

As Introduced

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A B I L L

To amend sections 3937.18, 3937.181, and 3937.182 of
the Revised Code to revise the Uninsured and
Underinsured Motorist Coverages Law, and to declare
an emergency.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3937.18, 3937.181, and 3937.182 of
the Revised Code be amended to read as follows:

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Sec. 3937.18. (A) ~~No automobile liability or motor vehicle~~
~~liability~~ Any policy of insurance insuring delivered or issued for
delivery in this state with respect to any motor vehicle
registered or principally garaged in this state that insures
against loss resulting from liability imposed by law for bodily
injury or death suffered by any person arising out of the
ownership, maintenance, or use of a motor vehicle ~~shall be~~
~~delivered or issued for delivery in this state with respect to any~~
~~motor vehicle registered or principally garaged in this state~~
~~unless both of the following coverages are offered to persons~~
~~insured under the policy due to bodily injury or death suffered by~~
~~such insureds:~~

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~~(1) Uninsured motorist coverage, which shall be in an amount of coverage equivalent to the automobile liability or motor vehicle liability coverage and shall provide protection for bodily injury, sickness, or disease, including death under provisions approved by the superintendent of insurance, for the protection of insureds thereunder who are legally entitled to recover from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, suffered by any person insured under the policy.~~

~~For purposes of division (A)(1) of this section, an insured is legally entitled to recover if the insured is able to prove the elements of the insured's claim that are necessary to recover from the owner or operator of the uninsured motor vehicle. The fact that the owner or operator of the uninsured motor vehicle has an immunity under Chapter 2744. of the Revised Code or a diplomatic immunity that could be raised as a defense in an action brought against the owner or operator by the insured does not affect the insured's right to recover under uninsured motorist coverage. However, any other type of statutory or common law immunity that may be a defense for the owner or operator of an uninsured motor vehicle shall also be a defense to an action brought by the insured to recover under, may, but is not required to, include uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages.~~

Unless otherwise defined in the policy or any endorsement to the policy, "motor vehicle," for purposes of the uninsured and underinsured motorist coverages, means a self-propelled vehicle designed for use and principally used on public roads, including an automobile, truck, semi-tractor, motorcycle, and bus. "Motor vehicle" also includes a motor home, provided the motor home is not stationary and is not being used as a temporary or permanent residence or office. "Motor vehicle" does not include a trolley,

streetcar, trailer, railroad engine, railroad car, motorized
bicycle, golf cart, off-road recreational vehicle, snowmobile,
fork lift, aircraft, watercraft, construction equipment, farm
tractor or other vehicle designed and principally used for
agricultural purposes, mobile home, vehicle traveling on treads or
rails, or any similar vehicle.

(B) For purposes of any uninsured motorist coverage included
in a policy of insurance described in division (A) of this
section, an "uninsured motorist" is the owner or operator of a
motor vehicle if any of the following conditions applies:

(1) There exists no bodily injury liability bond or insurance
policy covering the owner's or operator's liability to the
insured.

(2) The liability insurer denies coverage to the owner or
operator, or is or becomes the subject of insolvency proceedings
in any state.

(3) The identity of the owner or operator cannot be
determined, but independent corroborative evidence exists to prove
that the bodily injury, sickness, disease, or death of the insured
was proximately caused by the negligence or intentional actions of
the unidentified operator of the motor vehicle. For purposes of
division (B)(3) of this section, the testimony of any insured
seeking recovery from the insurer shall not constitute independent
corroborative evidence, unless the testimony is supported by
additional evidence.

(4) The owner or operator has diplomatic immunity.

(5) The owner or operator has immunity under Chapter 2744. of
the Revised Code.

An "uninsured motorist" does not include the owner or
operator of a motor vehicle that is self-insured within the
meaning of the financial responsibility law of the state in which

the motor vehicle is registered.

