

IC 27-7-5

Chapter 5. Uninsured Motorist Coverage and Underinsured Motorist Coverage

IC 27-7-5-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to section 2 of this chapter by P.L.391-1987(ss) apply only to policies first issued after December 31, 1987.

(2) Notwithstanding the effective date of P.L.124-2009, SECTION 1, the amendments made to section 2 of this chapter by P.L.124-2009 apply to a case in which:

(A) a claim under a policy's uninsured motorist coverage or underinsured motorist coverage arises after December 31, 2009;

(B) a rejection is made under section 2 of this chapter, as amended by P.L.124-2009 of the uninsured motorist coverage or underinsured motorist coverage under which the claim described in subdivision (1) is made; and

(C) the rejection described in clause (B) is made after December 31, 2009.

As added by P.L.220-2011, SEC.433.

IC 27-7-5-1

Repealed

(Repealed by Acts 1982, P.L.166, SEC.6.)

IC 27-7-5-1.5

Repealed

(Repealed by P.L.124-2009, SEC.4.)

IC 27-7-5-2

Uninsured and underinsured motorist coverage; required coverage; rejection; commercial policies

Sec. 2. (a) Except as provided in subsections (d) and (f), the insurer shall make available, in each automobile liability or motor vehicle liability policy of insurance which is delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state, insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person and for injury to or destruction of property to others arising from the ownership, maintenance, or use of a motor vehicle, or in a supplement to such a policy, the following types of coverage:

(1) in limits for bodily injury or death and for injury to or destruction of property not less than those set forth in IC 9-25-4-5 under policy provisions approved by the commissioner of insurance, for the protection of persons insured under the policy who are legally entitled to recover

damages from owners or operators of uninsured or underinsured motor vehicles because of bodily injury, sickness or disease, including death, and for the protection of persons insured under the policy who are legally entitled to recover damages from owners or operators of uninsured motor vehicles for injury to or destruction of property resulting therefrom; or

(2) in limits for bodily injury or death not less than those set forth in IC 9-25-4-5 under policy provisions approved by the commissioner of insurance, for the protection of persons insured under the policy provisions who are legally entitled to recover damages from owners or operators of uninsured or underinsured motor vehicles because of bodily injury, sickness or disease, including death resulting therefrom.

The uninsured and underinsured motorist coverages must be provided by insurers for either a single premium or for separate premiums, in limits at least equal to the limits of liability specified in the bodily injury liability provisions of an insured's policy, unless such coverages have been rejected in writing by the insured. However, underinsured motorist coverage must be made available in limits of not less than fifty thousand dollars (\$50,000). At the insurer's option, the bodily injury liability provisions of the insured's policy may be required to be equal to the insured's underinsured motorist coverage. Insurers may not sell or provide underinsured motorist coverage in an amount less than fifty thousand dollars (\$50,000). Insurers must make underinsured motorist coverage available to all existing policyholders on the date of the first renewal of existing policies that occurs on or after January 1, 1995, and on any policies newly issued or delivered on or after January 1, 1995. Uninsured motorist coverage or underinsured motorist coverage may be offered by an insurer in an amount exceeding the limits of liability specified in the bodily injury and property damage liability provisions of the insured's policy.

(b) A named insured of an automobile or motor vehicle liability policy has the right, in writing, to:

- (1) reject both the uninsured motorist coverage and the underinsured motorist coverage provided for in this section; or
- (2) reject either the uninsured motorist coverage alone or the underinsured motorist coverage alone, if the insurer provides the coverage not rejected separately from the coverage rejected.

A rejection of coverage under this subsection by a named insured is a rejection on behalf of all other named insureds, all other insureds, and all other persons entitled to coverage under the policy. No insured may have uninsured motorist property damage liability insurance coverage under this section unless the insured also has uninsured motorist bodily injury liability insurance coverage under this section. Following rejection of either or both uninsured motorist coverage or underinsured motorist coverage, unless later requested in writing, the insurer need not offer uninsured motorist coverage or underinsured motorist coverage in or supplemental to a renewal or replacement policy issued to the same insured by the same insurer or

a subsidiary or an affiliate of the originally issuing insurer. Renewals of policies issued or delivered in this state which have undergone interim policy endorsement or amendment do not constitute newly issued or delivered policies for which the insurer is required to provide the coverages described in this section.

