

As Introduced

**127th General Assembly
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H. B. No. 481

Representative Blessing

**Cosponsors: Representatives Oelslager, Stebelton, Okey, Huffman, Hughes,
Foley, Combs, Szollosi, Skindell**

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A B I L L

To amend sections 2305.16 and 3937.18 of the Revised 1
Code to include in the definition of uninsured 2
motorist, operators who avoid liability because of 3
a "sudden emergency" plea, to prohibit uninsured 4
and underinsured coverage from limiting or 5
contracting certain coverage requirements, and to 6
include uninsured motorist and underinsured 7
motorist coverage in the current tolling of the 8
statute of limitations due to the person bringing 9
an action being within the age of minority or of 10
unsound mind. 11

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

Section 1. That sections 2305.16 and 3937.18 of the Revised 12
Code be amended to read as follows: 13

Sec. 2305.16. Unless otherwise provided in sections 1302.98, 14
1304.35, ~~and~~ 2305.04 to 2305.14, and 3937.18 of the Revised Code, 15
if a person entitled to bring any action mentioned in those 16
sections, unless for penalty or forfeiture, is, at the time the 17
cause of action accrues, within the age of minority or of unsound 18

mind, the person may bring it within the respective times limited 19
by those sections, after the disability is removed. When the 20
interests of two or more parties are joint and inseparable, the 21
disability of one shall inure to the benefit of all. 22

After the cause of action accrues, if the person entitled to 23
bring the action becomes of unsound mind and is adjudicated as 24
such by a court of competent jurisdiction or is confined in an 25
institution or hospital under a diagnosed condition or disease 26
which renders the person of unsound mind, the time during which 27
the person is of unsound mind and so adjudicated or so confined 28
shall not be computed as any part of the period within which the 29
action must be brought. 30

Sec. 3937.18. (A) Any policy of insurance delivered or issued 31
for delivery in this state with respect to any motor vehicle 32
registered or principally garaged in this state that insures 33
against loss resulting from liability imposed by law for bodily 34
injury or death suffered by any person arising out of the 35
ownership, maintenance, or use of a motor vehicle, may, but is not 36
required to, include uninsured motorist coverage, underinsured 37
motorist coverage, or both uninsured and underinsured motorist 38
coverages. 39

Unless otherwise defined in the policy or any endorsement to 40
the policy, "motor vehicle," for purposes of the uninsured 41
motorist coverage, underinsured motorist coverage, or both 42
uninsured and underinsured motorist coverages, means a 43
self-propelled vehicle designed for use and principally used on 44
public roads, including an automobile, truck, semi-tractor, 45
motorcycle, and bus. "Motor vehicle" also includes a motor home, 46
provided the motor home is not stationary and is not being used as 47
a temporary or permanent residence or office. "Motor vehicle" does 48
not include a trolley, streetcar, trailer, railroad engine, 49

railroad car, motorized bicycle, golf cart, off-road recreational 50
vehicle, snowmobile, fork lift, aircraft, watercraft, construction 51
equipment, farm tractor or other vehicle designed and principally 52
used for agricultural purposes, mobile home, vehicle traveling on 53
treads or rails, or any similar vehicle. 54

(B) For purposes of any uninsured motorist coverage included 55
in a policy of insurance, an "uninsured motorist" is the owner or 56
operator of a motor vehicle if any of the following conditions 57
applies: 58

(1) There exists no bodily injury liability bond or insurance 59
policy covering the owner's or operator's liability to the 60
insured. 61

(2) The liability insurer denies coverage to the owner or 62
operator, or is or becomes the subject of insolvency proceedings 63
in any state. 64

(3) The identity of the owner or operator cannot be 65
determined, but independent corroborative evidence exists to prove 66
that the bodily injury, sickness, disease, or death of the insured 67
was proximately caused by the negligence or intentional actions of 68
the unidentified operator of the motor vehicle. For purposes of 69
division (B)(3) of this section, the testimony of any insured 70
seeking recovery from the insurer shall not constitute independent 71
corroborative evidence, unless the testimony is supported by 72
additional evidence. 73

(4) The owner or operator has diplomatic immunity. 74

(5) The owner or operator has immunity under Chapter 2744. of 75
the Revised Code. 76

