

# HOUSE BILL 266

C4

2lr1494  
CF SB 301

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By: **Delegate Crosby**

Introduced and read first time: January 13, 2022

Assigned to: Economic Matters

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Committee Report: Favorable

House action: Adopted

Read second time: March 3, 2022

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## 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 2021 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 2021 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**

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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

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 uninsured motor vehicle.

3 19-509.1.

4 (a) In this section, “underinsured motor vehicle” means a motor vehicle that has  
5 liability coverage in an amount less than, more than, or equal to the uninsured motorist  
6 coverage provided under the insured party’s motor vehicle liability insurance policy.

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

9 (1) that insures a motor vehicle that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (d) In addition to any other coverage required by this subtitle, each private  
28 passenger motor vehicle liability insurance policy issued, sold, or delivered in the State on  
29 or after July 1, [2018] 2023, to an insured that [elects to obtain] MAINTAINS enhanced  
30 underinsured motorist coverage instead of the uninsured motorist coverage required under  
31 § 19-509 of this subtitle, shall contain coverage for damages, subject to the policy limits,  
32 that:

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

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

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

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

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

15 (i) shall at least equal:

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

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

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

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

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

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

33 (2) the named insured, a family member of the named insured who resides  
34 in the named insured's household, and any other individual who has other applicable motor  
35 vehicle insurance for an injury that occurs when the named insured, family member, or

1 other individual is occupying or is struck as a pedestrian by the insured motor vehicle while  
2 the motor vehicle is operated or used by an individual who is excluded from coverage under  
3 § 27–609 of this article.

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

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

7 (2) is the amount of that coverage without any reduction for the amount  
8 paid to the insured, that exhausts any applicable liability insurance policies, bonds, and  
9 securities, on behalf of any person that may be held liable for the bodily injuries or death  
10 of the insured.

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

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

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

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

27 19–510.

28 (a) This section applies only when:

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

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

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

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

9 19-511.

10 (a) This section [does not apply] **APPLIES ONLY** when the first named insured  
11 under a policy or binder of private passenger motor vehicle liability insurance has [elected  
12 to obtain] **WAIVED** enhanced underinsured motorist coverage under § 19-509.1 of this  
13 subtitle **AND** instead [of the] **MAINTAINS** uninsured motorist coverage required under §  
14 19-509 of this subtitle.

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

22 19-511.1.

23 (a) This section applies only when the first named insured under a policy or  
24 binder of private passenger motor vehicle liability insurance has [elected to obtain] **NOT**  
25 **WAIVED AND THEREFORE MAINTAINS** enhanced underinsured motorist coverage under  
26 § 19-509.1 of this subtitle [instead of the uninsured motorist coverage required under §  
27 19-509 of this subtitle].

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

35 **SECTION 2. AND BE IT FURTHER ENACTED**, That this Act applies to each policy  
36 of private passenger motor vehicle insurance issued, sold, or delivered in the State on or  
37 after July 1, 2023.

1           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   October 1, 2022.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.