

HOUSE BILL 128

C4
HB 266/22 – ECM

3lr0343
CF SB 171

By: **Delegate Crosby**

Introduced and read first time: January 13, 2023

Assigned to: Economic Matters

Committee Report: Favorable

House action: Adopted

Read second time: March 6, 2023

CHAPTER _____

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**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 19–509.

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

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

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

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

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

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

14 (1) that insures a motor vehicle that:

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

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

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

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

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

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

32 (3) a surviving relative of the insured, who is described in § 3–904 of the
33 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 policy or binder of private passenger motor vehicle liability insurance 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].

(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

1 MADE ON THE FORM THAT THE COMMISSIONER REQUIRES.

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

4 3. THE FORM SHALL CLEARLY AND CONCISELY EXPLAIN
5 IN AT LEAST 10 POINT BOLDFACE TYPE:

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

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

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

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

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

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

26 (d) In addition to any other coverage required by this subtitle, each private
27 passenger motor vehicle liability insurance policy issued, sold, or delivered in the State on
28 or after July 1, [2018] **2024**, to an insured that [elects to obtain] **MAINTAINS** enhanced
29 underinsured motorist coverage instead of the uninsured motorist coverage required under
30 § 19–509 of this subtitle shall contain coverage for damages, subject to the policy limits,
31 that:

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

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

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

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

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

12 (i) shall at least equal:

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

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

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

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

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

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

30 (2) the named insured, a family member of the named insured who resides
31 in the named insured's household, and any other individual who has other applicable motor
32 vehicle insurance for an injury that occurs when the named insured, family member, or
33 other individual is occupying or is struck as a pedestrian by the insured motor vehicle while
34 the motor vehicle is operated or used by an individual who is excluded from coverage under
35 § 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.

(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

1 the same amount as the liability coverage.

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

5 19-511.

6 (a) This section [does not apply] **APPLIES ONLY** when the first named insured
7 under a policy or binder of private passenger motor vehicle liability insurance has [elected
8 to obtain] **WAIVED** enhanced underinsured motorist coverage under § 19-509.1 of this
9 subtitle **AND** instead [of the] **MAINTAINS** uninsured motorist coverage required under §
10 19-509 of this subtitle.

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

18 19-511.1.

19 (a) This section applies only when the first named insured under a policy or
20 binder of private passenger motor vehicle liability insurance has [elected to obtain] **NOT**
21 **WAIVED AND THEREFORE MAINTAINS** enhanced underinsured motorist coverage under
22 § 19-509.1 of this subtitle [instead of the uninsured motorist coverage required under §
23 19-509 of this subtitle].

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

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

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