

HOUSE BILL 128

C4
HB 266/22 – ECM

3lr0343
CF 3lr1667

By: **Delegate Crosby**

Introduced and read first time: January 13, 2023

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Private Passenger Motor Vehicle Liability Insurance – Enhanced Underinsured**
3 **Motorist Coverage – Opt-Out Option**

4 FOR the purpose of converting enhanced underinsured motorist coverage from an opt-in
5 offering of coverage into an opt-out coverage option under certain provisions of law
6 establishing requirements for private passenger motor vehicle liability insurance;
7 and generally relating to private passenger motor vehicle liability insurance.

8 BY repealing and reenacting, without amendments,

9 Article – Insurance

10 Section 19–509(a) and (c), 19–510(b), 19–511(b), and 19–511.1(b)

11 Annotated Code of Maryland

12 (2017 Replacement Volume and 2022 Supplement)

13 BY repealing and reenacting, with amendments,

14 Article – Insurance

15 Section 19–509(b), 19–509.1, 19–510(a), 19–511(a), and 19–511.1(a)

16 Annotated Code of Maryland

17 (2017 Replacement Volume and 2022 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

19 That the Laws of Maryland read as follows:

20 **Article – Insurance**

21 19–509.

22 (a) In this section, “uninsured motor vehicle” means a motor vehicle:

23 (1) the ownership, maintenance, or use of which has resulted in the bodily
24 injury or death of an insured; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) for which the sum of the limits of liability under all valid and collectible
2 liability insurance policies, bonds, and securities applicable to bodily injury or death:

3 (i) is less than the amount of coverage provided under this section;
4 or

5 (ii) has been reduced by payment to other persons of claims arising
6 from the same occurrence to an amount less than the amount of coverage provided under
7 this section.

8 (b) The uninsured motorist coverage required by this section does not apply to a
9 motor vehicle liability insurance policy:

10 (1) that insures a motor vehicle that:

11 (i) is not subject to registration under § 13-402 of the
12 Transportation Article because it is not driven on a highway; or

13 (ii) is exempt from registration under § 13-402(c)(10) of the
14 Transportation Article; or

15 (2) if the first named insured under a policy or binder of private passenger
16 motor vehicle liability insurance has [elected to obtain] **NOT WAIVED AND THEREFORE**
17 **MAINTAINS** enhanced underinsured motorist coverage under § 19-509.1 of this subtitle
18 [instead of the uninsured motorist coverage required under this section].

19 (c) In addition to any other coverage required by this subtitle, each motor vehicle
20 liability insurance policy issued, sold, or delivered in the State after July 1, 1975, shall
21 contain coverage for damages, subject to the policy limits, that:

22 (1) the insured is entitled to recover from the owner or operator of an
23 uninsured motor vehicle because of bodily injuries sustained in a motor vehicle accident
24 arising out of the ownership, maintenance, or use of the uninsured motor vehicle;

25 (2) the insured is entitled to recover from the owner or operator of an
26 uninsured motor vehicle because of property damage, including loss of use of the insured
27 vehicle; and

28 (3) a surviving relative of the insured, who is described in § 3-904 of the
29 Courts Article, is entitled to recover from the owner or operator of an uninsured motor
30 vehicle because the insured died as the result of a motor vehicle accident arising out of the
31 ownership, maintenance, or use of the uninsured motor vehicle.

32 19-509.1.

33 (a) In this section, “underinsured motor vehicle” means a motor vehicle that has

1 liability coverage in an amount less than, more than, or equal to the uninsured motorist
2 coverage provided under the insured party's motor vehicle liability insurance policy.

3 (b) The enhanced underinsured motorist coverage required by this section does
4 not apply to a motor vehicle liability insurance policy:

5 (1) that insures a motor vehicle that:

6 (i) is not subject to registration under § 13-402 of the
7 Transportation Article because it is not driven on a highway; or

8 (ii) is exempt from registration under § 13-402(c)(10) of the
9 Transportation Article; or

10 (2) [when] **IF** a first named insured under a policy or binder of private
11 passenger motor vehicle liability insurance has [not elected to obtain] **WAIVED** enhanced
12 underinsured motorist coverage under this section [instead of the uninsured motorist
13 coverage required under § 19-509 of this subtitle].

14 (c) (1) **[An] UNLESS WAIVED IN ACCORDANCE WITH THIS SUBSECTION,**
15 **AN** insurer shall [offer] **PROVIDE** enhanced underinsured motorist coverage [at the time
16 of purchase of a private passenger motor vehicle liability insurance policy].

17 (2) **(I)** The first named insured under a policy or binder of private
18 passenger motor vehicle liability insurance may elect to [obtain] **WAIVE** enhanced
19 underinsured motorist coverage **AND** instead [of the] **MAINTAIN** uninsured motorist
20 coverage required under § 19-509 of this subtitle.