~~(2) Underinsured (C) If underinsured motorist coverage is included in a policy of insurance described in division (A) of this section, which shall be in an amount of coverage equivalent to the automobile liability or motor vehicle liability underinsured motorist coverage and shall provide protection for insureds thereunder for bodily injury, sickness, or disease, including death, suffered by any person insured under the policy, where the limits of coverage available for payment to the insured under all bodily injury liability bonds and insurance policies covering persons liable to the insured are less than the limits for the insured's uninsured underinsured motorist coverage. Underinsured motorist coverage in this state is not and shall not be excess insurance coverage to other applicable liability coverages, and shall be provided only to afford provide the insured an amount of protection not greater than that which would be available under the insured's uninsured motorist coverage if the person or persons liable to the insured were uninsured at the time of the accident. The policy limits of the underinsured motorist coverage shall be reduced by those amounts available for payment under all applicable bodily injury liability bonds and insurance policies covering persons liable to the insured.~~

~~(B) Coverages offered under division (A) of this section shall be written for the same limits of liability. No change shall be made in the limits of one of these coverages without an equivalent change in the limits of the other coverage.~~

~~(C) A named insured or applicant may reject or accept both coverages as offered under division (A) of this section, or may alternatively select both such coverages in accordance with a schedule of limits approved by the superintendent. The schedule of limits approved by the superintendent may permit a named insured or applicant to select uninsured and underinsured motorists~~

~~coverages with limits on such coverages that are less than the
limit of liability coverage provided by the automobile liability
or motor vehicle liability policy of insurance under which the
coverages are provided, but the limits shall be no less than the
limits set forth in section 4509.20 of the Revised Code for bodily
injury or death. A named insured's or applicant's rejection of
both coverages as offered under division (A) of this section, or a
named insured's or applicant's selection of such coverages in
accordance with the schedule of limits approved by the
superintendent, shall be in writing and shall be signed by the
named insured or applicant. A named insured's or applicant's
written, signed rejection of both coverages as offered under
division (A) of this section, or a named insured's or applicant's
written, signed selection of such coverages in accordance with the
schedule of limits approved by the superintendent, shall be
effective on the day signed, shall create a presumption of an
offer of coverages consistent with division (A) of this section,
and shall be binding on all other named insureds, insureds, or
applicants.~~

~~Unless a named insured or applicant requests such coverages
in writing, such coverages need not be provided in or made
supplemental to a policy renewal or a new or replacement policy
that provides continuing coverage to the named insured or
applicant where a named insured or applicant has rejected such
coverages in connection with a policy previously issued to the
named insured or applicant by the same insurer or affiliate of
that insurer. If a named insured or applicant has selected such
coverages in connection with a policy previously issued to the
named insured or applicant by the same insurer or affiliate of
that insurer, with limits in accordance with the schedule of
limits approved by the superintendent, such coverages need not be
provided with limits in excess of the limits of liability~~

~~previously issued for such coverages, unless a named insured or~~
~~applicant requests in writing higher limits of liability for such~~
~~coverages~~ For purposes of underinsured motorist coverage, an
"underinsured motorist" does not include the owner or operator of
a motor vehicle that has applicable liability coverage in the
policy under which the underinsured motorist coverage is provided.

~~(D) For the purpose of this section, a motor vehicle shall be~~
~~deemed uninsured in either of the following circumstances:~~

~~(1) The liability insurer denies coverage or is or becomes~~
~~the subject of insolvency proceedings in any jurisdiction;~~

~~(2) The identity of the owner and operator of the motor~~
~~vehicle cannot be determined, but independent corroborative~~
~~evidence exists to prove that the bodily injury, sickness,~~
~~disease, or death of the insured was proximately caused by the~~
~~negligence or intentional actions of the unidentified operator of~~
~~the motor vehicle. For purposes of this division, the testimony of~~
~~any insured seeking recovery from the insurer shall not constitute~~
~~independent corroborative evidence, unless the testimony is~~
~~supported by additional evidence~~ With respect to the uninsured and
underinsured motorist coverages included in a policy of insurance
described in division (A) of this section, an insured shall be
required to prove all elements of the insured's claim that are
necessary to recover from the owner or operator of the uninsured
or underinsured motor vehicle.

