

As Passed by the Senate

**124th General Assembly
Regular Session
2001-2002**

Sub. S. B. No. 97

**SENATORS Nein, Wachtmann, Mumper, White, DiDonato, Austria, Amstutz,
Coughlin, Finan, Harris, Hottinger, Spada, Armbruster, Randy Gardner,
Robert Gardner, Carnes, Johnson**

A B I L L

To amend sections 3937.18, 3937.181, and 3937.182 of 1
the Revised Code to revise the Uninsured and 2
Underinsured Motorist Coverages Law. 3

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

Section 1. That sections 3937.18, 3937.181, and 3937.182 of 4
the Revised Code be amended to read as follows: 5

Sec. 3937.18. (A) ~~No automobile liability or motor vehicle~~ 6
~~liability~~ Any policy of insurance insuring delivered or issued for 7
delivery in this state with respect to any motor vehicle 8
registered or principally garaged in this state that insures 9
against loss resulting from liability imposed by law for bodily 10
injury or death suffered by any person arising out of the 11
ownership, maintenance, or use of a motor vehicle ~~shall be~~ 12
~~delivered or issued for delivery in this state with respect to any~~ 13
~~motor vehicle registered or principally garaged in this state~~ 14
~~unless both of the following coverages are offered to persons~~ 15
~~insured under the policy due to bodily injury or death suffered by~~ 16
~~such insureds:~~ 17

~~(1) Uninsured motorist coverage, which shall be in an amount 18~~

~~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
motorist coverage, underinsured motorist coverage, or 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~~

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trolley, streetcar, trailer, railroad engine, railroad car, 51
motorized bicycle, golf cart, off-road recreational vehicle, 52
snowmobile, fork lift, aircraft, watercraft, construction 53
equipment, farm tractor or other vehicle designed and principally 54
used for agricultural purposes, mobile home, vehicle traveling on 55
treads or rails, or any similar vehicle. 56

(B) For purposes of any uninsured motorist coverage included 57
in a policy of insurance, an "uninsured motorist" is the owner or 58
operator of a motor vehicle if any of the following conditions 59
applies: 60

(1) There exists no bodily injury liability bond or insurance 61
policy covering the owner's or operator's liability to the 62
insured. 63

(2) The liability insurer denies coverage to the owner or 64
operator, or is or becomes the subject of insolvency proceedings 65
in any state. 66

(3) The identity of the owner or operator cannot be 67
determined, but independent corroborative evidence exists to prove 68
that the bodily injury, sickness, disease, or death of the insured 69
was proximately caused by the negligence or intentional actions of 70
the unidentified operator of the motor vehicle. For purposes of 71
division (B)(3) of this section, the testimony of any insured 72
seeking recovery from the insurer shall not constitute independent 73
corroborative evidence, unless the testimony is supported by 74
additional evidence. 75

(4) The owner or operator has diplomatic immunity. 76

(5) The owner or operator has immunity under Chapter 2744. of 77
the Revised Code. 78

An "uninsured motorist" does not include the owner or 79
operator of a motor vehicle that is self-insured within the 80
meaning of the financial responsibility law of the state in which 81

the motor vehicle is registered. 82

~~(2) Underinsured (C) If underinsured motorist coverage, which shall be in an amount of coverage equivalent to is included in a policy of insurance, 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.~~ 83
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~~(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.~~ 103
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~~(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~~ 107
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~~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.~~

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~~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~~

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~~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.

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

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

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~~(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 motorist coverage, underinsured motorist coverage, or uninsured and underinsured motorist coverages included in a policy of insurance, 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.

