

Chapter 514

(House Bill 128)

AN ACT concerning

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

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

BY repealing and reenacting, without amendments,

Article – Insurance

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

Annotated Code of Maryland

(2017 Replacement Volume and 2022 Supplement)

BY repealing and reenacting, with amendments,

Article – Insurance

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

Annotated Code of Maryland

(2017 Replacement Volume and 2022 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Insurance

19–509.

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

(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 limits of liability under all valid and collectible liability insurance policies, bonds, and securities applicable to bodily injury or death:

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

or

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

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

(1) that insures a motor vehicle that:

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

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

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

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

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

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

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

19-509.1.

(a) In this section, “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.

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

(1) that insures a motor vehicle that:

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

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

(2) [when] IF a first named insured under a NEW policy or binder of private passenger motor vehicle liability insurance ISSUED ON OR AFTER JULY 1, 2024, has [not elected to obtain] **WAIVED** enhanced underinsured motorist coverage under this section [instead of the uninsured motorist coverage required under § 19-509 of this subtitle]; OR

(3) IF A FIRST NAMED INSURED ON A RENEWAL POLICY ISSUED BEFORE JULY 1, 2024, HAS NOT ELECTED TO OBTAIN ENHANCED UNDERINSURED MOTORIST COVERAGE UNDER THIS SECTION.

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

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

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

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

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

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

3. **THE FORM SHALL CLEARLY AND CONCISELY EXPLAIN IN AT LEAST ~~10~~ 14 POINT BOLDFACE TYPE:**

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

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

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

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

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

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

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

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

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

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

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

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

(i) shall at least equal:

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

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

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

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

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

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

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

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

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

(2) 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.

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

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

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

(k) A provision in a private passenger motor vehicle liability insurance policy issued on or after July 1, 2018, 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 binding arbitration is prohibited and is of no legal effect.

19-510.

(a) This section applies only when:

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

(2) the first named insured under a policy or binder of private passenger motor vehicle liability insurance has ~~[not elected to obtain] WAIVED enhanced underinsured motorist coverage under § 19-509.1 of this subtitle AND instead [of the] MAINTAINS uninsured motorist coverage required under § 19-509 of this subtitle~~ **UNINSURED MOTORIST COVERAGE REQUIRED UNDER § 19-509 OF THIS SUBTITLE AND HAS NOT OBTAINED ENHANCED UNDERINSURED MOTORIST COVERAGE UNDER § 19-509.1 OF THIS SUBTITLE.**

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

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

19-511.

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

(b) If an injured person receives a written offer from a motor vehicle insurance liability insurer or that 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 injured person shall send by certified mail, to any insurer that provides uninsured motorist coverage for the bodily injury or death, a copy of the liability insurer's written settlement offer.

19-511.1.

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

(b) If an injured person receives a written offer from a motor vehicle liability insurer or that 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 injured person shall send by certified mail, to any insurer that provides enhanced underinsured motorist coverage for the bodily injury or death, a copy of the liability insurer's written settlement offer.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Maryland Insurance Administration shall conduct a study on the impact of converting enhanced underinsured motorist coverage under private passenger motor vehicle liability insurance from an opt-in coverage option to an opt-out coverage option.

(b) The study shall include:

(1) a comparison of the rate of selection of enhanced underinsured motorist coverage before and after the implementation of this Act;

(2) an analysis of the impact on premiums from enhanced underinsured motorist coverage being offered as a default selection for coverage, including the identification and analysis of any factors contributing to any observed impact on premiums relating to the offering of enhanced underinsured motorist coverage as a default selection for coverage;

(3) to the extent information is available, an analysis of the impact of the offering of enhanced underinsured motorist coverage as a default option on compensation for damages resulting from motor vehicle accidents, including the impact on out-of-pocket costs incurred by insureds for damages exceeding policy limits;

(4) a review of notice and waiver procedures relating to the offering of enhanced underinsured motorist coverage as a default coverage option to:

(i) assess whether consumers are aware of the uninsured motorist and enhanced underinsured motorist coverage options and able to make an informed selection from the description of the coverage options and the per vehicle premium associated with each option; and

(ii) make recommendations regarding any changes to notice and coverage selection procedures to improve consumer awareness and informed decision making regarding uninsured motorist and enhanced underinsured motorist coverage; and

(5) any other relevant matters relating to the offering of uninsured motorist and enhanced underinsured motorist coverage by private passenger motor vehicle liability insurers.

(c) (1) On or before December 31, 2026, the Maryland Insurance Administration shall submit an interim report to the Governor and, in accordance with § 2-1257 of the State Government Article, the Senate Finance Committee and the House Economic Matters Committee that includes any initial findings and recommendations from the study required under this section.

(2) On or before December 31, 2028, the Maryland Insurance Administration shall submit a final report to the Governor and, in accordance with § 2-1257 of the State Government Article, the Senate Finance Committee and the House Economic Matters Committee that includes the findings and recommendations from the study required under this section.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act applies to each policy of private passenger motor vehicle insurance issued, sold, or delivered in the State on or after July 1, 2024.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023. It shall remain effective for a period of 5 years and 8 months, and, at the

end of June 30, 2029, this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

Approved by the Governor, May 8, 2023.