



Aida S. Montano

Final Analysis
Legislative Service Commission

Sub. S.B. 267
123rd General Assembly
(As Passed by the General Assembly)

Sens. Ray, Hottinger, Nein, DiDonato, Spada, Drake

Reps. Salerno, Callender, Tiberi, Mottley, Stapleton, Flannery, Evans, Terwilleger, Hoops, Harris, Calvert, Robinson, Metzger, Buehrer, Roman, Bender, Austria, Womer Benjamin, Corbin, Grendell, Gooding, Widener, Van Vyven, Goodman, Myers, Gardner, Brading, Damschroder

Effective date: September 21, 2000

ACT SUMMARY

- Modifies the Uninsured and Underinsured Motorist Coverages Law to clarify that recovery under that Law is limited to circumstances in which an insured suffers bodily injury or death, and declares the intent of the General Assembly in making this modification to supersede the holdings of the Ohio Supreme Court in *Sexton v. State Farm Mut. Auto. Ins. Co.* (1982), 69 Ohio St.2d 431, and *Moore v. State Auto. Mut. Ins. Co.* (2000), 88 Ohio St.3d 27.
- Specifies that a renewal, new, or replacement automobile insurance policy that provides continuing coverage to a named insured or applicant generally need not provide for uninsured and underinsured motorist coverages that the insured or applicant rejected in connection with the previous policy issued to the named insured or applicant by the insurer or affiliate of the insurer.
- Removes the exclusion of 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 from the definition of "uninsured motor vehicle" or "underinsured motor vehicle" as used in the Uninsured and Underinsured Motorist Coverages Law.

- Specifies that an insurer is not prohibited from incorporating into an automobile insurance policy any changes permitted or required by the Revised Code at the beginning of any policy period within the minimum two-year period allowed for the issuance of every automobile insurance policy.

CONTENT AND OPERATION

Recovery under uninsured/underinsured motorist coverage

Prior law

Formerly, the Uninsured and Underinsured Motorist Coverages Law generally prohibited the delivery or issuance for delivery of any automobile liability or motor vehicle liability insurance policy in Ohio insuring 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, unless both of the following coverages were offered "to persons insured under the policy *for loss* due to bodily injury or death suffered by such insureds" (R.C. 3937.18(A)):

(1) Uninsured motorist coverage, which provided protection for insureds under the policy who were legally entitled "to recover *damages* 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." An insured was legally entitled to recover *damages* if the insured was able to prove the elements of the insured's claim that were necessary to recover *damages* from the owner or operator of the uninsured vehicle.

(2) Underinsured motorist coverage, which provided protection for insureds under the policy "*against loss* 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 were less than the limits for the insured's uninsured motorist coverage.

Operation of the act

The act removes the references to "for loss," "damages," and "against loss" from prior law, as described above in italics. Consequently, under the act, the Uninsured and Underinsured Motorist Coverages Law requires the offering of the coverages "to persons insured under the policy due to bodily injury or death suffered by such insureds." Uninsured motorist coverage protects insureds under

the policy "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 the uninsured motorist coverage, 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." And underinsured motorist coverage protects insureds under the policy "for bodily injury, sickness, or disease, including death, suffered by any person insured under the policy." (R.C. 3937.18(A).)

Intent of the act

The act states that it is the intent of the General Assembly in making these changes "to supersede the holdings of the Ohio Supreme Court in *Sexton v. State Farm Mut. Auto. Ins. Co.* (1982), 69 Ohio St.2d 431, and *Moore v. State Auto. Mut. Ins. Co.* (2000), 88 Ohio St.3d 27, that R.C. 3937.18(A) does not permit an insurer to limit uninsured or underinsured motorist coverage in such a way that an insured must suffer bodily injury, sickness, death or disease for any other insured to recover from the insurer." (Section 3.) (See **COMMENT 1**.)

Coverages under renewal, new, or replacement policies

Continuing and prior law

A continuing provision of the Uninsured and Underinsured Motorist Coverages Law authorizes a named insured or applicant: (a) to reject or accept both uninsured and underinsured motorist coverages as offered under the Law or (b) alternatively to select both coverages in accordance with a schedule of limits approved by the Superintendent of Insurance. The schedule of limits may permit a named insured or applicant to select uninsured and underinsured motorist coverages with limits on those 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 cannot be less than the limits set forth in the Financial Responsibility Law (see **COMMENT 2**) for bodily injury or death. A named insured's or applicant's rejection of both uninsured and underinsured motorist coverages or a named insured's or applicant's selection of those coverages in accordance with the schedule of limits approved by the Superintendent must be in writing and signed by the named insured or applicant. (R.C. 3937.18(C), 1st paragraph.)

