

Legislative Analysis



NO-FAULT AUTO INSURANCE: UNINSURED AND UNDERINSURED MOTORIST COVERAGE

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House Bill 4836

Sponsor: Rep. Bob Constan

Committee: Insurance

Complete to 4-30-08

A SUMMARY OF HOUSE BILL 4836 AS INTRODUCED 5-24-07

The bill would amend the Insurance Code (MCL 500.3160) to require automobile insurers to offer uninsured motorist benefits and underinsured motorist benefits as an optional coverage. The insurance company would have to inform customers of their right to purchase these coverages and provide a written explanation of them, along with the premiums that will be charged. Companies would have to obtain from each customer a written waiver of the option to purchase the coverages.

Under the bill, the minimum limits of both kinds of coverage would be \$100,000 per person and \$200,000 per occurrence. The coverages would have to be provided in an insurance policy endorsement approved by the commissioner of the Office of Financial and Insurance Regulation (OFIR). Rates would have to be priced in accordance with standard insurance industry practices and be otherwise reasonable and appropriate for the risk.

The bill sets forth descriptions of the two types of coverage that the policy endorsement would have to comply with. They are paraphrased below:

Coverage for uninsured motorist benefits entitles the claimant to recover damages arising out of the ownership, operation, maintenance, or use of a motor vehicle with respect to which mandatory insurance coverage was not in effect when the damages occurred. Damages recoverable in the claim include the same elements of loss that could have been recovered if the claimant had filed an action directly against the uninsured tortfeasor (the other motorist). A claim could be pursued even though a portion of the claimant's damages or loss was caused by the conduct of other persons or entities who were not uninsured tortfeasors.

Coverage for underinsured motorist benefits entitles the claimant to recover damages arising out of the ownership, operation, maintenance, or use of a motor vehicle where the vehicle had mandatory insurance but in an amount less than the total amount of damages sought in the underinsured motorist claim. Damages recoverable in the claim include the same elements of loss that could have been recovered if the claimant had filed an action directly against the underinsured tortfeasor. A claim could be pursued even though a portion of the claimant's damages or loss was caused by the conduct of other persons or entities who were not underinsured tortfeasors.

The policy endorsements would also have to comply with the following.

- For underinsured motorist benefits, all of the following would apply:

- In order for the claimant to be entitled to pursue a claim for underinsured motorist benefits, the claimant would have to first exhaust, by way of settlement or judgment, the limits of all liability insurance coverages applicable to the uninsured tortfeasor. Upon payment of those limits, the claimant could proceed with the claim for underinsured motorist benefits.
 - A claimant would not be required to obtain the consent of the underinsured motorist insurer to settle with and fully release the underinsured tortfeasor from all liability arising out of the claim.
 - A claim for underinsured benefits could not be reduced or set off by the amount paid to the claimant by the underinsured tortfeasor's liability insurers. However, any amount personally paid by the underinsured tortfeasor to the claimant could be subtracted or set off from the claim.
- A policy could not contain notice provisions, claim deadlines, or statutes of limitations that in any way shortened the time limitations contained in the Revised Judicature Act that would be applicable if the cause of action that gave rise to the claim for uninsured or underinsured motorist benefits had been asserted directly against the tortfeasor.
 - The claim for uninsured or underinsured motorist benefits could not be reduced by any amounts paid or payable to the claimant by any other sources, including no-fault personal injury protection (PIP) insurance benefits, workers' compensation benefits, Social Security disability benefits, Social Security survivor's benefits, health insurance, disability insurance, benefits under a private contract, governmentally provided benefits, or damages recovered from any tortfeasor, unless in the claim the claimant sought to recover damages that duplicated amounts paid or payable from any of these other sources.
 - A claim could not be denied or otherwise disallowed on the basis that there was no physical contact between the claimant or the claimant's vehicle and a vehicle that was uninsured or underinsured, as long as the claimant was able to prove, by a preponderance of the evidence, that the claimant's damage arose out of the ownership, operation, maintenance, or use of the uninsured or uninsured vehicle.
 - All insurance policies providing for uninsured and underinsured motorist benefits would have to give the claimant the option of binding arbitration of the claim. If the claimant selected arbitration, the arbitration would be conducted in accordance with Chapter 50 of the Revised Judicature Act.

FISCAL IMPACT:

A fiscal analysis is in process.

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 Fiscal Analyst: Mark Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.