



General Assembly

January Session, 2009

***Raised Bill No. 895***

LCO No. 3331

\*03331\_\_\_\_\_INS\*

Referred to Committee on Insurance and Real Estate

Introduced by:  
(INS)

***AN ACT CONCERNING UNINSURED MOTORISTS 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 Section 38a-336a of the general statutes is repealed and  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 offer, for an additional premium, underinsured motorist  
5 conversion coverage with limits in accordance with section 38a-336.  
6 The purchase of such underinsured motorist conversion coverage shall  
7 be in lieu of underinsured motorist coverage pursuant to section 38a-  
8 336.

9 (b) Any new policy issued on or after January 1, 2010, shall disclose  
10 the availability of, premium cost and description of underinsured  
11 motorist conversion coverage to an insured at the time of sale or  
12 issuance. Such description of coverage shall be included in a  
13 conspicuous manner with the informed consent form specified in  
14 subdivision (2) of subsection (a) of section 38a-336, as amended by this

15 act.

16 [(b)] (c) Such underinsured motorist conversion coverage shall  
17 provide for the protection of persons insured thereunder who are  
18 legally entitled to recover damages from owners or operators of  
19 underinsured motor vehicles.

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

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

33 [(e)] (f) For purposes of this section, an "underinsured motor  
34 vehicle" means a motor vehicle with respect to which the sum of all  
35 payments received by or on behalf of the covered person from or on  
36 behalf of the tortfeasor are less than the fair, just and reasonable  
37 damages of the covered person.

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

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

42 (a) (1) Each automobile liability insurance policy shall provide  
43 insurance, herein called uninsured and underinsured motorist  
44 coverage, in accordance with the regulations adopted pursuant to

45 section 38a-334, with limits for bodily injury or death not less than  
46 those specified in subsection (a) of section 14-112, for the protection of  
47 persons insured thereunder who are legally entitled to recover  
48 damages from owners or operators of uninsured motor vehicles and  
49 underinsured motor vehicles and insured motor vehicles, the insurer  
50 of which becomes insolvent prior to payment of such damages,  
51 because of bodily injury, including death resulting therefrom. Each  
52 insurer licensed to write automobile liability insurance in this state  
53 shall provide uninsured and underinsured motorists coverage with  
54 limits requested by any named insured upon payment of the  
55 appropriate premium, provided each such insurer shall offer such  
56 coverage with limits that are twice the limits of the bodily injury  
57 coverage of the policy issued to the named insured. The insured's  
58 selection of uninsured and underinsured motorist coverage shall apply  
59 to all subsequent renewals of coverage and to all policies or  
60 endorsements [which] that extend, change, supersede or replace an  
61 existing policy issued to the named insured, unless changed in writing  
62 by any named insured. No insurer shall be required to provide  
63 uninsured and underinsured motorist coverage to (A) a named  
64 insured or relatives residing in his household when occupying, or  
65 struck as a pedestrian by, an uninsured or underinsured motor vehicle  
66 or a motorcycle that is owned by the named insured, or (B) any  
67 insured occupying an uninsured or underinsured motor vehicle or  
68 motorcycle that is owned by such insured.

69 (2) Notwithstanding any provision of this section to the contrary,  
70 each automobile liability insurance policy issued or renewed on and  
71 after January 1, 1994, shall provide uninsured and underinsured  
72 motorist coverage with limits for bodily injury and death equal to  
73 those purchased to protect against loss resulting from the liability  
74 imposed by law unless any named insured requests in writing a lesser  
75 amount, but not less than the limits specified in subsection (a) of  
76 section 14-112. Such written request shall apply to all subsequent  
77 renewals of coverage and to all policies or endorsements which extend,  
78 change, supersede or replace an existing policy issued to the named

79 insured, unless changed in writing by any named insured. No such  
80 written request for a lesser amount shall be effective unless any named  
81 insured has signed an informed consent form which shall contain: (A)  
82 An explanation of uninsured and underinsured motorist insurance  
83 approved by the commissioner; (B) a list of uninsured and  
84 underinsured motorist coverage options available from the insurer;  
85 and (C) the premium cost for each of the coverage options available  
86 from the insurer. Such informed consent form shall contain a heading  
87 in twelve-point type and shall state: "WHEN YOU SIGN THIS FORM,  
88 YOU ARE CHOOSING A REDUCED PREMIUM, BUT YOU ARE  
89 ALSO CHOOSING NOT TO PURCHASE CERTAIN VALUABLE  
90 COVERAGE WHICH PROTECTS YOU AND YOUR FAMILY. IF YOU  
91 ARE UNCERTAIN ABOUT HOW THIS DECISION WILL AFFECT  
92 YOU, YOU SHOULD GET ADVICE FROM YOUR INSURANCE  
93 AGENT OR ANOTHER QUALIFIED ADVISER."

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

110 (c) Each automobile liability insurance policy issued on or after  
111 October 1, 1971, [which] that contains a provision for binding

112 arbitration shall include a provision for final determination of  
113 insurance coverage in such arbitration proceeding. With respect to any  
114 claim submitted to arbitration on or after October 1, 1983, the  
115 arbitration proceeding shall be conducted by a single arbitrator if the  
116 amount in demand is forty thousand dollars or less or by a panel of  
117 three arbitrators if the amount in demand is more than forty thousand  
118 dollars.

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

142 (e) For the purposes of this section, an "underinsured motor vehicle"  
143 means a motor vehicle with respect to which the sum of the limits of  
144 liability under all bodily injury liability bonds and insurance policies

145 applicable at the time of the accident is less than the applicable limits  
146 of liability under the uninsured motorist portion of the policy against  
147 which claim is made under subsection (b) of this section.

148 (f) Notwithstanding subsection (a) of section 31-284, an employee of  
149 a named insured injured while occupying a covered motor vehicle in  
150 the course of employment shall be covered by such insured's otherwise  
151 applicable uninsured and underinsured motorist coverage.

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

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

177 by, such automobile liability insurance company.

178 (3) Notwithstanding the provisions of this section, in the case of an  
179 uninsured motorist claim, if an insurer chooses to exercise its right of  
180 subrogation pursuant to the terms of an automobile liability policy,  
181 such insurer may also seek under such action payment for any  
182 deductible for property damage paid by the insured to the insurer.  
183 Upon recovery of such amount, the insurer shall refund to the insured  
184 the amount paid by the insured for 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

**Statement of Purpose:**

To ensure that Connecticut drivers are informed of the benefits of underinsured motorist conversion coverage, to allow insurers in the case of an uninsured motorist claim to seek payment under a subrogation action for a deductible for physical damage paid by an insured, and to require such deductible be returned to the insured if the insurer is successful in its action.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*