurer may exclude from the uninsured vessel coverage benefits for that individual.

The bill sets the liability limit as the amount of the uninsured vessel coverage less the amount paid to the insured that exhausts any applicable liability insurance policies, bonds, and securities, on behalf of any person that may be held liable for the bodily injuries or death of the insured. A policy that, as its primary purpose, provides coverage in excess of other valid and collectible insurance or qualified self-insurance may include the uninsured vessel coverage. The required uninsured vessel coverage is primary to any other right to recovery.

The bill stipulates that a provision in a vessel liability insurance policy that covers damage by an uninsured vessel also covers damage by a vessel insured by a liability insurer that is insolvent, or otherwise unable to pay. The bill prohibits a provision in a policy that requires a dispute between involving damages caused by an uninsured vehicle to be submitted to binding arbitration.

A final judgment in an action for personal injury protection coverage under a vessel liability insurance policy does not preclude a subsequent action for uninsured or underinsured coverage arising out of the same vessel accident or occurrence.

If liability coverage under a policy or binder of vessel liability insurance exceeds the required coverage amount, a first named insured may make an affirmative written waiver of having uninsured vessel coverage in the same amount as the liability coverage. The bill imposes specified notice requirements that an insurer must meet before a waiver by a first named insured is effective. If no waiver is made, the bill requires the insurer to provide uninsured vessel coverage in an amount equal to the amount of the liability coverage provided under the policy or binder. A waiver by a person that is insured continuously by an insurer is effective until the waiver is withdrawn in writing.

The bill prohibits an insurer from refusing to underwrite a person because the person refuses to waive the excess coverage. An insurer that violates the bill's provisions relating to the waiver of the excess coverage is subject to the Insurance Commissioner's enforcement authority.

Settlement Offer: If an injured person receives a written offer from a vessel liability insurer or the insurer's authorized agent to settle a claim for bodily injury or death and the amount of the settlement offer, in combination with any other settlements arising out of the same occurrence, would exhaust the bodily injury or death limits of the applicable liability insurance policies, bonds, and securities, the bill requires the injured person to send by certified mail, to any insurer that provides uninsured vessel coverage for the bodily injury or death, a copy of the liability insurer's written settlement offer.

The insurer must, within 60 days of receipt of the copy of the offer, send to the injured person a written acceptance or refusal of the offer. If the insurer refuses to accept, the insurer must pay the injured person within 30 days the amount of the settlement offer. This payment preserves the uninsured vessel insurer's subrogation rights against the liability insurer and insured. Additionally, the receipt by the injured person of the payment constitutes the assignment, up to the payment amount, of any recovery on behalf of the injured person that is subsequently paid from the applicable liability insurance policies, bonds, and securities.

The bill authorizes the injured person to accept the liability insurer's settlement offer and release in favor of the liability insurer and its insured without prejudice to any claim the injured person may have against the uninsured liability insurer (1) on receipt of written consent to acceptance of the settlement offer and to the execution of releases or (2) if the uninsured vessel insurer has not met the aforementioned timeline requirements.

Written consent by an uninsured vessel insurer to acceptance of a settlement offer does not limit the right of the uninsured vessel insurer to raise any issue relating to liability or damages in an action against the uninsured vessel insurer and does not constitute an admission concerning any issue raised in an action against the uninsured vessel insurer.

Collision Coverage: The bill requires that each insurer that issues, sells, or delivers a vessel insurance policy in the State offer collision coverage for damage to insured vessels subject to deductibles of \$50 to \$250 in \$50 increments. Collision coverage must provide insurance, without regard to fault, against accidental property damage to the insured vessel caused by physical contact of the insured vessel with another vessel or other object by upset of the insured vessel, if the vessel accident occurs in a state, Canada, or Mexico.

A policy that includes collision coverage must also include vessels that are rented for a period of 30 days or less. The insurer must provide an insured with specified notice of this requirement. A policy that includes comprehensive coverage must include any replacement vessels.