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(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~~

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

~~(F)~~ The uninsured motorist coverage, underinsured motorist 183
coverage, or uninsured and underinsured motorist coverages offered 184
under this section included in a policy of insurance shall not be 185
made subject to an exclusion or reduction in amount because of any 186
workers' compensation benefits payable as a result of the same 187
injury or death. 188

~~(G)~~~~(F)~~ Any automobile liability or motor vehicle liability 189
policy of insurance that includes uninsured motorist coverage, 190
underinsured motorist coverage, or both uninsured and underinsured 191
motorist coverages offered under division (A) of this section or 192
selected in accordance with division (C) of this section may, 193
without regard to any premiums involved, include terms and 194
conditions that preclude any and all stacking of such coverages, 195
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 uninsured motorist coverage, 205
underinsured motorist coverage, or both uninsured and underinsured 206
motorist coverages offered under division (A) of this section or 207
selected in accordance with division (C) of this section and that 208
provides a limit of coverage for payment for of damages for bodily 209

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

(H) Any policy of insurance that includes uninsured motorist 221
coverage, underinsured motorist coverage, or both uninsured and 222
underinsured motorist coverages may include terms and conditions 223
requiring that, so long as the insured has not prejudiced the 224
insurer's subrogation rights, each claim or suit for uninsured 225
motorist coverage, underinsured motorist coverage, or both 226
uninsured and underinsured motorist coverages be made or brought 227
within three years after the date of the accident causing the 228
bodily injury, sickness, disease, or death, or within one year 229
after the liability insurer for the owner or operator of the motor 230
vehicle liable to the insured has become the subject of insolvency 231
proceedings in any state, whichever is later. 232

~~(I) Nothing in this section shall prohibit the inclusion Any 233~~
~~policy of insurance that includes uninsured motorist coverage, 234~~
~~underinsured motorist coverage in any, or both uninsured and 235~~
~~underinsured motorist coverage provided in compliance with this 236~~
~~section. 237~~

~~(J) The coverages offered under division (A) of this section 238~~
~~or selected in accordance with division (C) of this section may 239~~
~~include terms and conditions that preclude coverage for bodily 240~~
~~injury or death suffered by an insured under specified 241~~

circumstances, including but not limited to any of the following 242
circumstances: 243

(1) While the insured is operating or occupying a motor 244
vehicle owned by, furnished to, or available for the regular use 245
of a named insured, a spouse, or a resident relative of a named 246
insured, if the motor vehicle is not specifically identified in 247
the policy under which a claim is made, or is not a newly acquired 248
or replacement motor vehicle covered under the terms of the policy 249
under which the uninsured motorist coverage, underinsured motorist 250
coverage, or uninsured and underinsured motorist coverages are 251
provided; 252

(2) While the insured is operating or occupying a motor 253
vehicle without a reasonable belief that the insured is entitled 254
to do so, provided that under no circumstances will an insured 255
whose license has been suspended, revoked, or never issued, be 256
held to have a reasonable belief that the insured is entitled to 257
operate a motor vehicle; 258

(3) When the bodily injury or death is caused by a motor 259
vehicle operated by any person who is specifically excluded from 260
coverage for bodily injury liability in the policy under which the 261
uninsured motorist coverage, underinsured motorist coverage, or 262
uninsured and underinsured motorist coverages are provided; 263

(4) While any employee, officer, director, partner, trustee, 264
member, executor, administrator, or beneficiary of the named 265
insured, or any relative of any such person, is operating or 266
occupying a motor vehicle, unless the employee, officer, director, 267
partner, trustee, member, executor, administrator, beneficiary, or 268
relative is operating or occupying a motor vehicle for which 269
uninsured motorist coverage, underinsured motorist coverage, or 270
both uninsured and underinsured motorist coverages are provided in 271
the policy; 272

(5) When the person actually suffering the bodily injury, 273

sickness, disease, or death is not an insured under the policy. 274

(J) In the event of payment to any person under the uninsured 275
motorist coverage, underinsured motorist coverage, or uninsured 276
and underinsured motorist coverages, and subject to the terms and 277
conditions of that coverage, the insurer making such payment is 278
entitled, to the extent of the payment, to the proceeds of any 279
settlement or judgment resulting from the exercise of any rights 280
of recovery of that person against any person or organization 281
legally responsible for the bodily injury or death for which the 282
payment is made, including any amount recoverable from an insurer 283
that is or becomes the subject of insolvency proceedings, through 284
such proceedings or in any other lawful manner. No insurer shall 285
attempt to recover any amount against the insured of an insurer 286
that is or becomes the subject of insolvency proceedings, to the 287
extent of those rights against the insurer that the insured 288
assigns to the paying insurer. 289

