

HOUSE BILL No. 4836

May 24, 2007, Introduced by Reps. Constan, Johnson, Vagnozzi, Young, Meadows, Hammon, Hammel, Robert Jones, Scott, Clemente, Cushingberry, Polidori, Melton, Clack, Kathleen Law, Espinoza, Lemmons, Donigan and Condino and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
(MCL 500.100 to 500.8302) by adding section 3160.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 3160. (1) EACH INSURER AUTHORIZED TO TRANSACT AUTOMOBILE
2 INSURANCE IN THIS STATE SHALL OFFER, AS OPTIONAL COVERAGES,
3 UNINSURED MOTORIST BENEFITS AND UNDERINSURED MOTORIST BENEFITS. ALL
4 OF THE FOLLOWING APPLY TO UNINSURED MOTORIST BENEFITS AND
5 UNDERINSURED MOTORIST BENEFITS:

6 (A) THE INSURER SHALL INFORM ANY PERSON PURCHASING INSURANCE
7 FROM THE INSURER OF THAT PERSON'S RIGHT TO PURCHASE COVERAGE FOR
8 UNINSURED MOTORIST BENEFITS AND UNDERINSURED MOTORIST BENEFITS AND
9 SHALL SUBMIT TO THAT PERSON A WRITTEN EXPLANATION AND SUMMARY OF
10 THESE COVERAGES ON A FORM APPROVED BY THE COMMISSIONER. THE INSURER

1 SHALL ALSO INFORM THAT PERSON OF THE PREMIUMS THAT WILL BE CHARGED
2 FOR UNINSURED MOTORIST BENEFITS AND UNDERINSURED MOTORIST BENEFITS.
3 IF THAT PERSON DECLINES THE OFFER TO PURCHASE UNINSURED MOTORIST
4 BENEFITS OR UNDERINSURED MOTORIST BENEFITS, THE INSURER SHALL
5 PROCURE, FROM THAT PERSON, A WRITTEN WAIVER OF THE OPTION TO
6 PURCHASE UNINSURED MOTORIST BENEFITS OR UNDERINSURED MOTORIST
7 BENEFITS, WHICH WAIVER FORM MUST BE APPROVED BY THE COMMISSIONER.

8 (B) THE MINIMUM LIMITS OF COVERAGE FOR UNINSURED MOTORIST
9 BENEFITS SHALL BE \$100,000.00 PER PERSON AND \$200,000.00 PER
10 OCCURRENCE.

11 (C) THE MINIMUM LIMITS OF COVERAGE FOR UNDERINSURED MOTORIST
12 BENEFITS SHALL BE \$100,000.00 PER PERSON AND \$200,000.00 PER
13 OCCURRENCE.

14 (D) THE COVERAGES FOR UNINSURED MOTORIST BENEFITS AND
15 UNDERINSURED MOTORIST BENEFITS SHALL BE OFFERED AT RATES THAT ARE
16 PRICED IN ACCORDANCE WITH STANDARD INSURANCE INDUSTRY PRACTICES AND
17 ARE OTHERWISE REASONABLE AND APPROPRIATE FOR THE RISK UNDERTAKEN.

18 (E) THE COVERAGE REQUIRED FOR UNINSURED MOTORIST BENEFITS AND
19 UNDERINSURED MOTORIST BENEFITS SHALL BE PROVIDED IN AN INSURANCE
20 POLICY ENDORSEMENT THAT IS APPROVED BY THE COMMISSIONER AND IS NOT
21 INCONSISTENT OR IN CONFLICT WITH THIS SECTION.

