

LEGISLATIVE BILL 573

Approved by the Governor March 18, 1986

Introduced by Lynch, 13; DeCamp, 40

AN ACT relating to insurance; to amend section 60-509, Reissue Revised Statutes of Nebraska, 1943; to adopt the Underinsured Motorist Insurance Coverage Act; to harmonize provisions; to provide an operative date; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 12 of this act shall be known and may be cited as the Underinsured Motorist Insurance Coverage Act.

Sec. 2. As used in the Underinsured Motorist Insurance Coverage Act, unless the context otherwise requires, the definitions found in sections 3 to 6 of this act shall apply.

Sec. 3. Motor vehicle shall mean a motor vehicle as defined in section 60-501.

Sec. 4. Underinsured motor vehicle shall mean a motor vehicle with respect to the ownership, operation, maintenance, or use of which there is bodily injury liability insurance or a bond applicable at the time of the accident and the amount of the insurance or bond (1) is less than the limit for underinsured motorist coverage under the insured's policy or (2) has been reduced by payments to persons, other than an insured, injured in the accident to less than the limit for underinsured motorist coverage under the insured's policy.

Sec. 5. An underinsured motor vehicle shall not include a motor vehicle:

(1) Insured under the liability coverage of the same policy of which the underinsured motorist coverage is a part;

(2) Owned by, furnished, or available for the regular use of the named insured or any resident of the insured's household;

(3) Which is self-insured under sections 60-562 to 60-564 or is self-insured within the meaning of the motor vehicle financial responsibility law of any other state in which the motor vehicle is registered or any federal law which requires maintenance of financial responsibility;

(4) Which is owned by any government, political subdivision, or agency thereof; or

(5) Which is located and used as a residence or premises and not as a vehicle.

Sec. 6. Affiliated insurer shall mean an insurer who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person.

Sec. 7. (1) Unless the named insured has in writing rejected underinsured motorist coverage, no policy insuring against liability imposed by law for bodily injury, sickness, disease, or death suffered by a natural person arising out of the ownership, operation, maintenance, or use of a motor vehicle within the United States, its territories or possessions, or Canada shall be delivered, issued for delivery, or renewed with respect to any motor vehicle principally garaged in this state unless coverage is provided for the protection of persons insured who are legally entitled to recover compensatory damages from the owner or operator of an underinsured motor vehicle (a) in split limits of twenty-five thousand dollars because of bodily injury, sickness, disease, or death of one person in any one accident and subject to such limit for one person, (b) in the amount of fifty thousand dollars because of bodily injury, sickness, disease, or death of two or more persons in any one accident, or (c) at a combined single limit of one hundred thousand dollars.

(2) At the written request of the named insured, the insurer shall provide higher limits of underinsured motorist coverage in accordance with its rating plan and rules, except that in no event shall the insurer be required to provide limits higher than the lesser of (a) one hundred thousand dollars per person and three hundred thousand dollars per accident or (b) the combined single limit equivalent of three hundred thousand dollars per accident.

(3) After selection of limits by the insured or the exercise of the option not to purchase underinsured motorist coverages, no insurer or any affiliated insurer shall be required to notify any policyholder in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy as to the availability of such coverages or optional limits. The insured may, subject to the limitations of this section, make a written request for additional coverage or coverage more extensive than that provided in a prior policy.

Sec. 8. (1) The maximum liability of the

insurer under the underinsured motorist coverage shall be the lesser of:

(a) The difference between the limit of underinsured motorist coverage and the amount paid to the insured by or for any person or organization which may be held legally liable for the bodily injury, sickness, disease, or death; or

(b) The amount of damages sustained but not recovered.

(2) In no event shall the liability of the insurer under such coverage be more than the limits of the underinsured motorist coverage provided.

Sec. 9. Regardless of the number of vehicles involved, persons covered, claims made, vehicles or premiums shown on the policy, or premiums paid, the limits of liability for underinsured motorist coverage for two or more motor vehicles insured under the same policy or separate policies shall not be added together, combined, or stacked to determine the limit of insurance coverage available to an injured person for any one accident.

Sec. 10. (1) In the event an insured is entitled to underinsured motorist coverage under more than one policy of motor vehicle liability insurance, the maximum amount an insured may recover shall not exceed the highest limit of any one such policy.