Formerly, the Uninsured and Underinsured Motorist Coverages Law specified that, unless a named insured or applicant requested the coverages described in the preceding paragraph in writing, those coverages did not need to be provided in or made supplemental to a policy renewal or replacement policy if a

named insured or applicant had *rejected* those coverages in connection with a policy previously issued to the named insured or applicant by the same insurer. If a named insured or applicant had selected those coverages in connection with a policy previously issued to the named insured or applicant by the same insurer, with limits in accordance with the schedule of limits approved by the Superintendent, those coverages did not need to be provided with limits in excess of the limits of liability previously issued for those coverages, unless a named insured or applicant requested in writing higher limits of liability for those coverages. (R.C. 3937.18(C), 2nd paragraph.)

Operation of the act

The act continues the provisions in the law authorizing a named insured or applicant to reject or accept both uninsured and underinsured motorist coverages as offered under the law or alternatively to select both coverages in accordance with a schedule of limits approved by the Superintendent of Insurance, and modifies the provisions pertaining to those coverages under renewal or replacement policies. Under the act, unless a named insured or applicant requests the uninsured or underinsured motorist coverages in writing, those 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* if a named insured or applicant has rejected those coverages in connection with a policy previously issued to the named insured or applicant by the same insurer *or affiliate or that insurer*. If a named insured or applicant has selected those 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, those coverages need not be provided with limits in excess of the limits of liability previously issued for those coverages, unless a named insured or applicant requests in writing higher limits of liability for those coverages. (Italicized phrases are added by the act.) (R.C. 3937.18(C), 2nd paragraph.)

Intent of the act

The act declares that it is the intent of the General Assembly in amending R.C. 3937.18(C), as described above, to make it clear that new rejections of uninsured and underinsured motorist coverages or decisions to accept lower limits of coverages need not be obtained from an insured or applicant at the beginning of each policy period in which the policy provides continuing coverage to the named insured or applicant, regardless of whether a new, replacement, or renewal policy that provides continuing coverage to the named insured or applicant is issued by the insurer or affiliate of that insurer with or without new policy terms or new policy numbers (Section 4).

"Uninsured motor vehicle" and "underinsured motor vehicle"

Prior and continuing law

Formerly, the Uninsured and Underinsured Motorist Coverages Law provided, by definition, that any of the following motor vehicles was *not* an "uninsured motor vehicle" or "underinsured motor vehicle" as used in that Law (R.C. 3937.18(K)):

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

(2) *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;*

(3) A motor vehicle owned by a political subdivision, unless the operator of the motor vehicle had an immunity under the Political Subdivision Sovereign Immunity Law that could be raised as a defense in an action brought against the operator by the insured;

(4) A motor vehicle that was self-insured within the meaning of the financial responsibility law of the state in which the motor vehicle was registered.

The items described in (1), (3), and (4), above, are in continuing law.

Operation of the act

The act removes the exclusion of *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*, described in (2), above from the definition of "uninsured motor vehicle" or "underinsured motor vehicle" as used in the Uninsured and Underinsured Motorist Coverages Law (R.C. 3937.18(K)). In effect, *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* is an "uninsured motor vehicle" or an "underinsured motor vehicle" under that Law (see **COMMENT 3**).

Modification of policy terms at beginning of policy period

Prior and continuing law

Formerly, under the Automobile Insurance Law, every automobile insurance policy was required to be issued for a *policy period* of not less than two years or guaranteed *renewable for successive policy periods* totaling not less than two years. Continuing law provides that if renewal is mandatory, "cancellation," as used in the provisions pertaining to the cancellation of automobile insurance

policies, includes refusal to renew a policy with at least the coverages, included insureds, and policy limits provided at the end of the next preceding policy period. An insurer is prohibited from canceling any such policy except pursuant to the terms of the policy, and in accordance with R.C. 3937.30 to 3937.39, and for any of four reasons specified in R.C. 3937.31. (R.C. 3937.31(A).)

Operation of the act

Under the act, every automobile insurance policy must be issued for a *period* (instead of a *policy period*) of not less than two years or guaranteed renewable for successive policy periods totaling not less than two years. The act continues the other provisions in R.C. 3937.31 and adds a new provision that specifies that nothing in that section prohibits an insurer from incorporating into a policy any changes that are permitted or required by that section or other sections of the Revised Code at the beginning of any policy period within the two-year period as described in the preceding sentence. (R.C. 3937.31(A) and (E).)

Intent of the act

The act declares that it is the intent of the General Assembly in amending R.C. 3937.31, as described above, to make it clear that an insurer may modify the terms and conditions of any automobile insurance policy to incorporate changes that are permitted or required by that section and other sections of the Revised Code at the beginning of any policy period within the two-year period set forth in R.C. 3937.31(A) as described above (Section 5).