~~(K) As used Nothing in this section, "uninsured motor~~ 290
~~vehicle" and "underinsured motor vehicle" do not include any of~~ 291
~~the following motor vehicles:~~ 292

~~(1) A motor vehicle that has applicable liability coverage in~~ 293
~~the policy under which shall prohibit the uninsured and inclusion~~ 294
~~of underinsured motorist coverages are provided;~~ 295

~~(2) A motor vehicle owned by a political subdivision, unless~~ 296
~~the operator of the motor vehicle has an immunity under Chapter~~ 297
~~2744. of the Revised Code that could be raised as a defense in an~~ 298
~~action brought against the operator by the insured;~~ 299

~~(3) A motor vehicle self-insured within the meaning of the~~ 300
~~financial responsibility law of the state in which the motor~~ 301
~~vehicle is registered coverage in any uninsured motorist coverage~~ 302
~~included in a policy of insurance.~~ 303

~~(L) As used in this section, "automobile liability or motor~~ 304

vehicle liability policy of insurance" means either of the 305
following: 306

(1) Any policy of insurance that serves as proof of financial 307
responsibility, as proof of financial responsibility is defined by 308
division (K) of section 4509.01 of the Revised Code, for owners or 309
operators of the motor vehicles specifically identified in the 310
policy of insurance; 311

(2) Any umbrella liability policy of insurance written as 312
excess over one or more policies described in division (L)(1) of 313
this section The superintendent of insurance shall study the 314
market availability of, and competition for, uninsured and 315
underinsured motorist coverages in this state and shall, from time 316
to time, prepare status reports containing the superintendent's 317
findings and any recommendations. The first status report shall be 318
prepared not later than two years after the effective date of this 319
amendment. To assist in preparing these status reports, the 320
superintendent may require insurers and rating organizations 321
operating in this state to collect pertinent data and to submit 322
that data to the superintendent. 323

The superintendent shall submit a copy of each status report 324
to the governor, the speaker of the house of representatives, the 325
president of the senate, and the chairpersons of the committees of 326
the general assembly having primary jurisdiction over issues 327
relating to automobile insurance. 328

Sec. 3937.181. (A) No automobile liability or motor vehicle 329
liability policy of insurance offering uninsured and underinsured 330
motorist coverages under described in division (A) of section 331
3937.18 of the Revised Code that includes uninsured motorist 332
coverage, underinsured motorist coverage, or both uninsured and 333
underinsured motorist coverages shall be delivered or issued for 334
delivery unless coverage is also made available for damage to, or 335

the destruction of, any ~~automobile~~ or motor vehicle specifically 336
identified in the policy, for the protection of those persons 337
insured under the policy who are legally entitled to recover for 338
the damage to or destruction of any ~~automobile~~ or motor vehicle 339
specifically identified in the policy from the owner or operator 340
of an uninsured motor vehicle. 341

(B) The coverage made available under this section need not 342
exceed the lesser of seventy-five hundred dollars or the amount 343
otherwise available from the policy for damages to, or the 344
destruction of, the ~~automobile~~ or motor vehicle. The coverage 345
shall be subject to a maximum two-hundred-fifty-dollar deductible. 346
The losses recoverable under this section shall be limited to 347
recovery for that destruction of or damage to the ~~automobile~~ or 348
motor vehicle specifically identified in the policy directly 349
caused by an uninsured ~~automobile~~ or motor vehicle whose owner or 350
operator has been identified. 351

(C) If an insured has a policy containing collision coverage 352
covering damages caused by an uninsured ~~automobile~~ or motor 353
vehicle, the insured's insurer need not make coverage available 354
under this section. 355

(D) An insurer making payments to an insured under the 356
coverage offered under division (A) of this section shall be 357
entitled, to the extent of those payments and subject to the terms 358
and conditions of the coverage, to the proceeds of any settlement 359
or judgment resulting from the exercise of any rights of recovery 360
by the insured against the person or organization legally 361
responsible for the injury or destruction of the property, 362
including any amounts recoverable from an insurer that is or 363
becomes the subject of insolvency proceedings, through such 364
proceedings or in any other lawful manner. No insurer shall 365
attempt to recover any amount ~~against~~ from the insured of an 366
insurer that is or becomes the subject of insolvency proceedings, 367

to the extent of ~~his~~ those rights against ~~such the~~ insurer which 368
~~such that the~~ insured assigns to the paying insurer. 369

