



Greg Schwab

Final Analysis
Legislative Service Commission

Am. Sub. S.B. 97
124th General Assembly
(As Passed by the General Assembly)

Sens. Nein, Wachtmann, Mumper, White, DiDonato, Austria, Amstutz, Coughlin, Finan, Harris, Hottinger, Spada, Armbruster, Randy Gardner, Robert Gardner, Carnes, Johnson

Reps. Calvert, Goodman, G. Smith, Schaffer, Faber, Olman, Fessler, Husted, Jolivette, Wolpert, Evans, Krupinski, Blasdel, DeWine, Stapleton, Schmidt, Hoops, Schuring, Clancy, Lendrum, Flowers, Hughes, Reidelbach, Seitz, Raga, Hollister, Roman, Niehaus, Hagan, Collier, Allen, Driehaus, Ogg, Otterman, Peterson, Young, Damschroder, Williams, Latta, Webster, Schneider, Kilbane, Metelsky, Gilb, Core, Carey, Rhine, Womer Benjamin, Sferra, Widowfield, Coates, Carmichael, Metzger, White, Flannery, Key, Distel, Salerno

Effective date: *

ACT SUMMARY

? Revises the Uninsured and Underinsured Motorist Coverages Law, as follows:

- Eliminates the requirement of the mandatory offer of uninsured and underinsured motorist coverages;
- Provides that certain policies of insurance *may* include uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages;
- Sets forth requirements, exclusions, and other conditions applicable to such coverages, *if* the coverages are included in a policy of insurance.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

? Requires the Superintendent of Insurance to prepare periodic status reports on the market availability of, and competition for, uninsured and underinsured motorist coverages in Ohio.

CONTENT AND OPERATION

Background and overview

Prior to this act, the Uninsured and Underinsured Motorist Coverages Law (section 3937.18 of the Revised Code) generally prohibited the delivery of any automobile liability or motor vehicle liability policy of insurance in Ohio, which policy insured against loss resulting from liability imposed by law for bodily injury or death arising out of the ownership or use of a motor vehicle, *unless* both uninsured and underinsured motorist coverages were *offered* to persons insured under the policy in accordance with the Law. "Automobile liability or motor vehicle liability policy of insurance" was defined for purposes of the Law as (1) any policy of insurance that serves as proof of financial responsibility for owners or operators of the motor vehicles specifically identified in the policy or (2) any umbrella liability policy of insurance written as excess over one or more of the policies described in (1), above. Uninsured and underinsured motorist coverages were required to be in an amount equivalent to the automobile liability or motor vehicle liability coverage of the policy unless lower limits of coverage were specifically chosen by an applicant for insurance or insured. A rejection of both coverages, or a selection of coverages with lower limits, was required to be in writing and signed by the applicant or named insured.

The act eliminates the requirement of a mandatory offer of uninsured and underinsured motorist coverages and, instead, provides that certain policies of insurance *may* include uninsured motorist coverage, underinsured motorist coverage, or uninsured and underinsured motorist coverages. In addition, it sets forth requirements, exclusions, and other conditions that apply to such coverages *if* the coverages are included in a policy of insurance.

Changes made by the act

Permissive offering

(sec. 3937.18(A))

The act provides that any policy of insurance delivered or issued for delivery in Ohio with respect to any motor vehicle registered or principally garaged in Ohio 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, "may, but is not required to, include"

uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages.

The act provides a definition of motor vehicle for purposes of such coverages, *unless* the term is otherwise defined in a particular policy or any endorsement to a policy. As defined by the act, "**motor vehicle**" means a self-propelled vehicle designed for use and principally used on public roads, including an automobile, truck, semi-tractor, motorcycle, and bus. The term 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.

Uninsured motorist coverage

(sec. 3937.18(B))

Several operative provisions of the Uninsured and Underinsured Motorist Coverages Law are consolidated by the act to establish a definition of "uninsured motorist" for purposes of any uninsured motorist coverage included in a policy of insurance. Under that definition, 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 this provision, the testimony of any insured seeking recovery from the insurer does 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 the Political Subdivision Tort Liability Law (Chapter 2744.).

"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.

The act eliminates what had been the definition in division (L) of section 3937.18 of the Revised Code for "automobile liability or motorvehicle liability policy of insurance" for purposes of the Law.

