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Maryland General Assembly
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FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 403

(Senator Astle, *et al.*)

Finance

Economic Matters

**Private Passenger Motor Vehicle Liability Insurance - Enhanced Underinsured
Motorist Coverage**

This bill establishes enhanced underinsured motorist (EUIM) coverage in the State and makes conforming changes. The first-named insured under a private passenger motor vehicle liability insurance policy may elect to obtain EUIM coverage *instead* of the uninsured motorist coverage generally required for registered motor vehicles in the State.

The bill applies to each policy of private passenger motor vehicle insurance issued, sold, or delivered in the State on or after July 1, 2018 (but takes effect October 1, 2017).

Fiscal Summary

State Effect: Minimal increase in Maryland Insurance Administration (MIA) special fund revenues in FY 2018 due to \$125 rate and form filings. Review of the filings and development of the coverage form can be handled with existing resources. General fund revenues increase beginning in FY 2019 due to the 2% tax collected on all premiums in the State to the extent that policyholders pay additional premiums by choosing to purchase EUIM 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 2019 and subsequent years to the extent that MAIF policyholders pay additional premiums by choosing to purchase EUIM 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 EUIM coverage. Expenditures also increase by \$200,000 in FY 2018 only for one-time programming costs to update MAIF's systems.

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

Small Business Effect: Minimal.

Analysis

Bill Summary: “Underinsured motor vehicle” means a motor vehicle that has liability coverage in an amount less than, more than, or equal to the uninsured motorist coverage provided under the insured party’s motor vehicle liability insurance policy.

Establishment of Enhanced Underinsured Motorist Coverage

An insurer must offer EUIM coverage at the time of purchase of a private passenger motor vehicle liability insurance policy. The first-named insured under the policy may elect to obtain EUIM coverage *instead* of the uninsured motorist coverage generally required for registered motor vehicles in the State. An insured who obtains the EUIM coverage established by the bill under his or her private passenger motor vehicle liability insurance policy is not required to also obtain uninsured motorist coverage. After an insured obtains EUIM coverage, the coverage continues to apply through the insured’s policy renewals and any other changes to his or her policy, unless the first-named insured affirmatively makes a change to the coverage in writing. A person may recover benefits from more than one insurer under EUIM coverage on a supplemental basis, but not on a duplicative basis.

EUIM does not apply to a motor vehicle liability insurance policy under two circumstances. First, it does not apply when a first-named insured has elected not to obtain the EUIM coverage. Second, it does not apply to a policy that covers a motor vehicle that is exempt from State registration requirements because it is not driven on a highway or to a policy that is exempt from State registration requirements because the covered vehicle is a snowmobile.

Coverage Amount

EUIM coverage has to meet certain threshold requirements but may not exceed the amount of liability coverage provided under the policy. The amount of EUIM coverage equals the amount of liability coverage.

Liability Requirements, Limits, and Exclusions

Each private passenger motor vehicle liability insurance policy issued, sold, or delivered in the State to an insured who elects to obtain EUIM coverage on or after July 1, 2018, must contain coverage for damages that (1) the insured is entitled to recover from the operator of an underinsured motor vehicle and (2) a surviving relative is entitled to recover from the owner or operator of an underinsured motor vehicle because of the death of an insured. The liability limit for an insurer that provides EUIM coverage is the amount of that coverage without any reduction for 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. An insurer may exclude benefits for an insured or family member of the insured under EUIM coverage under specified circumstances.

Enhanced Underinsured Motorist Coverage Payments

If an injured person receives a written offer from a motor vehicle liability insurer or its agent to settle a claim for bodily injury or death, and the amount of the settlement offer (combined with any other settlements related to the same occurrence) would exhaust the limits of the applicable insurance policies, the injured person must send, by certified mail, a copy of the settlement offer to his or her EUIM insurer. The EUIM insurer must then consent or refuse to accept the settlement offer within 60 days after receiving notice. Even so, within 30 days after refusing to accept the settlement offer, the EUIM insurer must pay the amount of the settlement offer to the injured person. Such a payment preserves the EUIM insurer's subrogation rights against the motor vehicle liability insurer and its insured. Acceptance of the settlement offer does not limit the EUIM insurer's right to raise any issue related to liability or damages in an action against the EUIM insurer and does not constitute an admission by the uninsured motorist insurer to any issue raised in an action against the EUIM insurer.