COMMENT

1. In *Sexton*, the insured's daughter was killed in an automobile accident caused by an uninsured motorist. The insured attempted to recover his damages arising out of the death of his daughter (medical and funeral expenses) under the uninsured motorist provision of his insurance policy. Since the daughter was not an insured as defined by the policy, and the father--the insured--did not sustain bodily injury, the insurer denied the claim.

The version of R.C. 3937.18(A) that applied in *Sexton* provided that

[no] automobile liability . . . policy of insurance . . . shall be delivered or issued for delivery in this state . . . unless an equivalent amount of coverage for bodily injury or death is provided therein . . . for the protection of persons insured thereunder who are legally entitled to recover damages from owners or

operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom. (69 Ohio St.2d. at 433.)

The Court noted that, "[a]lthough the statute does not indicate who must have sustained the bodily injury, it does not specify that it be the insured" (69 Ohio St.2d at 434). The Court found that the insured *Sexton's* cause of action under the wrongful death laws, R.C. Chapter 2125., for recovery of pecuniary damages against the negligent driver satisfies the requirement of R.C. 3937.18(A) that the insured be "legally entitled to recover damages" resulting from the bodily injury or death. Accordingly, the Court held the policy's restriction allowing recovery only when an insured suffered bodily injury to be void.

The facts in *Moore* are very similar: the insured's son died in an automobile accident caused by the negligence of an uninsured motorist. The insured filed an uninsured motorist claim for damages arising out of the death of her son. The policy provided that the insurer would pay compensatory damages due to bodily injury sustained by an insured. Since the son was not an insured and the insured did not sustain bodily injury as a result of the accident, the insurer denied the claim.

Subsequent to the *Sexton* decision, the 120th General Assembly, in Am. Sub. S.B. 20, amended section 3937.18 of the Revised Code. The resulting version is as follows:

(A) No automobile liability . . . policy of insurance . . . shall be delivered or issued for delivery in this state . . . unless both of the following coverages are provided to persons insured under the policy for loss due to bodily injury or death suffered by such persons:

(1) Uninsured motorist coverage, which . . . shall provide protection for bodily injury or death . . . for the protection of persons insured thereunder who are legally entitled to recover damages 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. (88 Ohio St.3d at 30.)

The insured in *Moore* argued that the phrase "suffered by such persons" in division (A) refers to "loss" (rather than to bodily injury) and the phrase "suffered by any person insured under the policy" in division (A)(1) refers to "damages" (rather than to bodily injury). In holding that the statute, as revised by Am. Sub.

S.B. 20, does *not* require that an insured suffer bodily injury, sickness, or disease in order to recover damages from the insurer, the Court noted, among other things, that

if the words "for loss" and "damages" were removed from R.C. 3937.18(A) and (A)(1), then the statute would have precisely the meaning that [the insurer] suggests [that is, that the phrases "suffered by such persons" and "suffered by any person insured under the policy" refer to the phrase "bodily injury or death" or "bodily injury, sickness, or disease, including death," whichever is applicable]. (88 Ohio St.3d at 32.)

The Court in *Moore* noted that R.C. 3937.18 is remedial legislation and must be liberally construed to give effect to the legislative purpose of uninsured motorist coverage, which is to protect persons from losses that, because of the tortfeasor's lack of liability coverage, would otherwise go uncompensated. Thus, R.C. 2125.01 recognizes a cause of action for wrongful death, and R.C. 2125.02(A)(1) acknowledges that parents of wrongful death victims are presumed to have suffered damages.

2. A policy or bond does not comply with certain provisions of the Financial Responsibility Law unless the policy or bond, if the accident has resulted in bodily injury or death, is subject to a limit, exclusive of interest and costs, of not less than \$12,500 because of bodily injury to or death of one person in any one accident, and, subject to that limit for one person, to a limit of not less than \$25,000 because of bodily injury to or death of two or more persons in one accident (R.C. 4509.20(A)--not in the act).

3. Under the Uninsured and Underinsured Motorist Coverages Law, as amended by the act, uninsured motorist coverage is provided for the protection of insureds who are legally entitled to recover from owners or operators of "uninsured motor vehicles" (which, under the act, include *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*) because of bodily injury, sickness, or disease, including death, suffered by any person insured under the policy. Underinsured motorist coverage is provided for the protection of insureds for bodily injury, sickness, or disease, including death, suffered by any person insured under the policy, if 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 motorist coverage. (R.C. 3937.18(A) and (K).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-16-00	p. 1470
Reported, S. Insurance, Commerce & Labor	04-05-00	pp. 1560-1561
Passed Senate (33-0)	04-05-00	pp. 1564-1565
Reported, H. Civil & Commercial Law	05-17-00	p. 2002
Passed House (96-0)	05-23-00	pp. 2043-2044
Senate concurred in House amendments (33-0)	05-24-00	pp. 1820-1821

00-SB267.123/nlr