Underinsured motorist coverage

(sec. 3937.18(C) and (K))

If underinsured motorist coverage is included in a policy of insurance, the act requires, in a manner similar to prior law, that it provide protection for insureds under the policy for bodily injury, sickness, or disease, including death, suffered by any such insured, 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 *underinsured* motorist coverage. The act states that underinsured motorist coverage "in Ohio" is not and cannot be excess "coverage" to other applicable liability coverages, and that it can only 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 "liable to the insured" was uninsured at the time of the accident. Continuing law requires the policy limits of the underinsured motorist coverage to be reduced by those amounts available for payment under all applicable bodily injury liability bonds and insurance policies covering persons liable to the insured.

The act provides that, for purposes of this 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.

The law continues to permit the inclusion of underinsured motorist coverage in any uninsured motorist coverage that is included in a policy of insurance.

Coverage exclusions and limitations

Workers' compensation benefits (sec. 3937.18(E)). As in prior law, uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages cannot 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.

Stacking of coverages (sec. 3937.18(F)). As in prior law, any policy that includes uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages may, without regard to any premiums involved, include terms and conditions that preclude stacking of coverages, including but not limited to interfamily stacking and intrafamily stacking.

Single claim (sec. 3937.18(G)). Similarly to prior law, any policy that includes uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages and that provides a limit of coverage for payment of damages for bodily injury sustained by any one person in any one automobile accident may include terms under which all claims resulting from any one person's bodily injury will collectively be subject to the policy limit applicable to bodily injury sustained by one person and will constitute a single claim.

Other restrictions (sec. 3937.18(I)). The law continues to permit uninsured and underinsured motorist coverages to preclude coverage for bodily injury or death suffered by an insured under circumstances *specified in the statute*. The act continues to permit the preclusion of coverage under those circumstances, but identifies *additional* circumstances under which coverage may be precluded, and provides that the circumstances specified in the statute are *not* exclusive.

The additional circumstances specified in the act are as follows:

(1) 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;

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

Statute of limitations; proving all elements of a claim

(sec. 3937.18(D) and (H))

The act permits any policy of insurance that includes uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages to include terms and conditions requiring that, so long as the insured has not prejudiced the insurer's subrogation rights, each claim or suit for

such 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. In addition, the act states that an insured must 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.

Right of insurer to proceeds of settlement

(sec. 3937.18(J))

Under continuing law, an insurer making a payment to a person under the uninsured or underinsured motorist coverage is entitled, to the extent of the payment, to the proceeds of any settlement or judgment resulting from any recovery of that person against the person legally responsible for the bodily injury or death for which the payment was made. An insurer is generally prohibited from attempting to recover any amount against the insured of an insurer that is or becomes the subject of insolvency proceedings.

Periodic status reports on market availability and competition

(sec. 3937.18(L))

Under the act, the Superintendent of Insurance is required to study the market availability of, and competition for, uninsured and underinsured motorist coverages in Ohio and, from time to time, prepare status reports containing the Superintendent's findings and any recommendations. The first status report is due not later than two years after the act takes effect. To assist in the preparation of those reports, the Superintendent may require insurers and rating organizations operating in Ohio to collect pertinent data and to submit that data to the Superintendent.

A copy of each status report is to be submitted 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.

Conforming changes

(secs. 3937.181 and 3937.182)

The act makes conforming changes in the statutes addressing coverage for property damage caused by uninsured motor vehicles and coverage for punitive or exemplary damages.

Intent of the General Assembly

(Section 3)

The act states that it is the intent of the General Assembly in enacting this act to do all of the following:

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

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

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

(b) 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;

(c) 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;

(d) 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;

(e) 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 that make uninsured motorist property damage coverage available under limited conditions.

(3) 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;

(4) 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;

(5) 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.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-01-01	p. 321
Reported, S. Insurance, Commerce & Labor	05-22-01	pp. 384-385
Passed Senate (25-7)	05-22-01	pp. 389-396
Reported, H. Insurance	06-27-01	p. 716
Passed House (94-5)	06-28-01	pp. 763-769
Senate concurred in House amendments (24-8)	06-28-01	p. 802

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