General Provisions

The offer of EUIM coverage must be on the form that the Insurance Commissioner requires. Excess coverage insurance policies may include EUIM coverage. Any EUIM coverage is primary to any right to recovery an insured may have from MAIF's Uninsured Division. Existing protections to cover an insured in the event that an insurer becomes insolvent or otherwise unable to pay claims apply to EUIM coverage. Any provision in a private passenger motor vehicle liability insurance policy (about coverage for damages sustained by the insured as a result of the operation of an underinsured motor vehicle) that requires a dispute between the insured and the insurer to be submitted to a binding arbitration is prohibited and is of no legal effect if the policy is issued on or after July 1, 2018.

Current Law:

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 (PIP) 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).

If the first-named insured does waive PIP, the waiver (1) constitutes a waiver under the first-named insured's policy or any other motor vehicle liability insurance policy in the State and (2) is binding on each named insured, each listed driver, and each member of the first-named insured's family who is age 16 or older and resides in the first-named insured's household.

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.

Uninsured Motorist Task Force

Chapter 41 of 2014 established the Task Force to Study Methods to Reduce the Rate of Uninsured Drivers. The task force was required to study and make recommendations regarding (1) the rate of uninsured drivers in the State and other states and the ways in which the rate is calculated by the Motor Vehicle Administration (MVA) and other entities; (2) the deterrents and incentives that are used in the State and in other states, or that could be used in the State, to reduce the rate of uninsured drivers; and (3) methods to lower the cost of insurance as a way to reduce the rate of uninsured drivers and promote economic and job opportunities associated with vehicle ownership.

During the 2014 and 2015 interims, the task force worked with MAIF, MVA, MIA, and others to identify and implement many low-cost strategies to educate the public about the requirement for and benefits of automobile insurance. For example, the websites of both MVA and MIA have been updated with additional information about the State's compulsory automobile insurance laws. Furthermore, MVA is (1) modifying its online renewal web page, paper, and registration renewal notices and (2) updating the driver education curriculum to include more information related to the automobile insurance laws. The task force learned that the State's new financial literacy curriculum used in grades 3 through 12 contains substantive materials related to purchasing the mandatory automobile insurance.

Based on the task force's discussions, the following bills were proposed by the task force, passed by the General Assembly, and enacted.

- Chapters 401 and 402 of 2016 require the driver of a motor vehicle to carry evidence of required security (generally, proof of insurance) while operating the vehicle. Those Acts also create the Uninsured Motorist Education and Enforcement Fund to educate drivers about and enforce the security requirements for motor vehicles under the Maryland Vehicle Law.
- Chapters 425 and 426 of 2016 exempt an applicant for a motor vehicle liability insurance policy from being required to obtain the coverage for medical, hospital, and disability benefits known as PIP benefits.
- Chapters 446 and 447 of 2016 establish the Program to Incentivize and Enable Uninsured Vehicle Owners to Be Insured, which must be administered by MVA. The purpose of the program is to reduce the number of uninsured vehicles in the State by incentivizing and enabling uninsured vehicle owners with delinquent uninsured vehicle penalties to be insured.

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: EUIM coverage differs from the standard uninsured motorist coverage required by State law because uninsured motorist coverage does not pay unless the limits of liability under all valid and collectible liability insurance policies *are less* than the uninsured motorist coverage. Conversely, EUIM coverage pays *in addition* to the limits of liability under all other valid and collectible liability insurance policies.