21 **(II) IF THE FIRST NAMED INSURED DOES NOT WISH TO OBTAIN**
22 **THE ENHANCED UNDERINSURED MOTORIST COVERAGE UNDER THIS SECTION, THE**
23 **FIRST NAMED INSURED SHALL MAKE AN AFFIRMATIVE WRITTEN STATEMENT**
24 **WAIVING THE COVERAGE.**

25 **(III) A WAIVER MADE UNDER THIS SUBSECTION IS NOT**
26 **EFFECTIVE UNLESS, BEFORE THE WAIVER, THE INSURER GIVES THE FIRST NAMED**
27 **INSURED WRITTEN NOTICE OF THE NATURE, EXTENT, BENEFIT, AND COST OF THE**
28 **LEVEL OF THE ENHANCED UNDERINSURED MOTORIST COVERAGE BEING WAIVED.**

29 **(IV) 1. A WAIVER MADE UNDER THIS SUBSECTION SHALL BE**
30 **MADE ON THE FORM THAT THE COMMISSIONER REQUIRES.**

31 **2. THE FORM MAY BE PART OF THE INSURANCE**
32 **CONTRACT.**

33 **3. THE FORM SHALL CLEARLY AND CONCISELY EXPLAIN**

1 IN AT LEAST 10 POINT BOLDFACE TYPE:

2 **A. THE NATURE, EXTENT, BENEFIT, AND COST OF THE**
3 **LEVEL OF THE ENHANCED UNDERINSURED MOTORIST COVERAGE THAT WOULD BE**
4 **PROVIDED UNDER THE POLICY IF NOT WAIVED BY THE FIRST NAMED INSURED;**

5 **B. THAT A FAILURE OF THE FIRST NAMED INSURED TO**
6 **MAKE A WAIVER REQUIRES THE INSURER TO PROVIDE ENHANCED UNDERINSURED**
7 **MOTORIST COVERAGE;**

8 **C. THAT THE INSURER MAY NOT REFUSE TO**
9 **UNDERWRITE A PERSON BECAUSE THE PERSON REFUSES TO WAIVE THE ENHANCED**
10 **UNDERINSURED MOTORIST COVERAGE UNDER THIS SUBSECTION; AND**

11 **D. THAT A WAIVER MADE UNDER THIS SUBSECTION MUST**
12 **BE AN AFFIRMATIVE WRITTEN WAIVER.**

13 **(V) IF THE FIRST NAMED INSURED DOES NOT MAKE AN**
14 **AFFIRMATIVE WRITTEN STATEMENT WAIVING THE ENHANCED UNDERINSURED**
15 **MOTORIST COVERAGE, THE INSURER SHALL PROVIDE THE COVERAGE UNDER THIS**
16 **SECTION.**

17 (3) Unless the first named insured affirmatively makes a change in
18 writing, the election to [obtain] **WAIVE** enhanced underinsured motorist coverage applies
19 to all subsequent renewals of coverage and to all other policies or endorsements that extend,
20 change, supersede, or replace an existing private passenger motor vehicle insurance policy
21 issued to the first named insured.

22 (d) In addition to any other coverage required by this subtitle, each private
23 passenger motor vehicle liability insurance policy issued, sold, or delivered in the State on
24 or after July 1, [2018] **2024**, to an insured that [elects to obtain] **MAINTAINS** enhanced
25 underinsured motorist coverage instead of the uninsured motorist coverage required under
26 § 19–509 of this subtitle shall contain coverage for damages, subject to the policy limits,
27 that:

28 (1) the insured is entitled to recover from the owner or operator of an
29 underinsured motor vehicle because of bodily injuries sustained in a motor vehicle accident
30 arising out of the ownership, maintenance, or use of the underinsured motor vehicle;

31 (2) the insured is entitled to recover from the owner or operator of an
32 underinsured motor vehicle because of property damage, including loss of use of the insured
33 vehicle; and

34 (3) a surviving relative of the insured, who is described in § 3–904 of the
35 Courts Article, is entitled to recover from the owner or operator of an underinsured motor

1 vehicle because the insured died as the result of a motor vehicle accident arising out of the
2 ownership, maintenance, or use of the underinsured motor vehicle.

3 (e) The [offer of] enhanced underinsured motorist coverage required by this
4 section shall be on the form that the Commissioner requires.

5 (f) (1) The enhanced underinsured motorist coverage contained in a private
6 passenger motor vehicle liability insurance policy:

7 (i) shall at least equal:

8 1. the amounts required by Title 17 of the Transportation
9 Article for bodily injury and property damage, including loss of use of the insured vehicle;
10 and

11 2. the coverage provided to a qualified person under Title 20,
12 Subtitle 6 of this article; and

13 (ii) may not exceed the amount of liability coverage provided under
14 the policy.

15 (2) The amount of enhanced underinsured motorist coverage provided
16 under a private passenger motor vehicle liability insurance policy shall equal the amount
17 of liability coverage provided under the policy.

18 (g) An insurer may exclude from the enhanced underinsured motorist coverage
19 required by this section benefits for:

20 (1) the named insured or a family member of the named insured who
21 resides in the named insured's household for an injury that occurs when the named insured
22 or family member is occupying or is struck as a pedestrian by an underinsured motor
23 vehicle that is owned by the named insured or an immediate family member of the named
24 insured who resides in the named insured's household; and

25 (2) the named insured, a family member of the named insured who resides
26 in the named insured's household, and any other individual who has other applicable motor
27 vehicle insurance for an injury that occurs when the named insured, family member, or
28 other individual is occupying or is struck as a pedestrian by the insured motor vehicle while
29 the motor vehicle is operated or used by an individual who is excluded from coverage under
30 § 27-609 of this article.