22 (2) ANY INSURANCE POLICY ENDORSEMENT PROVIDING UNINSURED
23 MOTORIST BENEFITS AND UNDERINSURED MOTORIST BENEFITS SHALL COMPLY
24 WITH ALL OF THE FOLLOWING:

25 (A) COVERAGE FOR UNINSURED MOTORIST BENEFITS ENTITLES THE
26 CLAIMANT TO RECOVER DAMAGES ARISING OUT OF THE OWNERSHIP,
27 OPERATION, MAINTENANCE, OR USE OF A MOTOR VEHICLE WITH RESPECT TO

1 WHICH THE SECURITY REQUIRED BY SECTION 3101 OR THE SECURITY
2 REQUIRED UNDER THE LAWS OF ANOTHER STATE WITH RESPECT TO THAT
3 VEHICLE, WAS NOT IN EFFECT AT THE TIME THE DAMAGES OCCURRED. THE
4 DAMAGES RECOVERABLE BY THE CLAIMANT IN THE UNINSURED MOTORIST CLAIM
5 INCLUDE THE SAME ELEMENTS OF LOSS THE CLAIMANT COULD HAVE RECOVERED
6 HAD HE OR SHE FILED AN ACTION DIRECTLY AGAINST THE UNINSURED
7 TORTFEASOR. THE CLAIMANT IS ENTITLED TO PURSUE A CLAIM FOR
8 UNINSURED MOTORIST BENEFITS EVEN THOUGH A PORTION OF THE CLAIMANT'S
9 DAMAGES OR LOSS WAS CAUSED BY THE CONDUCT OF OTHER PERSONS OR
10 ENTITIES WHO WERE NOT UNINSURED TORTFEASORS.

11 (B) COVERAGE FOR UNDERINSURED MOTORIST BENEFITS ENTITLES THE
12 CLAIMANT TO RECOVER DAMAGES ARISING OUT OF THE OWNERSHIP,
13 OPERATION, MAINTENANCE, OR USE OF A MOTOR VEHICLE WITH RESPECT TO
14 WHICH THE SECURITY REQUIRED BY SECTION 3101 OR THE SECURITY
15 REQUIRED UNDER THE LAWS OF ANOTHER STATE WITH RESPECT TO THAT
16 VEHICLE, WAS IN EFFECT AT THE TIME THE DAMAGES OCCURRED BUT WAS IN
17 AN AMOUNT LESS THAN THE TOTAL DAMAGES SOUGHT BY THE CLAIMANT IN THE
18 UNDERINSURED MOTORIST CLAIM. THE DAMAGES RECOVERABLE BY THE
19 CLAIMANT IN THE UNDERINSURED MOTORIST CLAIM INCLUDE THE SAME
20 ELEMENTS OF LOSS THE CLAIMANT COULD HAVE RECOVERED HAD HE OR SHE
21 FILED AN ACTION DIRECTLY AGAINST THE UNDERINSURED TORTFEASOR. THE
22 CLAIMANT IS ENTITLED TO PURSUE A CLAIM FOR UNDERINSURED MOTORIST
23 BENEFITS EVEN THOUGH A PORTION OF THE CLAIMANT'S DAMAGES OR LOSS
24 WAS CAUSED BY THE CONDUCT OF OTHER PERSONS OR ENTITIES WHO WERE NOT
25 UNDERINSURED TORTFEASORS.

26 (C) FOR CLAIMS FOR UNDERINSURED MOTORIST BENEFITS, ALL OF THE
27 FOLLOWING APPLY:

1 (i) IN ORDER FOR THE CLAIMANT TO BE ENTITLED TO PURSUE A CLAIM
2 FOR UNDERINSURED MOTORIST BENEFITS, THE CLAIMANT SHALL FIRST
3 EXHAUST, BY WAY OF SETTLEMENT OR JUDGMENT, THE LIMITS OF ALL
4 LIABILITY INSURANCE COVERAGES APPLICABLE TO THE UNDERINSURED
5 TORTFEASOR. UPON PAYMENT OF THOSE INSURANCE LIMITS, THE CLAIMANT IS
6 ENTITLED TO PROCEED WITH THE CLAIM FOR UNDERINSURED MOTORIST
7 BENEFITS.

8 (ii) A CLAIMANT IS NOT REQUIRED TO OBTAIN THE CONSENT OF THE
9 UNDERINSURED MOTORIST INSURER TO SETTLE WITH AND FULLY RELEASE THE
10 UNDERINSURED TORTFEASOR FROM ALL LIABILITY ARISING OUT OF THE
11 CLAIM.