(6) A court or jury determines that the operator is not 77
negligent in a motor vehicle accident due to the fact that the 78
operator was suddenly stricken by a period of unconsciousness 79
which the operator had no reason to anticipate and which rendered 80

it impossible for the operator to control the motor vehicle. 81

An "uninsured motorist" does not include the owner or 82
operator of a motor vehicle that is self-insured within the 83
meaning of the financial responsibility law of the state in which 84
the motor vehicle is registered. 85

(C) If underinsured motorist coverage is included in a policy 86
of insurance, the underinsured motorist coverage shall provide 87
protection for insureds thereunder for bodily injury, sickness, or 88
disease, including death, suffered by any insured under the 89
policy, where the limits of coverage available for payment to the 90
insured under all bodily injury liability bonds and insurance 91
policies covering persons liable to the insured are less than the 92
limits for the underinsured motorist coverage. Underinsured 93
motorist coverage in this state is not and shall not be excess 94
coverage to other applicable liability coverages, and shall only 95
provide the insured an amount of protection not greater than that 96
which would be available under the insured's uninsured motorist 97
coverage if the person or persons liable to the insured were 98
uninsured at the time of the accident. The policy limits of the 99
underinsured motorist coverage shall be reduced by those amounts 100
available for payment under all applicable bodily injury liability 101
bonds and insurance policies covering persons liable to the 102
insured. 103

For purposes of underinsured motorist coverage, an 104
"underinsured motorist" does not include the owner or operator of 105
a motor vehicle that has applicable liability coverage in the 106
policy under which the underinsured motorist coverage is provided. 107

(D) With respect to the uninsured motorist coverage, 108
underinsured motorist coverage, or both uninsured and underinsured 109
motorist coverages included in a policy of insurance, an insured 110
shall be required to prove all elements of the insured's claim 111
that are necessary to recover from the owner or operator of the 112

uninsured or underinsured motor vehicle for the purpose of the 113
insurer's determination of the accrual of the insured's claim. 114

(E) The uninsured motorist coverage, underinsured motorist 115
coverage, or both uninsured and underinsured motorist coverages 116
included in a policy of insurance shall not be subject to an 117
exclusion or reduction in amount because of any workers' 118
compensation benefits payable as a result of the same injury or 119
death. 120

(F) Any policy of insurance that includes uninsured motorist 121
coverage, underinsured motorist coverage, or both uninsured and 122
underinsured motorist coverages may, without regard to any 123
premiums involved, include terms and conditions that preclude any 124
and all stacking of such coverages, including but not limited to: 125

(1) Interfamily stacking, which is the aggregating of the 126
limits of such coverages by the same person or two or more 127
persons, whether family members or not, who are not members of the 128
same household; 129

(2) Intrafamily stacking, which is the aggregating of the 130
limits of such coverages purchased by the same person or two or 131
more family members of the same household. 132

(G) Any policy of insurance that includes uninsured motorist 133
coverage, underinsured motorist coverage, or both uninsured and 134
underinsured motorist coverages and that provides a limit of 135
coverage for payment of damages for bodily injury, including 136
death, sustained by any one person in any one automobile accident, 137
may, notwithstanding Chapter 2125. of the Revised Code, include 138
terms and conditions to the effect that all claims resulting from 139
or arising out of any one person's bodily injury, including death, 140
shall collectively be subject to the limit of the policy 141
applicable to bodily injury, including death, sustained by one 142
person, and, for the purpose of such policy limit shall constitute 143

a single claim. Any such policy limit shall be enforceable 144
regardless of the number of insureds, claims made, vehicles or 145
premiums shown in the declarations or policy, or vehicles involved 146
in the accident. 147

(H) Any policy of insurance that includes uninsured motorist 148
coverage, underinsured motorist coverage, or both uninsured and 149
underinsured motorist coverages may include terms and conditions 150
requiring that, so long as the insured has not prejudiced the 151
insurer's subrogation rights, each claim or suit for uninsured 152
motorist coverage, underinsured motorist coverage, or both 153
uninsured and underinsured motorist coverages be made or brought 154
within three years after the date of the accident causing the 155
bodily injury, sickness, disease, or death, or within one year 156
after the liability insurer for the owner or operator of the motor 157
vehicle liable to the insured has become the subject of insolvency 158
proceedings in any state, whichever is later. 159

