

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader - Revised

Senate Bill 742
Finance

(Senator Zirkin)

Maryland Automobile Insurance Fund - Notice of Claim for Damages - Repeal

This bill repeals the requirement for a particular notice to be filed with the Maryland Automobile Insurance Fund (MAIF), after an accident and within a specified timeframe, before a person may apply or sue for payment from MAIF's Uninsured Division. Thus, in conjunction with removing the requirement to file *notice* of a claim, the bill also eliminates the timeframe within which a claim may be filed.

The bill applies prospectively and may not be applied or interpreted to have any effect on or application to any notice of a claim for damages filed with MAIF based on an accident that occurred before the bill's October 1, 2017 effective date.

Fiscal Summary

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

Maryland Automobile Insurance Fund Effect: MAIF's nonbudgeted expenditures increase, potentially significantly, as discussed below. Nonbudgeted revenues are also affected due to the likelihood of recovering less money from at-fault parties.

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

Small Business Effect: Minimal.

Analysis

Current Law/Background:

Required Security

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 or exempt by Chapters 425 and 426 of 2016, 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).

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.*, sufficient 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.

Maryland Automobile Insurance Fund – Insured Division

Created by the General Assembly in 1972, MAIF is an independent, nonbudgeted State agency. Through its Insured Division, MAIF provides automobile liability insurance to residents of the State who are unable to obtain policies in the private insurance market. MAIF is not in direct competition with the private insurance industry. 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 states. The residual market for personal automobile insurance is the “market of last resort” for drivers who are unable to find coverage in the voluntary market. Maryland is the only state that has a state plan. Most states have an automobile assigned risk plan.

Maryland Automobile Insurance Fund – Uninsured Division

MAIF’s Uninsured Division is available to qualified Maryland citizens involved in accidents with an uninsured vehicle. To be eligible, Maryland residents must have no other

form of collectible insurance. For example, a pedestrian, struck by an uninsured vehicle, who does not own a vehicle and has no other collectible household coverage would be eligible to collect from the Uninsured Division. The Uninsured Division is funded through a portion of the uninsured motorist penalty fines issued by the Motor Vehicle Administration (MVA). The uninsured motorist penalty fines are distributed to the Transportation Trust Fund, Maryland Department of State Police, MAIF's Uninsured Division, and the general fund based on a specified formula.

If the required security for a vehicle lapses, MVA may assess the owner of the vehicle a penalty of \$150 for each vehicle without the required security for the first 30 days. Beginning on the thirty-first day, the fine increases by a rate of \$7 for each day, but the total fine may not exceed \$2,500 annually, not including the additional misdemeanor penalty of up to \$500, which may be prepaid with a fine of \$290. *Knowingly* operating a vehicle without adequate security is a misdemeanor, subject to maximum penalties of a \$1,000 fine and/or one year imprisonment for a first offense and a \$1,000 fine and/or two years imprisonment for a subsequent offense. The violation requires a court appearance, results in the imposition of five points on the driver's record, and subjects the driver to participation in the Driver Improvement Program.

Notice Required for Uninsured Division Claims

A notice of a claim for damages must be filed with MAIF's Uninsured Division within 180 days after an accident before a person may apply or sue for payment from MAIF. The notice of a claim must contain (1) evidence that the claimant has fulfilled all requirements to file a claim; (2) evidence that the claimant is not eligible for uninsured motorist coverage benefits from an existing policy; (3) certification by the claimant's employer of all lost wages incurred; (4) evidence of medical expenses incurred and reports of treatment and consultation for injuries sustained; (5) evidence of all other damages claimed; (6) all available police or other accident reports; and (6) additional information the Executive Director of MAIF requires by regulation.

Generally, if the notice is not filed within the required timeframe, a claim or suit may not be filed or maintained; however, a suit or claim may still be filed if the claimant provides proof that the claimant:

- was physically incapable of filing the notice in the required timeframe but (1) filed the notice within 30 days after becoming physically able to do so or (2) a notice was filed on his or her behalf within a reasonable period (if the claimant did not become capable of doing so);
- filed notice within 30 days after having received notice that an insurer had disclaimed on a policy and, thus, removed or withdrew liability insurance coverage for the claim against a defendant; or

- gave the notice required within 30 days after receiving notice that the insurer of the defendant was insolvent, in a specified manner.

Maryland Automobile Insurance Fund Fiscal Effect: The bill's repeal of the notice requirement is expected to increase MAIF expenditures and reduce revenues from recoveries. A precise estimate cannot be made at this time; however, *for illustrative purposes*, MAIF advises the combined impact could total \$630,000.

- The bill removes the 180-day timeframe for a claimant to file notice; thus, MAIF's Uninsured Division is likely to receive and be required to pay additional claims each year. MAIF anticipates 20% more reported claims each year at a cost of \$190,000.
- MAIF is likely to have to spend more time and resources investigating claims because claimants no longer have to provide a notice containing the relevant information about the claim; moreover, claims filed beyond the 180-day timeframe specified under current law are likely to be more difficult to investigate. These impacts of late reporting of accidents likely add another 20% to costs (or another \$190,000).
- Loss adjustment expenses under the scenario above could add \$55,000 to the costs.
- Additionally, an increase in claims filed beyond the existing 180-day timeframe may reduce MAIF's ability to pursue recovery of costs from at-fault parties involved in accidents, resulting in lost revenues. This impact is assumed to be approximately 20% of recoveries – or \$195,000 each year.

These effects depend on the number, timing, severity, and disposition of claims that are received by MAIF's Uninsured Division in future years. However, if they are realized, it is not clear whether MAIF's Uninsured Division would have sufficient fund balance to cover its costs; MAIF advises that its revenues (including investment income and recoveries, both of which would likely be lower under the bill) have exceeded costs by approximately \$250,000 on an annual basis, allowing it to carry a fund balance. As a result of budget reconciliation legislation over the years, most of the fund balance has been depleted through transfers to the general fund. While the Uninsured Division had a balance of \$1.3 million in December 2016, the impacts above could completely eliminate any fund balance within two to three years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Insurance Administration; Maryland Automobile Insurance Fund; Department of Legislative Services

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