~~(E) In the event of payment to any person under the coverages~~
~~offered under this section and subject to the terms and conditions~~
~~of such coverages, the insurer making such payment to the extent~~
~~thereof is entitled to the proceeds of any settlement or judgment~~
~~resulting from the exercise of any rights of recovery of such~~
~~person against any person or organization legally responsible for~~
~~the bodily injury or death for which such payment is made,~~
~~including any amount recoverable from an insurer which is or~~

~~becomes the subject of insolvency proceedings, through such~~ 178
~~proceedings or in any other lawful manner. No insurer shall~~ 179
~~attempt to recover any amount against the insured of an insurer~~ 180
~~which is or becomes the subject of insolvency proceedings, to the~~ 181
~~extent of those rights against such insurer which such insured~~ 182
~~assigns to the paying insurer.~~ 183

(F) The uninsured and underinsured motorist coverages offered 184
under included in a policy of insurance described in division (A) 185
of this section shall not be ~~made~~ subject to an exclusion or 186
reduction in amount because of any workers' compensation benefits 187
payable as a result of the same injury or death. 188

(G)(F) Any ~~automobile liability or motor vehicle liability~~ 190
policy of insurance ~~that includes coverages offered under~~ 191
described in division (A) of this section that includes uninsured 192
~~or selected in accordance with division (C) of this section~~ 193
underinsured motorist coverage may, without regard to any premiums 194
involved, include terms and conditions that preclude any and all 195
stacking of such coverages, including but not limited to: 196

(1) Interfamily stacking, which is the aggregating of the 197
limits of such coverages by the same person or two or more 198
persons, whether family members or not, who are not members of the 199
same household; 200

(2) Intrafamily stacking, which is the aggregating of the 201
limits of such coverages purchased by the same person or two or 202
more family members of the same household. 203

(H)(G) Any ~~automobile liability or motor vehicle liability~~ 204
policy of insurance ~~that includes coverages offered under~~ 205
described in division (A) of this section that includes uninsured 206
motorist coverage, underinsured motorist coverage, or selected in 207
~~accordance with division (C) of this section~~ both uninsured and 208
underinsured motorist coverages and that provides a limit of 209

coverage for payment ~~for~~ of damages for bodily injury, including 210
death, sustained by any one person in any one automobile accident, 211
may, notwithstanding Chapter 2125. of the Revised Code, include 212
terms and conditions to the effect that all claims resulting from 213
or arising out of any one person's bodily injury, including death, 214
shall collectively be subject to the limit of the policy 215
applicable to bodily injury, including death, sustained by one 216
person, and, for the purpose of such policy limit shall constitute 217
a single claim. Any such policy limit shall be enforceable 218
regardless of the number of insureds, claims made, vehicles or 219
premiums shown in the declarations or policy, or vehicles involved 220
in the accident. 221

(H) Any policy of insurance described in division (A) of this 222
section that includes uninsured or underinsured motorist coverage 223
may include terms and conditions requiring that each claim or suit 224
for uninsured or underinsured motorist coverage be made or brought 225
within two years after the date of the accident causing the bodily 226
injury, sickness, disease, or death. 227

~~(I) Nothing in Any policy of insurance described in division 228~~
~~(A) of this section shall prohibit the inclusion of that includes 229~~
~~uninsured motorist coverage, underinsured motorist coverage in 230~~
~~any, or uninsured and underinsured motorist coverage provided in 231~~
~~compliance with this section. 232~~

~~(J) The coverages offered under division (A) of this section 233~~
~~or selected in accordance with division (C) of this section may 234~~
include terms and conditions that preclude coverage for bodily 235
injury or death suffered by an insured under specified 236
circumstances, including but not limited to any of the following 237
circumstances: 238

(1) While the insured is operating or occupying a motor 239
vehicle owned by, furnished to, or available for the regular use 240
of a named insured, a spouse, or a resident relative of a named 241

insured, if the motor vehicle is not specifically identified in
the policy under which a claim is made, or is not a newly acquired
or replacement motor vehicle covered under the terms of the policy
under which the uninsured motorist coverage, underinsured motorist
coverage, or uninsured and underinsured motorist coverages are
provided;

(2) While the insured is operating or occupying a motor
vehicle without a reasonable belief that the insured is entitled
to do so, provided that under no circumstances will an insured
whose license has been suspended, revoked, or never issued, be
held to have a reasonable belief that the insured is entitled to
operate a motor vehicle;

