



Senate

General Assembly

File No. 124

January Session, 2009

Substitute Senate Bill No. 895

Senate, March 19, 2009

The Committee on Insurance and Real Estate reported through SEN. CRISCO of the 17th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING UNINSURED MOTORIST CLAIMS AND NOTIFICATION OF UNDERINSURED MOTORIST CONVERSION COVERAGE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-336a of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) Each insurer licensed to write automobile liability insurance in
4 this state shall (1) offer, for an additional premium, underinsured
5 motorist conversion coverage with limits in accordance with section
6 38a-336, as amended by this act. The purchase of such underinsured
7 motorist conversion coverage shall be in lieu of underinsured motorist
8 coverage pursuant to section 38a-336, as amended by this act, and (2)
9 include with each application and renewal notice for automobile
10 liability insurance a written disclosure of the availability and the
11 premium cost of underinsured motorist conversion coverage, along
12 with a description of such coverage.

13 (b) Such underinsured motorist conversion coverage shall provide
14 for the protection of persons insured thereunder who are legally
15 entitled to recover damages from owners or operators of underinsured
16 motor vehicles.

17 (c) Each insurer shall be obligated to pay to the insured, up to the
18 limits of the policy's underinsured motorist conversion coverage, after
19 the limits of liability under all bodily injury liability bonds or
20 insurance policies applicable at the time of the accident have been
21 exhausted by payment of judgments or settlements. If the insured
22 purchases such underinsured motorist conversion coverage, then in no
23 event shall the underinsured motorist coverage be reduced on account
24 of any payment by or on behalf of the tortfeasor or by any third party.

25 (d) The selection of coverage under this section shall apply to all
26 subsequent renewals of coverage and to all policies or endorsements
27 which extend, change, supersede or replace an existing policy issued to
28 the named insured, unless changed in writing by any named insured.

29 (e) For purposes of this section, an "underinsured motor vehicle"
30 means a motor vehicle with respect to which the sum of all payments
31 received by or on behalf of the covered person from or on behalf of the
32 tortfeasor are less than the fair, just and reasonable damages of the
33 covered person.

34 [(f) The provisions of this section shall apply to all new and renewal
35 policies issued on or after January 1, 1994.]

36 Sec. 2. Section 38a-336 of the general statutes is repealed and the
37 following is substituted in lieu thereof (*Effective October 1, 2009*):

38 (a) (1) Each automobile liability insurance policy shall provide
39 insurance, herein called uninsured and underinsured motorist
40 coverage, in accordance with the regulations adopted pursuant to
41 section 38a-334, with limits for bodily injury or death not less than
42 those specified in subsection (a) of section 14-112, for the protection of
43 persons insured thereunder who are legally entitled to recover

44 damages from owners or operators of uninsured motor vehicles and
45 underinsured motor vehicles and insured motor vehicles, the insurer
46 of which becomes insolvent prior to payment of such damages,
47 because of bodily injury, including death resulting therefrom. Each
48 insurer licensed to write automobile liability insurance in this state
49 shall provide uninsured and underinsured motorists coverage with
50 limits requested by any named insured upon payment of the
51 appropriate premium, provided each such insurer shall offer such
52 coverage with limits that are twice the limits of the bodily injury
53 coverage of the policy issued to the named insured. The insured's
54 selection of uninsured and underinsured motorist coverage shall apply
55 to all subsequent renewals of coverage and to all policies or
56 endorsements [which] that extend, change, supersede or replace an
57 existing policy issued to the named insured, unless changed in writing
58 by any named insured. No insurer shall be required to provide
59 uninsured and underinsured motorist coverage to (A) a named
60 insured or relatives residing in his household when occupying, or
61 struck as a pedestrian by, an uninsured or underinsured motor vehicle
62 or a motorcycle that is owned by the named insured, or (B) any
63 insured occupying an uninsured or underinsured motor vehicle or
64 motorcycle that is owned by such insured.

