

Department of Legislative Services  
Maryland General Assembly  
2014 Session

FISCAL AND POLICY NOTE

House Bill 1146  
Economic Matters

(Delegate Barkley)

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Private Passenger Motor Vehicle Liability Insurance - Underinsured Motorist  
Excess Coverage

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This bill establishes underinsured motorist excess coverage in the State to provide protection for insured persons who are legally entitled to recover damages from the owner or operator of an underinsured motor vehicle.

The bill applies to each policy of private passenger motor vehicle insurance issued, sold, or delivered in the State on or after October 1, 2014.

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Fiscal Summary

**State Effect:** Minimal increase in Maryland Insurance Administration special fund revenues in FY 2015 due to \$125 rate and form filings. Review of the filings can be handled with existing resources. General fund revenues increase due to the 2% tax collected on all premiums in the State to the extent that policyholders pay additional premiums by choosing to purchase underinsured motorist excess coverage; however, the number of policyholders that will purchase this coverage and any corresponding premium tax revenues cannot be reliably estimated at this time.

**Maryland Automobile Insurance Fund (MAIF) Effect:** Nonbudgeted revenues increase in FY 2015 and subsequent years to the extent that MAIF policyholders pay additional premiums by choosing to purchase underinsured motorist excess coverage; however, the number of MAIF policyholders that will purchase this coverage, and any corresponding premium revenues cannot be reliably estimated at this time. Expenditures increase correspondingly for claim payments due to the additional liability for providing underinsured motorist excess coverage.

**Local Effect:** The bill does not materially affect local governmental operations or finances.

**Small Business Effect:** Minimal.

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## Analysis

### Bill Summary:

*Underinsured Motorist Excess Coverage Established:* The bill defines an “underinsured motor vehicle” as a motor vehicle that is liable for bodily injury or the death of an insured and for which the sum of the payments received by the insured from the owner or operator of the vehicle is less than the fair, just, and reasonable damages sustained by the insured.

Each insurer that offers vehicle liability coverage in the State must offer underinsured motorist excess coverage with limits that at least equal the securities required by State law. Underinsured motorist excess coverage must require an additional premium, and an insured may purchase this type of insurance *instead* of the uninsured motorist coverage required under Title 17 of the Transportation Article. Underinsured motorist excess coverage must provide protection for insured persons who are legally entitled to recover damages from the owner or operator of an underinsured motor vehicle.

An insurer is obligated to pay, up to the limits of the policy’s coverage, after the limits of liability for all bodily injury bonds and insurance policies applicable at the time of the accident have been exhausted by payment or settlement. Underinsured motorist excess coverage may not be reduced because of any payment by or on behalf of the party at fault or by any third party.

Unless an insured makes a change in writing, underinsured motorist excess coverage applies to all subsequent renewals of coverage and to all other policies that extend, change, supersede, or replace an existing policy of private passenger motor vehicle insurance issued to the insured.

*Waiver of Coverage:* Underinsured motorist excess coverage may be waived if an insured’s liability coverage (under his or her private passenger motor vehicle liability insurance) exceeds the amount required by State law or if the insurer does not offer underinsured motorist excess coverage. The waiver must be done on a written form that is approved by the Commissioner and include specified information about the nature, extent, benefit, and cost of the coverage being waived. An insured must complete a separate waiver for underinsured motorist excess coverage from that for uninsured

motorist coverage. However, the resulting total coverage after either waiver must conform to the securities required for motor vehicle insurance by State law.

*Duplication of Benefits:* Except with regard to underinsured motorist excess coverage, a person may not recover benefits related to the required securities for motor vehicle liability insurance from more than one motor vehicle liability insurance policy or insurer on a duplicative or supplemental basis.

### **Current Law:**

*Required Securities:* 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 security required must provide 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;
- for property of others damaged or destroyed in an accident of up to \$15,000;
- unless waived, for personal injury protection of \$2,500 per person; and
- for 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 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.

If an insured's liability coverage under his or her private passenger motor vehicle liability insurance exceeds the amount required by State law, the insured may choose to partially waive the required uninsured motorist coverage; this must be done on a written form that is approved by the Commissioner and include specified information about the nature, extent, benefit, and cost of the level of uninsured motorist coverage being waived. The waiver allows any uninsured motorist coverage to meet the minimum required insurance for liability coverage; otherwise, uninsured motorist coverage must equal the liability coverage of the policy.

*Duplication of Benefits:* A person may not recover benefits related to the required securities for motor vehicle liability insurance from more than one motor vehicle liability insurance policy or insurer on a duplicative or supplemental basis.

**Background:** Automobile liability insurance coverage is mandatory in 49 states and the District of Columbia. Only New Hampshire does not have compulsory automobile insurance liability laws; however, its 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.

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 Fiscal Effect:** Nonbudgeted revenues increase in fiscal 2015 and subsequent years to the extent that MAIF policyholders choose to purchase underinsured motorist excess coverage instead of uninsured motorist coverage as a result of the bill. Because the bill requires insurers who provide this coverage to charge an additional premium, revenues increase based on the number of insureds who choose to purchase this coverage. MAIF reports that policyholders pay, on average, \$134 per year for uninsured motorist coverage; MAIF also reports that underinsured motorist excess coverage will be slightly more expensive than uninsured motorist coverage to account for additional liabilities and the cost will most likely range between \$110 and \$150 depending on jurisdiction. MAIF expenditures increase correspondingly based on the number of policyholders who purchase underinsured motorist excess coverage due to the additional liabilities. Any expenditure increase depends on the number of MAIF policyholders who purchase underinsured motorist excess coverage and are also involved in accidents and collisions that result in personal injury and include an underinsured motorist. The number of MAIF policyholders that will experience this type of accident or collision, and any corresponding expenditures, cannot be reliably estimated at this time.

*For illustrative purposes*, if it is assumed that underinsured motorist excess coverage will cost an average of \$140 per year and 10% of MAIF policyholders (approximately 6,000) purchase underinsured motorist excess coverage rather than uninsured motorist coverage, MAIF would receive \$36,000 in increased premium revenue.

**State Effect:** General fund revenues increase due to the 2% tax collected on all premiums in the State to the extent that policyholders pay additional premiums by choosing to purchase underinsured motorist excess coverage instead of uninsured motorist coverage; however, the number of policyholders that will purchase this coverage, and any corresponding premium tax revenues, cannot be reliably estimated at this time.

*For illustrative purposes,* using the above assumption that MAIF will receive \$36,000 in additional premium revenue, general fund revenues increase by \$720 due to policyholders purchasing underinsured motorist excess coverage. Because MAIF only captures 2% of all motor vehicle insurance policies in the State, general fund revenues may increase minimally based on the insurance choices of other motor vehicle insurance policyholders in the State.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 844 (Senator Astle) - Finance.

**Information Source(s):** Maryland Insurance Administration, Maryland Automobile Insurance Fund, Maryland Department of Transportation, Department of Legislative Services

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