(c) A rejection under subsection (b) must specify:

(1) that the named insured is rejecting:

(A) the uninsured motorist coverage;

(B) the underinsured motorist coverage; or

(C) both the uninsured motorist coverage and the underinsured motorist coverage;

that would otherwise be provided under the policy; and

(2) the date on which the rejection is effective.

(d) An insurer is not required to make available the coverage described in subsection (a) in a commercial umbrella or excess liability policy, including a commercial umbrella or excess liability policy that is issued or delivered to a motor carrier (as defined in IC 8-2.1-17-10) that is in compliance with the minimum levels of financial responsibility set forth in 49 CFR Part 387.

(e) A rejection under subsection (b) of uninsured motorist coverage or underinsured motorist coverage in an underlying commercial policy of insurance is also a rejection of uninsured motorist coverage or underinsured motorist coverage in a commercial umbrella or excess liability policy.

(f) An insurer is not required to make available the coverage described in subsection (a) in connection with coverage that:

(1) is related to or included in a commercial policy of property and casualty insurance described in Class 2 or Class 3 of IC 27-1-5-1; and

(2) covers a loss related to a motor vehicle:

(A) of which the insured is not the owner (as defined in IC 9-13-2-121(a)); and

(B) that is used:

(i) by the insured or an agent of the insured; and

(ii) for purposes authorized by the insured.

As added by Acts 1982, P.L.166, SEC.1. Amended by P.L.391-1987(ss), SEC.1; P.L.5-1988, SEC.145; P.L.2-1991, SEC.88; P.L.1-1992, SEC.151; P.L.1-1993, SEC.203; P.L.130-1994, SEC.41; P.L.116-1994, SEC.56; P.L.233-1999, SEC.8; P.L.124-2009, SEC.1; P.L.116-2011, SEC.2.

IC 27-7-5-3

Property damage coverage; authorization

Sec. 3. (a) Insurers shall additionally offer to provide uninsured motorist property damage coverage without any deductible amount and may offer uninsured motorist property damage coverage with a deductible of not more than the first three hundred dollars (\$300.00) of property damage caused by collision. However, any such deductible amount for property damage shall be waived for damage resulting from collision if the insured motor vehicle is legally parked

and unoccupied when involved in a motor vehicle accident for which the insured is legally entitled to recover damages from an uninsured motorist.

(b) Property damage losses recoverable under the provisions of this chapter are limited to damages to the insured motor vehicle and the personal property owned by the insured which is contained in the insured motor vehicle and shall not include the loss of use of damaged or destroyed property.

(c) Any claim for property damage submitted under an uninsured motorist coverage must include the name and address of the at-fault operator and any other information to establish the at-fault operator is without motor vehicle liability insurance. There shall be no liability imposed upon an insurer where the owner or operator of the other vehicle cannot be identified.

As added by Acts 1982, P.L.166, SEC.2. Amended by P.L.259-1983, SEC.5.

IC 27-7-5-4

"Uninsured motor vehicle" and "underinsured motor vehicle" defined; insurer's insolvency protection

Sec. 4. (a) For the purpose of this chapter, the term uninsured motor vehicle, subject to the terms and conditions of such coverage, means a motor vehicle without liability insurance or a motor vehicle not otherwise in compliance with the financial responsibility requirements of IC 9-25 or any similar requirements applicable under the law of another state, and includes an insured motor vehicle where the liability insurer of the vehicle is unable to make payment with respect to the legal liability of its insured within the limits specified in IC 9-25-4-5 because of insolvency.

(b) For the purpose of this chapter, the term underinsured motor vehicle, subject to the terms and conditions of such coverage, includes an insured motor vehicle where the limits of coverage available for payment to the insured under all bodily injury liability policies covering persons liable to the insured are less than the limits for the insured's underinsured motorist coverage at the time of the accident, but does not include an uninsured motor vehicle as defined in subsection (a).

