

As Reported by the House Insurance Committee

124th General Assembly

Regular Session

2001-2002

Am. 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

REPRESENTATIVES Calvert, Goodman, G. Smith, Schaffer, Faber, Olman,

Fessler, Husted, Jolivette, Wolpert, Evans, Krupinski, Blasdel

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.

1
2
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
the Revised Code be amended to read as follows:

4
5

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~~

6
7
8
9
10
11
12
13
14
15
16

~~such insureds:~~

17

~~(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.~~

18

19

20

21

22

23

24

25

26

~~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.~~

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

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 both 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,

42

43

44

45

46

47

48

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.

49
50
51
52
53
54
55
56

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

57
58
59
60

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

61
62
63

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

64
65
66

(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.

67
68
69
70
71
72
73
74
75

(4) The owner or operator has diplomatic immunity.

76

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

77
78

An "uninsured motorist" does not include the owner or

79

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.

80
81
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
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102

~~(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
104
105
106

~~(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~~

107
108
109
110
111

~~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.~~

144
145
146
147
148
149
150

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

151
152

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

153
154

~~(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 both
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.~~

155
156
157
158
159
160
161
162
163
164
165
166
167
168

~~(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~~

169
170
171
172
173
174
175

~~the bodily injury or death for which such payment is made, 176
including any amount recoverable from an insurer which is or 177
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 motorist coverage, underinsured motorist 184
coverage, or both uninsured and underinsured motorist coverages 185
offered under this section included in a policy of insurance shall 186
not be made subject to an exclusion or reduction in amount because 187
of any workers' compensation benefits payable as a result of the 188
same injury or death. 189~~

~~(G)(F) Any automobile liability or motor vehicle liability 190
policy of insurance that includes uninsured motorist coverage, 191
underinsured motorist coverage, or both uninsured and underinsured 192
motorist coverages offered under division (A) of this section or 193
selected in accordance with division (C) of this section may, 194
without regard to any premiums involved, include terms and 195
conditions that preclude any and all stacking of such coverages, 196
including but not limited to: 197~~

~~(1) Interfamily stacking, which is the aggregating of the 198
limits of such coverages by the same person or two or more 199
persons, whether family members or not, who are not members of the 200
same household; 201~~

~~(2) Intrafamily stacking, which is the aggregating of the 202
limits of such coverages purchased by the same person or two or 203
more family members of the same household. 204~~

~~(H)(G) Any automobile liability or motor vehicle liability 205
policy of insurance that includes uninsured motorist coverage, 206
underinsured motorist coverage, or both uninsured and underinsured 207~~

~~motorist coverages offered under division (A) of this section or
selected in accordance with division (C) of this section and that
provides a limit of coverage for payment for of damages for bodily
injury, including death, sustained by any one person in any one
automobile accident, may, notwithstanding Chapter 2125. of the
Revised Code, include terms and conditions to the effect that all
claims resulting from or arising out of any one person's bodily
injury, including death, shall collectively be subject to the
limit of the policy applicable to bodily injury, including death,
sustained by one person, and, for the purpose of such policy limit
shall constitute a single claim. Any such policy limit shall be
enforceable regardless of the number of insureds, claims made,
vehicles or premiums shown in the declarations or policy, or
vehicles involved in the accident.~~

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

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

~~(J) The coverages offered under division (A) of this section~~

~~or selected in accordance with division (C) of this section may~~ 240
include terms and conditions that preclude coverage for bodily 241
injury or death suffered by an insured under specified 242
circumstances, including but not limited to any of the following 243
circumstances: 244

(1) While the insured is operating or occupying a motor 245
vehicle owned by, furnished to, or available for the regular use 246
of a named insured, a spouse, or a resident relative of a named 247
insured, if the motor vehicle is not specifically identified in 248
the policy under which a claim is made, or is not a newly acquired 249
or replacement motor vehicle covered under the terms of the policy 250
under which the uninsured motorist coverage, underinsured motorist 251
coverage, or both uninsured and underinsured motorist coverages 252
are provided; 253