65 (2) Notwithstanding any provision of this section to the contrary,
66 each automobile liability insurance policy issued or renewed on and
67 after January 1, 1994, shall provide uninsured and underinsured
68 motorist coverage with limits for bodily injury and death equal to
69 those purchased to protect against loss resulting from the liability
70 imposed by law unless any named insured requests in writing a lesser
71 amount, but not less than the limits specified in subsection (a) of
72 section 14-112. Such written request shall apply to all subsequent
73 renewals of coverage and to all policies or endorsements which extend,
74 change, supersede or replace an existing policy issued to the named
75 insured, unless changed in writing by any named insured. No such
76 written request for a lesser amount shall be effective unless any named
77 insured has signed an informed consent form which shall contain: (A)
78 An explanation of uninsured and underinsured motorist insurance

79 approved by the commissioner; (B) a list of uninsured and
80 underinsured motorist coverage options available from the insurer;
81 and (C) the premium cost for each of the coverage options available
82 from the insurer. Such informed consent form shall contain a heading
83 in twelve-point type and shall state: "WHEN YOU SIGN THIS FORM,
84 YOU ARE CHOOSING A REDUCED PREMIUM, BUT YOU ARE
85 ALSO CHOOSING NOT TO PURCHASE CERTAIN VALUABLE
86 COVERAGE WHICH PROTECTS YOU AND YOUR FAMILY. IF YOU
87 ARE UNCERTAIN ABOUT HOW THIS DECISION WILL AFFECT
88 YOU, YOU SHOULD GET ADVICE FROM YOUR INSURANCE
89 AGENT OR ANOTHER QUALIFIED ADVISER."

90 (b) An insurance company shall be obligated to make payment to its
91 insured up to the limits of the policy's uninsured and underinsured
92 motorist coverage after the limits of liability under all bodily injury
93 liability bonds or insurance policies applicable at the time of the
94 accident have been exhausted by payment of judgments or settlements,
95 but in no event shall the total amount of recovery from all policies,
96 including any amount recovered under the insured's uninsured and
97 underinsured motorist coverage, exceed the limits of the insured's
98 uninsured and underinsured motorist coverage. In no event shall there
99 be any reduction of uninsured or underinsured motorist coverage
100 limits or benefits payable for amounts received by the insured for
101 Social Security disability benefits paid or payable pursuant to the
102 Social Security Act, 42 USC Section 301, et seq. The limitation on the
103 total amount of recovery from all policies shall not apply to
104 underinsured motorist conversion coverage purchased pursuant to
105 section 38a-336a, as amended by this act.

106 (c) Each automobile liability insurance policy issued on or after
107 October 1, 1971, [which] that contains a provision for binding
108 arbitration shall include a provision for final determination of
109 insurance coverage in such arbitration proceeding. With respect to any
110 claim submitted to arbitration on or after October 1, 1983, the
111 arbitration proceeding shall be conducted by a single arbitrator if the
112 amount in demand is forty thousand dollars or less or by a panel of

113 three arbitrators if the amount in demand is more than forty thousand
114 dollars.

115 (d) Regardless of the number of policies issued, vehicles or
116 premiums shown on a policy, premiums paid, persons covered,
117 vehicles involved in an accident, or claims made, in no event shall the
118 limit of liability for uninsured and underinsured motorist coverage
119 applicable to two or more motor vehicles covered under the same or
120 separate policies be added together to determine the limit of liability
121 for such coverage available to an injured person or persons for any one
122 accident. If a person insured for uninsured and underinsured motorist
123 coverage is an occupant of a nonowned vehicle covered by a policy
124 also providing uninsured and underinsured motorist coverage, the
125 coverage of the occupied vehicle shall be primary and any coverage for
126 which such person is a named insured shall be secondary. All other
127 applicable policies shall be excess. The total amount of uninsured and
128 underinsured motorist coverage recoverable is limited to the highest
129 amount recoverable under the primary policy, the secondary policy or
130 any one of the excess policies. The amount paid under the excess
131 policies shall be apportioned in accordance with the proportion that
132 the limits of each excess policy bear to the total limits of the excess
133 policies. If any person insured for uninsured and underinsured
134 motorist coverage is an occupant of an owned vehicle, the uninsured
135 and underinsured motorist coverage afforded by the policy covering
136 the vehicle occupied at the time of the accident shall be the only
137 uninsured and underinsured motorist coverage available.

138 (e) For the purposes of this section, an "underinsured motor vehicle"
139 means a motor vehicle with respect to which the sum of the limits of
140 liability under all bodily injury liability bonds and insurance policies
141 applicable at the time of the accident is less than the applicable limits
142 of liability under the uninsured motorist portion of the policy against
143 which claim is made under subsection (b) of this section.

144 (f) Notwithstanding subsection (a) of section 31-284, an employee of
145 a named insured injured while occupying a covered motor vehicle in

146 the course of employment shall be covered by such insured's otherwise
147 applicable uninsured and underinsured motorist coverage.