The following example illustrates the difference in the total amount a driver may recover, depending on whether he or she has uninsured motorist coverage (required under current law) or EUIM coverage (established by the bill). Under both types of insurance, a driver may only receive *up to* the total amount of his or her injuries. In the example, Driver A (the at-fault driver) hits Driver B's vehicle, which causes Driver B to have \$80,000 in injuries. Driver A only has \$30,000 in liability coverage, while Driver B has \$50,000 in either uninsured motorist or EUIM coverage. In this circumstance, Driver B receives the following payments from Driver A's liability coverage and Driver B's own coverage.

Driver B has Uninsured Motorist Coverage

- \$30,000 from the at-fault driver's liability coverage
- \$20,000 from his/her own uninsured motorist coverage (reflecting \$50,000 of own coverage – \$30,000 from at-fault driver)

Total Recovered by Driver B: \$50,000
(Cannot receive, in total, more than limit of any policy)

Driver B has EUIM Coverage

- \$30,000 from the at-fault driver's liability coverage
- \$50,000 from his/her own EUIM coverage (paid up to the limit of own coverage)

Total Recovered by Driver B: \$80,000
(May use full amount of own coverage to cover injuries sustained that are in excess of the at-fault driver's 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.*, 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.

Nonduplication of Benefits

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*, 230 W. Va. 201, 737 SE 2d 229 (2012).)

Claims Cost Inflation

MAIF advises that the bill could lead to claims cost inflation, specifically in situations involving drivers carrying the minimum limits allowed by law. According to MAIF, when limit changes have taken effect in the past, the potential to collect a higher claims settlement led individuals to receive medical treatment for longer periods of time and attorneys to resist settlements. For example, when Maryland’s mandatory minimum bodily injury limits increased in 2011, MAIF experienced a 13.5% increase for medical bills that year.

State Revenues: General fund revenues increase beginning in fiscal 2019 due to the 2% tax collected on all premiums in the State to the extent that policyholders pay additional premiums by choosing to purchase EUIM 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 assumption below that MAIF will receive \$675,000 in additional premium revenue, general fund revenues increase by \$13,500 due to policyholders purchasing EUIM coverage. Because MAIF only captures about 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.

Special fund revenues for MIA also increase in fiscal 2018 due to \$125 rate and form filings. It is assumed the insurers in the State make the required rate and form filings in fiscal 2018 so they can offer EUIM coverage on July 1, 2018, as required by the bill.

MAIF Fiscal Effect: Nonbudgeted revenues increase in fiscal 2019 and subsequent years to the extent that MAIF policyholders choose to purchase EUIM coverage instead of uninsured motorist coverage as a result of the bill. MAIF reports that policyholders pay, on average, \$120 per year for uninsured motorist coverage; MAIF also reports that EUIM coverage will be slightly more expensive than uninsured motorist coverage to account for additional liabilities and the cost will most likely range between \$220 and \$320 depending on jurisdiction. MAIF expenditures increase correspondingly based on the number of

policyholders who purchase EUIM coverage due to the additional liabilities. Any expenditure increase depends on the number of MAIF policyholders who purchase EUIM 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 EUIM coverage will cost an average of \$270 per year and 10% of MAIF policyholders (approximately 4,500) purchase EUIM coverage instead of uninsured motorist coverage, MAIF would receive \$675,000 in increased premium revenue.

MAIF expenditures also increase in fiscal 2018 only to update MAIF's systems. MAIF estimates this one-time cost to be approximately \$200,000. It is assumed that MAIF updates its systems in fiscal 2018 so that it can begin offering EUIM coverage on July 1, 2018, as required by the bill.

Additional Information

Prior Introductions: HB 1172 of 2016 as amended passed the House, but no further action was taken. SB 553 of 2016, a similar bill, received a hearing in the Senate Finance Committee, but no further action was taken; its cross file, HB 667, received an unfavorable report from the House Economic Matters Committee. SB 614 of 2015, a similar bill, received a hearing in the Senate Finance Committee, but no further action was taken. Its cross file, HB 1093, received a hearing in the House Economic Matters Committee, but no further action was taken.

Cross File: HB 5 (Delegate Barkley, *et al.*) - Economic Matters.

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

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