



Aida S. Montano

Bill Analysis
Legislative Service Commission

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

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

BILL SUMMARY

- Modifies the Uninsured and Underinsured Motorist Coverages Law to clarify that recovery under the Law is limited to circumstances in which an insured suffers bodily injury or death.
- Declares the intent of the General Assembly 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.

CONTENT AND OPERATION

Recovery under uninsured/underinsured motorist coverage

Existing law

The Uninsured and Underinsured Motorist Coverages Law generally prohibits the 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 are 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 provides protection for insureds under the policy 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." An insured is legally entitled to recover *damages* if the insured is able to prove the elements of the insured's claim that are necessary to recover *damages* from the owner or operator of the uninsured vehicle.

(2) Underinsured motorist coverage, which provides 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 are less than the limits for the insured's uninsured motorist coverage.

Operation of the bill

The bill removes the references to "for loss," "damages," and "against loss" from existing law as described above. Consequently, under the bill, 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." 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 bill

The bill states that the intent of the General Assembly in making these changes is "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 division (A)(1) of section 3937.18 of the Revised Code 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.**)

COMMENT

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 section 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.

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

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