(c) An insurer's insolvency protection applies only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect and where the liability insurer of the tortfeasor becomes insolvent within two (2) years after such an accident. However, nothing contained in this section shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to its insured than is provided under this section.

As added by Acts 1982, P.L.166, SEC.3. Amended by P.L.391-1987(ss), SEC.2; P.L.2-1991, SEC.89; P.L.1-1992, SEC.152; P.L.1-1993, SEC.204.

IC 27-7-5-5

Limitations on coverage

Sec. 5. (a) The policy or endorsement affording coverage specified in this chapter may provide that the total limit of all insurers' liability arising out of any one (1) accident shall not exceed the highest limits under any one (1) policy applicable to the loss, but in no event may coverage be less than the minimum set forth in IC 9-25-4-5.

(b) When the coverage specified in this chapter is written to apply to one (1) or more motor vehicles under a single automobile liability policy, such coverage applies only to the operation of those motor vehicles for which a specific uninsured or underinsured motorist premium charge has been made and does not apply to the operation of any motor vehicles insured under the policy or owned by the named insured for which a premium charge has not been made.

(c) The maximum amount payable for bodily injury under uninsured or underinsured motorist coverage is the lesser of:

(1) the difference between:

(A) the amount paid in damages to the insured by or for any person or organization who may be liable for the insured's bodily injury; and

(B) the per person limit of uninsured or underinsured motorist coverage provided in the insured's policy; or

(2) the difference between:

(A) the total amount of damages incurred by the insured; and

(B) the amount paid by or for any person or organization liable for the insured's bodily injury.

As added by Acts 1982, P.L.166, SEC.4. Amended by P.L.391-1987(ss), SEC.3; P.L.2-1991, SEC.90; P.L.1-1992, SEC.153; P.L.1-1993, SEC.205.

IC 27-7-5-6

Subrogation

Sec. 6. (a) The policy or endorsement affording the coverage specified in this chapter may also provide that payment to any person of sums as damages under such coverage shall operate to subrogate the insurer to any cause of action in tort which such person may have against any other person or organization legally responsible for the bodily injury or death, or property damage, because of which such payment is made. The insurer shall be subrogated, to the extent of such payment, to the proceeds of any settlement or judgment that may later result from the exercise of any rights of recovery of such person against any person or organization legally responsible for said bodily injury or death, or property damage, for which payment is made by the insurer. Such insurer may enforce such rights in its own name or in the name of the person to whom payment has been made, as in their interest may appear, by proper action in any court of competent jurisdiction.

(b) An insurer providing underinsured motorist coverage does not have a right of subrogation against an underinsured motorist if:

(1) the insurer has been provided with a written notice that:

- (A) informs the insurer of the existence of a bona fide offer of agreement or settlement between its insured and the underinsured motorist; and
- (B) includes a certification of the liability coverage limits of the underinsured motorist; and
- (2) the insurer fails to advance payment to the insured in an amount equal to the amount provided for in the offer of agreement or settlement within thirty (30) days after the insurer receives the notice described in subdivision (1).

However, an insurer that, under the circumstances described in subdivision (1), advances payment to the insured in an amount equal to the amount provided for in the offer of agreement or settlement, has full rights of subrogation as provided in its policy or endorsement affording the underinsured motorist coverage.

(c) When an insurer makes payment under uninsured motorist coverage or underinsured motorist coverage because of the insolvency of an insolvent insurer (as defined in IC 27-6-8), the paying insurer's rights of reimbursement and subrogation do not include any rights of recovery against:

- (1) the insured of the insolvent insurer; or
- (2) the Indiana Insurance Guaranty Association created by IC 27-6-8-5;

except that the paying insurer may recover from the insured of the insolvent insurer that part of its payment that exceeds the limits of liability of the policy of the insolvent insurer.

As added by Acts 1982, P.L. 166, SEC.5. Amended by P.L. 121-1990, SEC.7.