Sec. 3937.182. (A) As used in this section, "policy" includes 370
an endorsement. 371

(B) No policy of automobile or motor vehicle insurance that 372
is covered by sections 3937.01 to 3937.17 of the Revised Code, 373
including, but not limited to, the uninsured motorist coverage, 374
underinsured motorist coverage, or uninsured and underinsured 375
~~motorists~~ motorist coverages included in such a policy as ~~required~~ 376
authorized by section 3937.18 of the Revised Code, and that is 377
issued by an insurance company licensed to do business in this 378
state, and no other policy of casualty or liability insurance that 379
is covered by sections 3937.01 to 3937.17 of the Revised Code and 380
that is so issued, shall provide coverage for judgments or claims 381
against an insured for punitive or exemplary damages. 382

(C) This section applies only to policies of automobile, 383
motor vehicle, or other casualty or liability insurance as 384
described in division (B) of this section that are issued or 385
renewed on or after the effective date of this section. 386

Section 2. That existing sections 3937.18, 3937.181, and 387
3937.182 of the Revised Code are hereby repealed. 388

Section 3. In enacting this act, it is the intent of the 389
General Assembly to do all of the following: 390

(A) Protect and preserve stable markets and reasonable rates 391
for automobile insurance for Ohio consumers; 392

(B) Express the public policy of the state to: 393

(1) Eliminate any requirement of the mandatory offer of 394
uninsured motorist coverage, underinsured motorist coverage, or 395
both uninsured and underinsured motorist coverages; 396

(2) Eliminate the possibility of uninsured motorist coverage, 397
underinsured motorist coverage, or both uninsured and underinsured 398
motorist coverages being implied as a matter of law in any 399
insurance policy; 400

(3) Provide statutory authority for the inclusion of 401
exclusionary or limiting provisions in uninsured motorist 402
coverage, underinsured motorist coverage, or both uninsured and 403
underinsured motorist coverages; 404

(4) Eliminate any requirement of a written offer, selection, 405
or rejection form for uninsured motorist coverage, underinsured 406
motorist coverage, and uninsured and underinsured motorist 407
coverages from any transaction for an insurance policy; 408

(5) Ensure that a mandatory offer of uninsured motorist 409
coverage, underinsured motorist coverage, or both uninsured and 410
underinsured motorist coverages not be construed to be required by 411
the provisions of section 3937.181 of the Revised Code, as amended 412
by this act, that make uninsured motorist property damage coverage 413
available under limited conditions. 414

(C) Provide statutory authority for provisions limiting the 415
time period within which an insured may make a claim under 416
uninsured motorist coverage, underinsured motorist coverage, or 417
both uninsured and underinsured motorist coverages to three years 418
after the date of the accident causing the injury; 419

(D) To supersede the holdings of the Ohio Supreme Court in 420
those cases previously superseded by Am. Sub. S.B. 20 of the 120th 421
General Assembly, Am. Sub. H.B. 261 of the 122nd General Assembly, 422
S.B. 57 of the 123rd General Assembly, and Sub. S.B. 267 of the 423
123rd General Assembly; 424

(E) To supersede the holdings of the Ohio Supreme Court in 425
Linko v. Indemnity Ins. Co. of N. America (2000), 90 Ohio St. 3d 426
445, *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.* (1999), 85 Ohio 427

St. 3d 660, <i>Schumacher v. Kreiner</i> (2000), 88 Ohio St. 3d 358,	428
<i>Sexton v. State Farm Mut. Auto. Ins. Co.</i> (1982), 69 Ohio St. 2d	429
431, <i>Gyori v. Johnston Coca-Cola Bottling Group, Inc.</i> (1996), 76	430
Ohio St. 3d 565, and their progeny.	431