(3) When the bodily injury or death is caused by a motor
vehicle operated by any person who is specifically excluded from
coverage for bodily injury liability in the policy under which the
uninsured motorist coverage, underinsured motorist coverage, or
uninsured and underinsured motorist coverages are provided;

(4) While any employee, officer, director, partner, trustee,
member, executor, administrator, or beneficiary of the named
insured, or any relative of any such person, is operating or
occupying a motor vehicle, unless the employee, officer, director,
partner, trustee, member, executor, administrator, beneficiary, or
relative is operating or occupying a motor vehicle for which
uninsured motorist coverage, underinsured motorist coverage, or
uninsured and underinsured motorist coverages are provided in the
policy;

(5) When the person actually suffering the bodily injury,
sickness, disease, or death is not an insured under the policy.

(J) In the event of payment to any person under the uninsured
or underinsured motorist coverage, and subject to the terms and
conditions of that coverage, the insurer making such payment is

entitled, to the extent of the payment, to the proceeds of any
settlement or judgment resulting from the exercise of any rights
of recovery of that person against any person or organization
legally responsible for the bodily injury or death for which the
payment is made, including any amount recoverable from an insurer
that is or becomes the subject of insolvency proceedings, through
such proceedings or in any other lawful manner. No insurer shall
attempt to recover any amount against the insured of an insurer
that is or becomes the subject of insolvency proceedings, to the
extent of those rights against the insurer that the insured
assigns to the paying insurer.

~~(K) As used Nothing in this section, "uninsured motor~~
~~vehicle" and "underinsured motor vehicle" do not include any of~~
~~the following motor vehicles:~~

~~(1) A motor vehicle that has applicable liability coverage in~~
~~the policy under which the uninsured and underinsured motorist~~
~~coverages are provided;~~

~~(2) A motor vehicle owned by a political subdivision, unless~~
~~the operator of the motor vehicle has an immunity under Chapter~~
~~2744. of the Revised Code that could be raised as a defense in an~~
~~action brought against the operator by the insured;~~

~~(3) A motor vehicle self-insured within the meaning of the~~
~~financial responsibility law of the state in which the motor~~
~~vehicle is registered.~~

~~(L) As used in this section, "automobile liability or motor~~
~~vehicle liability policy of insurance" means either of the~~
~~following:~~

~~(1) Any policy of insurance that serves as proof of financial~~
~~responsibility, as proof of financial responsibility is defined by~~
~~division (K) of section 4509.01 of the Revised Code, for owners or~~
~~operators of the motor vehicles specifically identified in the~~

~~policy of insurance;~~

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~~(2) Any umbrella liability policy of insurance written as~~
~~excess over one or more policies described in division (L)(1) of~~
~~this section shall prohibit the inclusion of underinsured motorist~~
~~coverage in any uninsured motorist coverage included in a policy~~
~~of insurance described in division (A) of this section.~~

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Sec. 3937.181. (A) No ~~automobile liability or motor vehicle~~
~~liability~~ policy of insurance ~~offering uninsured and underinsured~~
~~motorist coverages under~~ described in division (A) of section
3937.18 of the Revised Code that includes uninsured and
underinsured motorist coverages shall be delivered or issued for
delivery unless coverage is also made available for damage to, or
the destruction of, any ~~automobile or~~ motor vehicle specifically
identified in the policy, for the protection of those persons
insured under the policy who are legally entitled to recover for
the damage to or destruction of any ~~automobile or~~ motor vehicle
specifically identified in the policy from the owner or operator
of an uninsured motor vehicle.

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(B) The coverage made available under this section need not
exceed the lesser of seventy-five hundred dollars or the amount
otherwise available from the policy for damages to, or the
destruction of, the ~~automobile or~~ motor vehicle. The coverage
shall be subject to a maximum two-hundred-fifty-dollar deductible.
The losses recoverable under this section shall be limited to
recovery for that destruction of or damage to the ~~automobile or~~
motor vehicle specifically identified in the policy directly
caused by an uninsured ~~automobile or~~ motor vehicle whose owner or
operator has been identified.