148 (g) (1) No insurance company doing business in this state [may]
149 shall limit the time within which any suit may be brought against it or
150 any demand for arbitration on a claim may be made on the uninsured
151 or underinsured motorist provisions of an automobile liability
152 insurance policy to a period of less than three years from the date of
153 accident, provided, in the case of an underinsured motorist claim the
154 insured may toll any applicable limitation period (A) by notifying such
155 insurer prior to the expiration of the applicable limitation period, in
156 writing, of any claim which the insured may have for underinsured
157 motorist benefits and (B) by commencing suit or demanding
158 arbitration under the terms of the policy not more than one hundred
159 eighty days from the date of exhaustion of the limits of liability under
160 all automobile bodily injury liability bonds or automobile insurance
161 policies applicable at the time of the accident by settlements or final
162 judgments after any appeals.

163 (2) Notwithstanding the provisions of subdivision (1) of this
164 subsection, in the case of an uninsured motorist claim, if the motor
165 vehicle of a tortfeasor is an uninsured motor vehicle because the
166 automobile liability insurance company of such tortfeasor becomes
167 insolvent or denies coverage, no insurance company doing business in
168 this state may limit the time within which any suit may be brought
169 against it or any demand for arbitration on a claim may be made on
170 the uninsured motorist provisions of an automobile liability insurance
171 policy to a period of less than one year from the date of receipt by the
172 insured of written notice of such insolvency of, or denial of coverage
173 by, such automobile liability insurance company.

174 (3) If an insurer chooses to exercise its right of subrogation pursuant
175 to the terms of an automobile liability policy for an uninsured motorist
176 coverage claim, such insurer shall seek under such action payment for
177 any deductible paid by the insured to the insurer under such coverage,
178 and shall refund to the insured such deductible if the insurer recovers

179 such deductible.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	38a-336a
Sec. 2	<i>October 1, 2009</i>	38a-336

INS *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

This bill does not result in a fiscal impact. It requires auto insurers to give written disclosure to insurance applicants and renewals of an optional coverage benefit, among other provisions.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 895*****AN ACT CONCERNING UNINSURED MOTORIST CLAIMS AND NOTIFICATION OF UNDERINSURED MOTORIST CONVERSION COVERAGE.*****SUMMARY:**

This bill requires an auto insurer to give written disclosure of the availability of an optional benefit, underinsured motorist conversion coverage, with each policy application and renewal notice (see BACKGROUND). The disclosure must include the benefit's premium cost and description.

The bill requires an insurer that chooses to subrogate an uninsured motorist coverage claim, a right it has under an auto insurance policy, to (1) seek to recoup a deductible the insured paid to the insurer and, (2) if recovered, refund to the insured the amount of the deductible paid. (A deductible is usually not paid to the insurer. Rather, it is the amount the insurer deducts from its claim payment and that the insured pays to an auto repairer, for example.)

It also makes technical changes.

EFFECTIVE DATE: October 1, 2009

BACKGROUND***Required and Optional Coverage***

The law requires each auto insurer to provide uninsured and underinsured motorist coverage with bodily injury and death limits equal to the liability limits the insured purchased, unless the insured requests in writing a lesser amount. A person must purchase coverage of at least \$20,000 (for injury or death of one person) and \$40,000 (for more than one person in any accident).

By law, each auto insurer must offer, for an additional premium, underinsured motorist conversion coverage. If purchased, an insurer cannot reduce the insured's underinsured motorist coverage limit by amounts received from a tortfeasor or third-party on his or her behalf.

Underinsured Motorist Conversion Coverage Example

For illustrative purposes, assume (1) an auto policy includes uninsured and underinsured coverage of \$300,000, (2) the insured incurs \$400,000 in personal injuries that another driver caused, and (3) the at-fault driver's policy includes \$200,000 in bodily injury coverage. In such a case, the insured collects \$200,000 from the at-fault driver's insurer and turns to his or her own policy for additional coverage.

Without the optional underinsured conversion benefit, the insured's policy pays \$100,000 (his or her policy limit of \$300,000 minus the \$200,000 from the at-fault driver's insurer).

With the optional underinsured conversion benefit, the insured's policy pays the amount the insured remains out-of-pocket, up to the policy coverage limit. Thus, the insured's policy pays \$200,000 (the injuries of \$400,000 minus \$200,000 from the at-fault driver's insurer).

Subrogation

Subrogation is the principle that gives an insurer that pays a claim the insured's rights and remedies against a third party with respect to that claim. Thus, if an insurer pays a claim for which another was liable, the insurer may seek payment from the liable party.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 18 Nay 1 (03/05/2009)