The bill prohibits an insurer from denying coverage to an insured for collision damage to a rental vessel because the vessel accident involved an uninsured vessel or the identity of the vessel causing the damage cannot be ascertained. The bill authorizes an insurer to provide to the insured coverage for damages incurred by the insured as a result of the loss of use of a rental vessel that sustains collision damage while rented by the insured.

Vessels Equipped for Individuals with a Disability: The bill sets a daily reimbursement rate of up to \$100, for a maximum of \$1,500 per policy period, to allow an insured to rent a vessel that is equipped similarly to a covered vessel that is specially equipped for a disabled individual.

Vessels with More Than One Insured: If an insurer is authorized to cancel, nonrenew, or increase (or refuse to issue) the premiums on a policy of vessel liability insurance because of the claim experience or operating record of one or more but fewer than all of the individuals insured under the policy, the insurer must still offer to continue or renew (or issue) the insurance. However, the insurer must exclude all coverage when a vessel is operated by the specifically named excluded individual or individuals whose claim experience or operating record could have justified the cancellation, nonrenewal, or premium increase.

The premiums charged on a policy that excludes a named operator or operators may not reflect the claim experience or operating record of the excluded named operator or operators.

Miscellaneous Provisions: The bill does not prohibit a nonprofit health service plan or an authorized insurer, with the approval of the Commissioner, from providing medical, hospital, and disability benefits in connection with vessel accidents. The bill prohibits the recovery of the aforementioned benefits from more than one vessel liability insurance policy or insurer on a duplicative or supplemental basis.

The bill determines to which individuals an insurer of a vessel with the coverage described in the bill may pay. The bill also determines the situations in which these benefits may be reduced.

The bill requires that authorized insurers that issue, sell, or deliver vessel liability or physical damage insurance policies in the State must arbitrate and settle all vessel physical damage claims between the authorized insurers in accordance with a vessel subrogation program sponsored by the intercompany arbitration organization chosen by the authorized insurer that requests the arbitration.

Current Law: Vessel owners are not required to have vessel liability insurance coverage.

However, 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 the Maryland Automobile Insurance Fund'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.

State Fiscal Effect: DNR special fund expenditures increase by \$91,816 in fiscal 2014. This estimate reflects the cost of hiring a licensing and registration technician and reprogramming of DNR’s boating database. DNR approximates that 160,000 vessels are affected by the bill. As such, the technician is needed to input and verify the initial reporting of insurance information, assumed to be offered at the time of biennial decal renewal, in fiscal 2014 and 2015. In subsequent years, the technician will input any changes to the information and continue to verify its accuracy. Further, DNR will contract the reprogramming costs to an outside vendor. This estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$34,970
Reprogramming Costs	50,000
Other Operating Expenses	<u>6,846</u>
Total FY 2014 DNR State Expenditures	\$91,816

Future year expenditures reflect a full salary and employee turnover as well as annual increases in ongoing operating expenses.

MIA special fund revenues increase in fiscal 2014 and subsequent years from the \$125 rate and form filing fee. The number of filings at MIA is unknown. MIA advises that the bill’s requirements can be handled with existing budgeted resources.

General fund revenues increase – potentially significantly – in fiscal 2014 and subsequent years due to the imposition of a 2% premium tax on additional vessel insurance policies sold in the State. The amount of increase depends on the number of vessels currently uninsured, the number of vessel insurance policies that are altered to meet the bill’s requirements, and the amount of premiums an insurer charges for the bill’s required minimum security. The amount of increase cannot be reliably estimated; however, given the number of affected vessels, it is possible that the increase is significant.

Small Business Effect: The bill may have a potentially meaningful beneficial impact on insurers that issue a vessel liability insurance policy, some of which may be small businesses. The number of uninsured vessels of the approximately 160,000 affected vehicles is unknown; however, to the extent that the owners of these uninsured vessels purchase vessel liability coverage or owners of insured vessels need to increase coverage amounts, the revenues of an insurer that issues the applicable policies increase.

Additional Information

Prior Introductions: None.

Cross File: SB 763 (Senators Ramirez and Rosapepe) - Finance and Education, Health, and Environmental Affairs.

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