

AN ACT

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

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:

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:~~

~~(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 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, 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, 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, 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.

~~(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 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.~~

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

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

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

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

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

~~(H)~~(G) Any automobile liability or motor vehicle liability policy of insurance that includes uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured 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 include terms and conditions that preclude coverage for bodily injury or death suffered by an insured under specified circumstances, including but not limited to any of the following circumstances:

(1) While the insured is operating or occupying a motor vehicle owned by, furnished to, or available for the regular use of a named insured, a spouse, or a resident relative of a named 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 both 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 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 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 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 shall prohibit the uninsured and inclusion of 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 coverage in any uninsured motorist coverage included in a policy of insurance.~~

~~(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;~~

~~(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.

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.

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 coverage, underinsured motorist coverage, or both 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.

(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.

(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 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 motorist coverage, underinsured motorist coverage, or both 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 3937.182 of the Revised Code are hereby repealed.

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

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

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

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

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

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

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

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

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

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

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

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____