12 (iii) A CLAIM FOR UNDERINSURED MOTORIST BENEFITS SHALL NOT BE
13 REDUCED OR SET OFF BY THE AMOUNT PAID TO THE CLAIMANT BY THE
14 UNDERINSURED MOTORIST TORTFEASOR'S LIABILITY INSURERS. HOWEVER, ANY
15 AMOUNT PAID PERSONALLY BY THE UNDERINSURED TORTFEASOR TO THE
16 CLAIMANT MAY BE SUBTRACTED OR SET OFF FROM THE CLAIMANT'S
17 UNDERINSURED MOTORIST CLAIM.

18 (D) A POLICY SHALL NOT CONTAIN NOTICE PROVISIONS, CLAIM
19 DEADLINES, OR STATUTES OF LIMITATIONS THAT IN ANY WAY SHORTEN THE
20 TIME LIMITATIONS CONTAINED IN THE REVISED JUDICATURE ACT OF 1961,
21 1961 PA 236, MCL 600.101 TO 600.9947, THAT WOULD BE APPLICABLE IF
22 THE CAUSE OF ACTION THAT GIVES RISE TO THE CLAIM FOR UNINSURED
23 MOTORIST BENEFITS OR UNDERINSURED MOTORIST BENEFITS HAD BEEN
24 ASSERTED DIRECTLY AGAINST THE TORTFEASORS WHOSE CONDUCT GIVES RISE
25 TO THE CLAIM.

26 (E) THE CLAIM FOR UNINSURED MOTORIST BENEFITS AND UNDERINSURED
27 MOTORIST BENEFITS SHALL NOT BE REDUCED BY ANY AMOUNTS PAID OR

1 PAYABLE TO THE CLAIMANT BY ANY OTHER SOURCES, INCLUDING, BUT NOT
2 LIMITED TO, PERSONAL PROTECTION INSURANCE BENEFITS UNDER THIS ACT,
3 WORKERS' COMPENSATION BENEFITS, SOCIAL SECURITY DISABILITY
4 BENEFITS, SOCIAL SECURITY SURVIVOR'S BENEFITS, HEALTH INSURANCE,
5 DISABILITY INSURANCE, BENEFITS UNDER PRIVATE CONTRACT,
6 GOVERNMENTALLY PROVIDED BENEFITS, OR DAMAGES RECOVERED FROM ANY
7 TORTFEASOR, UNLESS, IN THE UNINSURED MOTORIST CLAIM OR THE
8 UNDERINSURED MOTORIST CLAIM, THE CLAIMANT SEEKS TO RECOVER DAMAGES
9 THAT DUPLICATE AMOUNTS PAID OR PAYABLE TO THE CLAIMANT FROM ANY OF
10 THESE OTHER SOURCES.

11 (F) A CLAIM FOR UNINSURED MOTORIST BENEFITS OR UNDERINSURED
12 MOTORIST BENEFITS SHALL NOT BE DENIED OR OTHERWISE DISALLOWED ON
13 THE BASIS THAT THERE WAS NO PHYSICAL CONTACT BETWEEN THE CLAIMANT
14 OR THE CLAIMANT'S VEHICLE AND A VEHICLE THAT WAS UNINSURED OR
15 UNDERINSURED WITHIN THE MEANING OF THIS SECTION, AS LONG AS THE
16 CLAIMANT IS OTHERWISE ABLE TO PROVE, BY A PREPONDERANCE OF THE
17 EVIDENCE, THAT THE CLAIMANT'S DAMAGES AROSE OUT OF THE OWNERSHIP,
18 OPERATION, MAINTENANCE, OR USE OF THE UNINSURED OR UNDERINSURED
19 VEHICLE.

20 (G) ALL INSURANCE POLICIES PROVIDING FOR UNINSURED MOTORIST
21 BENEFITS AND UNDERINSURED MOTORIST BENEFITS SHALL GIVE THE CLAIMANT
22 THE OPTION OF BINDING ARBITRATION OF THE CLAIM. IF THE CLAIMANT
23 SELECTS ARBITRATION, THE ARBITRATION SHALL BE CONDUCTED IN
24 ACCORDANCE WITH CHAPTER 50 OF THE REVISED JUDICATURE ACT OF 1961,
25 1961 PA 236, MCL 600.5001 TO 600.5035, AND MCR 3.602.