(I) ~~Any~~ Except as otherwise provided in this section, any 160
policy of insurance that includes uninsured motorist coverage, 161
underinsured motorist coverage, or both uninsured and underinsured 162
motorist coverages may include terms and conditions that preclude 163
coverage for bodily injury or death suffered by an insured under 164
specified circumstances, including but not limited to any of the 165
following circumstances: 166

(1) While the insured is operating or occupying a motor 167
vehicle owned by, furnished to, or available for the regular use 168
of a named insured, a spouse, or a resident relative of a named 169
insured, if the motor vehicle is not specifically identified in 170
the policy under which a claim is made, or is not a newly acquired 171
or replacement motor vehicle covered under the terms of the policy 172
under which the uninsured motorist coverage, underinsured motorist 173
coverage, or both uninsured and underinsured motorist coverages 174
are provided; 175

(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 both 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 both 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~~ No policy of insurance that includes uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverage shall include terms and conditions that contradict or limit the provisions of this section.

(K) In the event of payment to any person under the uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages, 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 207
of any settlement or judgment resulting from the exercise of any 208
rights of recovery of that person against any person or 209
organization legally responsible for the bodily injury or death 210
for which the payment is made, including any amount recoverable 211
from an insurer that is or becomes the subject of insolvency 212
proceedings, through such proceedings or in any other lawful 213
manner. No insurer shall attempt to recover any amount against the 214
insured of an insurer that is or becomes the subject of insolvency 215
proceedings, to the extent of those rights against the insurer 216
that the insured assigns to the paying insurer. 217

~~(K)~~(L) Nothing in this section shall prohibit the inclusion 218
of underinsured motorist coverage in any uninsured motorist 219
coverage included in a policy of insurance. 220

~~(L)~~(M) The superintendent of insurance shall study the market 221
availability of, and competition for, uninsured and underinsured 222
motorist coverages in this state and shall, from time to time, 223
prepare status reports containing the superintendent's findings 224
and any recommendations. The first status report shall be prepared 225
not later than two years after ~~the effective date of this~~ 226
~~amendment~~ October 31, 2001. To assist in preparing these status 227
reports, the superintendent may require insurers and rating 228
organizations operating in this state to collect pertinent data 229
and to submit that data to the superintendent. 230

The superintendent shall submit a copy of each status report 231
to the governor, the speaker of the house of representatives, the 232
president of the senate, and the chairpersons of the committees of 233
the general assembly having primary jurisdiction over issues 234
relating to automobile insurance. 235

Section 2. That existing sections 2305.16 and 3937.18 of the 236
Revised Code are hereby repealed. 237

Section 3. It is the intent of the General Assembly in 238
amending section 2305.16 of the Revised Code pursuant to this act 239
to respond to *Sarmiento v. Grange Mutual Casualty Company* (2005), 240
106 Ohio St. 3d 403, by clarifying that the provisions of section 241
2305.16 of the Revised Code apply to claims of uninsured motorist 242
and underinsured motorist coverage. 243

It is further the intent of the General Assembly in amending 244
divisions (I) and (J) of section 3937.18 of the Revised Code 245
pursuant to this act to supercede the effect of the holding of the 246
Ohio Supreme Court in *Snyder v. American Family Insurance Company* 247
(2007), 114 Ohio St. 3d 239. The General Assembly further declares 248
its intent that division (I) of section 3937.18 of the Revised 249
Code does not make the other provisions of section 3937.18 of the 250
Revised Code merely advisory, but rather division (I) of section 251
3937.18 of the Revised Code permits terms and conditions that do 252
not limit or contradict the other provisions of the section. 253

It is further the intent of the General Assembly in amending 254
division (B) of section 3937.18 of the Revised Code pursuant to 255
this act to respond to *Roman v. Estate of Gobbo* (2003), 99 Ohio 256
St. 3d 260, by allowing insureds who have purchased uninsured 257
motorists coverage to be compensated under that coverage for 258
losses suffered as a result of accidents caused by persons who 259
avoid liability by proving the affirmative defense of "sudden 260
emergency." 261