(2) While the insured is operating or occupying a motor 254
vehicle without a reasonable belief that the insured is entitled 255
to do so, provided that under no circumstances will an insured 256
whose license has been suspended, revoked, or never issued, be 257
held to have a reasonable belief that the insured is entitled to 258
operate a motor vehicle; 259

(3) When the bodily injury or death is caused by a motor 260
vehicle operated by any person who is specifically excluded from 261
coverage for bodily injury liability in the policy under which the 262
uninsured motorist coverage, underinsured motorist coverage, or 263
both uninsured and underinsured motorist coverages are provided; 264

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

both uninsured and underinsured motorist coverages are provided in 272
the policy; 273

(5) When the person actually suffering the bodily injury, 274
sickness, disease, or death is not an insured under the policy. 275

(J) In the event of payment to any person under the uninsured 276
motorist coverage, underinsured motorist coverage, or both 277
uninsured and underinsured motorist coverages, and subject to the 278
terms and conditions of that coverage, the insurer making such 279
payment is entitled, to the extent of the payment, to the proceeds 280
of any settlement or judgment resulting from the exercise of any 281
rights of recovery of that person against any person or 282
organization legally responsible for the bodily injury or death 283
for which the payment is made, including any amount recoverable 284
from an insurer that is or becomes the subject of insolvency 285
proceedings, through such proceedings or in any other lawful 286
manner. No insurer shall attempt to recover any amount against the 287
insured of an insurer that is or becomes the subject of insolvency 288
proceedings, to the extent of those rights against the insurer 289
that the insured assigns to the paying insurer. 290

~~(K) As used Nothing in this section, "uninsured motor~~ 291
~~vehicle" and "underinsured motor vehicle" do not include any of~~ 292
~~the following motor vehicles:~~ 293

~~(1) A motor vehicle that has applicable liability coverage in~~ 294
~~the policy under which shall prohibit the uninsured and inclusion~~ 295
~~of underinsured motorist coverages are provided;~~ 296

~~(2) A motor vehicle owned by a political subdivision, unless~~ 297
~~the operator of the motor vehicle has an immunity under Chapter~~ 298
~~2744. of the Revised Code that could be raised as a defense in an~~ 299
~~action brought against the operator by the insured;~~ 300

~~(3) A motor vehicle self-insured within the meaning of the~~ 301
~~financial responsibility law of the state in which the motor~~ 302

~~vehicle is registered coverage in any uninsured motorist coverage
included in a policy of insurance.~~

303
304

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

305
306
307

~~(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;~~

308
309
310
311
312

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

313
314
315
316
317
318
319
320
321
322
323
324

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

325
326
327
328
329

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 motorist~~

330
331
332
333

coverage, underinsured motorist coverage, or both uninsured and 334
underinsured motorist coverages shall be delivered or issued for 335
delivery unless coverage is also made available for damage to, or 336
the destruction of, any ~~automobile~~ or motor vehicle specifically 337
identified in the policy, for the protection of those persons 338
insured under the policy who are legally entitled to recover for 339
the damage to or destruction of any ~~automobile~~ or motor vehicle 340
specifically identified in the policy from the owner or operator 341
of an uninsured motor vehicle. 342

(B) The coverage made available under this section need not 343
exceed the lesser of seventy-five hundred dollars or the amount 344
otherwise available from the policy for damages to, or the 345
destruction of, the ~~automobile~~ or motor vehicle. The coverage 346
shall be subject to a maximum two-hundred-fifty-dollar deductible. 347
The losses recoverable under this section shall be limited to 348
recovery for that destruction of or damage to the ~~automobile~~ or 349
motor vehicle specifically identified in the policy directly 350
caused by an uninsured ~~automobile~~ or motor vehicle whose owner or 351
operator has been identified. 352

(C) If an insured has a policy containing collision coverage 353
covering damages caused by an uninsured ~~automobile~~ or motor 354
vehicle, the insured's insurer need not make coverage available 355
under this section. 356