(2) When multiple policies apply, payment shall be made in the following order of priority, subject to the limit of liability for each applicable policy:

(a) A policy covering a motor vehicle occupied by the injured person at the time of the accident;

(b) A policy covering a motor vehicle which came into contact with the insured while a pedestrian; and

(c) A policy covering a motor vehicle not involved in the accident with respect to which the injured person is an insured.

Sec. 11. (1) In the event of payment under the underinsured motorist coverage, the insurer making such payment shall, to the extent of such payment, be entitled to the proceeds of any settlement or judgment to the extent such settlement or judgment exceeds the amount paid under any applicable bodily injury liability policy or bond.

(2) Whenever an insurer makes payment under underinsured motorist coverage because of an insurer insolvency, as described in section 44-2403, the paying insurer's right of recovery or reimbursement shall not

include any rights either against the insured of such insolvent insurer, except for the amount which is in excess of the limits of liability of the policy of the insolvent insurer, or against a guaranty account established pursuant to the Nebraska Property and Liability Insurance Guaranty Association Act.

Sec. 12. (1) The underinsured motorist coverages provided in the Underinsured Motorist Insurance Coverage Act shall not apply to:

(a) Bodily injury, sickness, disease, or death of the insured with respect to which the insured or his or her representative makes, without the written consent of the insurer, any settlement with or obtains any judgment against any person who may be legally liable for any injuries if such settlement adversely affects the rights of the insurer;

(b) Bodily injury, sickness, disease, or death of an insured while occupying a motor vehicle owned by, but not insured by, the named insured or a spouse or relative residing with the named insured;

(c) Bodily injury, sickness, disease, or death of an insured while occupying an owned motor vehicle which is used as a public or livery conveyance and which is not insured as such;

(d) Bodily injury, sickness, disease, or death of an insured through being struck by a vehicle owned by the named insured or a spouse or relative residing with the named insured; and

(e) Bodily injury, sickness, disease, or death of the insured with respect to which the applicable statute of limitations has expired on the insured's claim against the underinsured motorist.

(2) Insurers providing motor vehicle liability insurance coverage on an excess or umbrella basis or incidental to some other basic coverage shall not be required to offer, provide, or make available coverage conforming to the Underinsured Motorist Insurance Coverage Act.

(3) Unless the named insured has in writing rejected underinsured coverage, an insurer may make underinsured motorist coverage a part of uninsured motorist coverage.

(4) Nothing in the Underinsured Motorist Insurance Coverage Act shall be construed to prevent an insurer from offering, making available, or providing coverage under terms and conditions more favorable to its insured or in limits higher than are required by the act.

(5) The Director of Insurance shall adopt and

promulgate rules and regulations as are necessary to provide that the language relating to coverages described in the Underinsured Motorist Insurance Coverage Act is not unfair, inequitable, misleading, or deceptive and does not encourage misrepresentation of the coverage.

Sec. 13. That section 60-509, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

60-509. No such policy or bond shall be effective under section 60-508 unless issued by an insurance company or surety company authorized to do business in this state, except that if such motor vehicle was not registered in this state, or was a motor vehicle which was registered elsewhere than in this state at the effective date of a policy or bond, or the most recent renewal thereof, such policy or bond shall not be effective under section 60-508 unless the insurance company or surety company, if not authorized to do business in this state, shall execute an acknowledgement that the company shall be amenable to process issued by a court of this state in any action upon such policy or bond arising out of such accident. Every + PROVIDED, every such policy or bond is subject, if the accident has resulted in bodily injury, sickness, disease, or death, to a limit, exclusive of interest and costs, of not less than twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to ~~said~~ such limit for one person, to a limit of not less than fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident; and, if the accident has resulted in injury to or destruction of property, to a limit of not less than twenty-five thousand dollars because of injury to or destruction of property of others in any one accident. Upon receipt of a notice of such accident, the insurance company or surety company which issued such policy or bond shall furnish, for filing with the department, a written notice that such policy or bond was in effect at the time of such accident.

Sec. 14. This act shall become operative on January 1, 1987.

Sec. 15. That original section 60-509, Reissue Revised Statutes of Nebraska, 1943, is repealed.