31 (h) The limit of liability for an insurer that provides enhanced underinsured
32 motorist coverage under this section:

33 (1) is subject to § 19-511.1 of this subtitle; and

34 (2) is the amount of that coverage without any reduction for the amount

1 paid to the insured, that exhausts any applicable liability insurance policies, bonds, and
2 securities, on behalf of any person that may be held liable for the bodily injuries or death
3 of the insured.

4 (i) (1) A policy that, as its primary purpose, provides coverage in excess of
5 other valid and collectible insurance or qualified self-insurance may include the enhanced
6 underinsured motorist coverage provided for in this section.

7 (2) The enhanced underinsured motorist coverage required by this section
8 is primary to any right to recovery from the Maryland Automobile Insurance Fund under
9 Title 20, Subtitle 6 of this article.

10 (j) An endorsement or a provision that protects the insured against damages
11 caused by an underinsured motor vehicle that is contained in a policy issued and delivered
12 in the State is deemed to cover damages caused by a motor vehicle insured by a liability
13 insurer that is insolvent or otherwise unable to pay claims to the same extent and in the
14 same manner as if the damages were caused by an underinsured motor vehicle.

15 (k) A provision in a private passenger motor vehicle liability insurance policy
16 issued on or after July 1, 2018, about coverage for damages sustained by the insured as a
17 result of the operation of an underinsured motor vehicle that requires a dispute between
18 the insured and the insurer to be submitted to binding arbitration is prohibited and is of
19 no legal effect.

20 19-510.

21 (a) This section applies only when:

22 (1) the liability coverage under a policy or binder of private passenger
23 motor vehicle liability insurance exceeds the amount required under § 17-103 of the
24 Transportation Article; and

25 (2) the first named insured under a policy or binder of private passenger
26 motor vehicle liability insurance has [not elected to obtain] **WAIVED** enhanced
27 underinsured motorist coverage under § 19-509.1 of this subtitle **AND** instead [of the]
28 **MAINTAINS** uninsured motorist coverage required under § 19-509 of this subtitle.

29 (b) (1) If the first named insured under a policy or binder of private passenger
30 motor vehicle liability insurance does not wish to obtain uninsured motorist coverage in the
31 same amount as the liability coverage provided under the policy or binder, the first named
32 insured shall make an affirmative written waiver of having uninsured motorist coverage in
33 the same amount as the liability coverage.

34 (2) If the first named insured does not make an affirmative written waiver
35 under this section, the insurer shall provide uninsured motorist coverage in an amount
36 equal to the amount of the liability coverage provided under the policy or binder.

1 19-511.

2 (a) This section [does not apply] **APPLIES ONLY** when the first named insured
3 under a policy or binder of private passenger motor vehicle liability insurance has [elected
4 to obtain] **WAIVED** enhanced underinsured motorist coverage under § 19-509.1 of this
5 subtitle **AND** instead [of the] **MAINTAINS** uninsured motorist coverage required under §
6 19-509 of this subtitle.

7 (b) If an injured person receives a written offer from a motor vehicle insurance
8 liability insurer or that insurer's authorized agent to settle a claim for bodily injury or
9 death, and the amount of the settlement offer, in combination with any other settlements
10 arising out of the same occurrence, would exhaust the bodily injury or death limits of the
11 applicable liability insurance policies, bonds, and securities, the injured person shall send
12 by certified mail, to any insurer that provides uninsured motorist coverage for the bodily
13 injury or death, a copy of the liability insurer's written settlement offer.

14 19-511.1.

15 (a) This section applies only when the first named insured under a policy or
16 binder of private passenger motor vehicle liability insurance has [elected to obtain] **NOT**
17 **WAIVED AND THEREFORE MAINTAINS** enhanced underinsured motorist coverage under
18 § 19-509.1 of this subtitle [instead of the uninsured motorist coverage required under §
19 19-509 of this subtitle].

20 (b) If an injured person receives a written offer from a motor vehicle liability
21 insurer or that insurer's authorized agent to settle a claim for bodily injury or death, and
22 the amount of the settlement offer, in combination with any other settlements arising out
23 of the same occurrence, would exhaust the bodily injury or death limits of the applicable
24 liability insurance policies, bonds, and securities, the injured person shall send by certified
25 mail, to any insurer that provides enhanced underinsured motorist coverage for the bodily
26 injury or death, a copy of the liability insurer's written settlement offer.

27 **SECTION 2. AND BE IT FURTHER ENACTED**, That this Act applies to each policy
28 of private passenger motor vehicle insurance issued, sold, or delivered in the State on or
29 after July 1, 2024.

30 **SECTION 3. AND BE IT FURTHER ENACTED**, That this Act shall take effect
31 October 1, 2023.