(D) An insurer making payments to an insured under the 357
coverage offered under division (A) of this section shall be 358
entitled, to the extent of those payments and subject to the terms 359
and conditions of the coverage, to the proceeds of any settlement 360
or judgment resulting from the exercise of any rights of recovery 361
by the insured against the person or organization legally 362
responsible for the injury or destruction of the property, 363
including any amounts recoverable from an insurer that is or 364
becomes the subject of insolvency proceedings, through such 365

proceedings or in any other lawful manner. No insurer shall 366
attempt to recover any amount ~~against~~ from the insured of an 367
insurer that is or becomes the subject of insolvency proceedings, 368
to the extent of ~~his~~ those rights against ~~such the~~ insurer which 369
~~such~~ that the insured assigns to the paying insurer. 370

Sec. 3937.182. (A) As used in this section, "policy" includes 371
an endorsement. 372

(B) No policy of automobile or motor vehicle insurance that 373
is covered by sections 3937.01 to 3937.17 of the Revised Code, 374
including, but not limited to, the uninsured motorist coverage, 375
underinsured motorist coverage, or both uninsured and underinsured 376
~~motorists~~ motorist coverages included in such a policy as ~~required~~ 377
authorized by section 3937.18 of the Revised Code, and that is 378
issued by an insurance company licensed to do business in this 379
state, and no other policy of casualty or liability insurance that 380
is covered by sections 3937.01 to 3937.17 of the Revised Code and 381
that is so issued, shall provide coverage for judgments or claims 382
against an insured for punitive or exemplary damages. 383

(C) This section applies only to policies of automobile, 384
motor vehicle, or other casualty or liability insurance as 385
described in division (B) of this section that are issued or 386
renewed on or after the effective date of this section. 387

Section 2. That existing sections 3937.18, 3937.181, and 388
3937.182 of the Revised Code are hereby repealed. 389

Section 3. In enacting this act, it is the intent of the 390
General Assembly to do all of the following: 391

(A) Protect and preserve stable markets and reasonable rates 392
for automobile insurance for Ohio consumers; 393

(B) Express the public policy of the state to: 394

(1) Eliminate any requirement of the mandatory offer of 395
uninsured motorist coverage, underinsured motorist coverage, or 396
both uninsured and underinsured motorist coverages; 397

(2) Eliminate the possibility of uninsured motorist coverage, 398
underinsured motorist coverage, or both uninsured and underinsured 399
motorist coverages being implied as a matter of law in any 400
insurance policy; 401

(3) Provide statutory authority for the inclusion of 402
exclusionary or limiting provisions in uninsured motorist 403
coverage, underinsured motorist coverage, or both uninsured and 404
underinsured motorist coverages; 405

(4) Eliminate any requirement of a written offer, selection, 406
or rejection form for uninsured motorist coverage, underinsured 407
motorist coverage, or both uninsured and underinsured motorist 408
coverages from any transaction for an insurance policy; 409

(5) Ensure that a mandatory offer of uninsured motorist 410
coverage, underinsured motorist coverage, or both uninsured and 411
underinsured motorist coverages not be construed to be required by 412
the provisions of section 3937.181 of the Revised Code, as amended 413
by this act, that make uninsured motorist property damage coverage 414
available under limited conditions. 415

(C) Provide statutory authority for provisions limiting the 416
time period within which an insured may make a claim under 417
uninsured motorist coverage, underinsured motorist coverage, or 418
both uninsured and underinsured motorist coverages to three years 419
after the date of the accident causing the injury; 420

(D) To supersede the holdings of the Ohio Supreme Court in 421
those cases previously superseded by Am. Sub. S.B. 20 of the 120th 422
General Assembly, Am. Sub. H.B. 261 of the 122nd General Assembly, 423
S.B. 57 of the 123rd General Assembly, and Sub. S.B. 267 of the 424
123rd General Assembly; 425

(E) To supersede the holdings of the Ohio Supreme Court in 426
Linko v. Indemnity Ins. Co. of N. America (2000), 90 Ohio St. 3d 427
445, *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.* (1999), 85 Ohio 428
St. 3d 660, *Schumacher v. Kreiner* (2000), 88 Ohio St. 3d 358, 429
Sexton v. State Farm Mut. Auto. Ins. Co. (1982), 69 Ohio St. 2d 430
431, *Gyori v. Johnston Coca-Cola Bottling Group, Inc.* (1996), 76 431
Ohio St. 3d 565, and their progeny. 432