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(C) If an insured has a policy containing collision coverage
covering damages caused by an uninsured ~~automobile or~~ motor
vehicle, the insured's insurer need not make coverage available

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under this section.

(D) An insurer making payments to an insured under the coverage offered under division (A) of this section shall be entitled, to the extent of those payments and subject to the terms and conditions of the coverage, to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery by the insured against the person or organization legally responsible for the injury or destruction of the property, including any amounts recoverable from an insurer that is or becomes the subject of insolvency proceedings, through such proceedings or in any other lawful manner. No insurer shall attempt to recover any amount ~~against~~ from the insured of an insurer that is or becomes the subject of insolvency proceedings, to the extent of ~~his~~ those rights against ~~such~~ the insurer ~~which~~ such that the insured assigns to the paying insurer.

Sec. 3937.182. (A) As used in this section, "policy" includes an endorsement.

(B) No policy of automobile or motor vehicle insurance that is covered by sections 3937.01 to 3937.17 of the Revised Code, including, but not limited to, the uninsured and underinsured ~~motorists~~ motorist coverages included in such a policy as ~~required~~ authorized by section 3937.18 of the Revised Code, and that is issued by an insurance company licensed to do business in this state, and no other policy of casualty or liability insurance that is covered by sections 3937.01 to 3937.17 of the Revised Code and that is so issued, shall provide coverage for judgments or claims against an insured for punitive or exemplary damages.

(C) This section applies only to policies of automobile, motor vehicle, or other casualty or liability insurance as described in division (B) of this section that are issued or renewed on or after the effective date of this section.

Section 2. That existing sections 3937.18, 3937.181, and 366
3937.182 of the Revised Code are hereby repealed. 367

Section 3. In enacting this act, it is the intent of the 368
General Assembly to do all of the following: 369

(A) Protect and preserve stable markets and reasonable rates 370
for automobile insurance for Ohio consumers; 371

(B) Express the public policy of the state to: 372

(1) Eliminate any requirement of the mandatory offer of 373
uninsured motorist coverage, underinsured motorist coverage, or 374
uninsured and underinsured motorist coverages; 375

(2) Eliminate the possibility of uninsured motorist coverage, 376
underinsured motorist coverage, or uninsured and underinsured 377
motorist coverages being implied as a matter of law in any 378
insurance policy; 379

(3) Provide statutory authority for the inclusion of 380
exclusionary or limiting provisions in uninsured and underinsured 381
motorist coverages; 382

(4) Eliminate any requirement of a written offer, selection, 383
or rejection form for uninsured motorist coverage, underinsured 384
motorist coverage, and uninsured and underinsured motorist 385
coverages from any transaction for an insurance policy. 386

(C) Provide statutory authority for provisions limiting the 387
time period within which an insured may make a claim under 388
uninsured or underinsured motorist coverage to two years after the 389
date of the accident causing the injury; 390

(D) To supersede the holdings of the Ohio Supreme Court in 391
those cases previously superseded by Am. Sub. S.B. 20 of the 120th 392
General Assembly, Am. Sub. H.B. 261 of the 122nd General Assembly, 393
S.B. 57 of the 123rd General Assembly, and Sub. S.B. 267 of the 394

123rd General Assembly; 395

(E) To supersede the holdings of the Ohio Supreme Court in 396
Linko v. Indemnity Ins. Co. of N. America (2000), 90 Ohio St. 3d 397
445, *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.* (1999), 85 Ohio 398
St. 3d 660, *Schumacher v. Kreiner* (2000), 88 Ohio St. 3d 358, 399
Sexton v. State Farm Mut. Auto. Ins. Co. (1982), 69 Ohio St. 2d 400
431, *Gyori v. Johnston Coca-Cola Bottling Group, Inc.* (1996), 76 401
Ohio St. 3d 565, and their progeny. 402

Section 4. This act is hereby declared to be an emergency 403
measure necessary for the immediate preservation of the public 404
peace, health, and safety. The reason for such necessity is that 405
immediate action is required to ensure a stable market and 406
reasonable rates for automobile insurance coverage offered to the 407
residents of this state and to protect the financial stability of 408
the automobile insurers providing that coverage. Therefore, this 409
act shall go into immediate effect. 410