



General Assembly

January Session, 2015

Committee Bill No. 5195

LCO No. 1956



* 0 1 9 5 6 H B 0 5 1 9 5 I N S *

Referred to Committee on INSURANCE AND REAL ESTATE

Introduced by:
(INS)

***AN ACT REQUIRING UNINSURED AND UNDERINSURED MOTORIST
COVERAGE TO BE OPTIONAL AND REPEALING THE PROHIBITION
ON SUBROGATION OF UNDERINSURED MOTORIST CLAIMS.***

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

1 Section 1. Section 38a-336 of the general statutes, as amended by
2 section 1 of public act 14-20, is repealed and the following is
3 substituted in lieu thereof (*Effective October 1, 2015*):

4 (a) (1) (A) Each insurer licensed to write automobile liability
5 insurance [policy shall provide] in this state shall offer, for each
6 automobile liability insurance policy issued or renewed on or after
7 January 1, 2016, and for an additional premium, insurance, herein
8 called uninsured and underinsured motorist coverage, in accordance
9 with the regulations adopted pursuant to section 38a-334, with limits
10 for bodily injury or death not less than those specified in subsection (a)
11 of section 14-112, for the protection of persons insured thereunder who
12 are legally entitled to recover damages because of bodily injury,
13 including death resulting therefrom, from owners or operators of
14 uninsured motor vehicles and underinsured motor vehicles and
15 insured motor vehicles, the insurer of which becomes insolvent prior

16 to payment of such damages. [, because of bodily injury, including
17 death resulting therefrom.] The insurer shall disclose to an applicant or
18 insured the availability and the premium cost of and a description of
19 uninsured and underinsured motorist coverage. Each insured who
20 declines uninsured and underinsured motorist coverage shall sign an
21 informed consent form as set forth in subparagraph (A) of subdivision
22 (2) of this subsection.

23 (B) Each insurer licensed to write automobile liability insurance in
24 this state shall [provide] offer uninsured and underinsured [motorists]
25 motorist coverage with limits requested by any named insured upon
26 payment of the appropriate premium, provided each such insurer shall
27 offer such coverage with limits that are twice the limits of the bodily
28 injury coverage of the policy issued to the named insured. The
29 insured's selection of uninsured and underinsured motorist coverage
30 shall apply to all subsequent renewals of coverage and to all policies or
31 endorsements [which] that extend, change, supersede or replace an
32 existing policy issued to the named insured, unless changed in writing
33 by any named insured.

34 (C) No insurer shall be required to provide uninsured and
35 underinsured motorist coverage to [(A)] (i) a named insured or
36 relatives residing in [his] the named insured's household when
37 occupying, or struck as a pedestrian by, an uninsured or underinsured
38 motor vehicle or a motorcycle that is owned by the named insured,
39 except as provided in subparagraph (D) of this subdivision, or [(B)] (ii)
40 any insured occupying an uninsured or underinsured motor vehicle or
41 motorcycle that is owned by such insured.

42 (D) For each automobile liability insurance policy issued or renewed
43 on or after October 1, 2014, an insurer shall not deny uninsured
44 motorist coverage to a named insured or any relative residing in the
45 named insured's household solely on the basis that the named insured
46 or such relative was struck as a pedestrian by a motor vehicle or
47 motorcycle, during the theft of such motor vehicle or motorcycle, that

48 is owned by the named insured and listed as a covered motor vehicle
49 on the named insured's policy.

50 (2) [Notwithstanding any provision of this section, each] (A) Each
51 insurer licensed to write automobile liability insurance policy in this
52 state shall offer, for each automobile liability insurance policy issued or
53 renewed on [and] or after [January 1, 1994, shall provide] January 1,
54 2016, uninsured and underinsured motorist coverage with limits for
55 bodily injury and death equal to those purchased to protect against
56 loss resulting from the liability imposed by law unless any named
57 insured requests in writing a lesser amount, but not less than the limits
58 specified in subsection (a) of section 14-112. Such written request shall
59 apply to all subsequent renewals of coverage and to all policies or
60 endorsements that extend, change, supersede or replace an existing
61 policy issued to the named insured, unless changed in writing by any
62 named insured. No such written request for a lesser amount shall be
63 effective unless any named insured has signed an informed consent
64 form that [shall contain: (A) An explanation of uninsured and
65 underinsured motorist insurance approved by the commissioner; (B)]
66 contains: (i) Explanations, approved by the commissioner, of (I)
67 uninsured and underinsured motorist coverage, and (II) uninsured
68 and underinsured motorist conversion coverage; (ii) a list of uninsured
69 and underinsured motorist coverage options and underinsured
70 motorist conversion coverage options available from the insurer; and
71 [(C)] (iii) the premium cost for each of the coverage options available
72 from the insurer. Such informed consent form shall contain a heading
73 in twelve-point type and shall state: "WHEN YOU SIGN THIS FORM,
74 YOU ARE CHOOSING A REDUCED PREMIUM, BUT YOU ARE
75 ALSO CHOOSING NOT TO PURCHASE CERTAIN VALUABLE
76 COVERAGE WHICH PROTECTS YOU AND YOUR FAMILY. IF YOU
77 ARE UNCERTAIN ABOUT HOW THIS DECISION WILL AFFECT
78 YOU, YOU SHOULD GET ADVICE FROM YOUR INSURANCE
79 AGENT OR ANOTHER QUALIFIED ADVISER."

80 (B) Each insured who declines uninsured and underinsured

81 motorist coverage or underinsured motorist conversion coverage or
82 both shall sign an informed consent form as set forth in subparagraph
83 (A) of this subdivision.

84 (b) An insurance company shall be obligated to make payment to its
85 insured up to the limits of the policy's uninsured and underinsured
86 motorist coverage after the limits of liability under all bodily injury
87 liability bonds or insurance policies applicable at the time of the
88 accident have been exhausted by payment of judgments or settlements,
89 but in no event shall the total amount of recovery from all policies,
90 including any amount recovered under the insured's uninsured and
91 underinsured motorist coverage, exceed the limits of the insured's
92 uninsured and underinsured motorist coverage. In no event shall there
93 be any reduction of uninsured or underinsured motorist coverage
94 limits or benefits payable (1) for amounts received by the insured for
95 Social Security disability benefits paid or payable pursuant to the
96 Social Security Act, 42 USC Section 301, et seq., or (2) with respect to an
97 automobile liability insurance policy issued or renewed on or after
98 October 1, 2015, (A) for amounts paid by or on behalf of any tortfeasor
99 for bodily injury to anyone other than individuals insured under the
100 policy against which the claim is made, or (B) for amounts paid by or
101 on behalf of any tortfeasor for property damage. The limitation on the
102 total amount of recovery from all policies shall not apply to
103 underinsured motorist conversion coverage purchased pursuant to
104 section 38a-336a, as amended by this act.

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

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

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

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

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

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

172 Sec. 2. Section 38a-336a of the general statutes is repealed and the
173 following is substituted in lieu thereof (*Effective October 1, 2015*):

174 (a) Each insurer licensed to write automobile liability insurance in
175 this state shall offer, for an additional premium, underinsured motorist
176 conversion coverage with limits in accordance with section 38a-336, as
177 amended by this act. The purchase of such underinsured motorist

178 conversion coverage shall be in lieu of underinsured motorist coverage
179 pursuant to section 38a-336, as amended by this act. For each new
180 automobile liability insurance policy issued on or after January 1, 2016,
181 the insurer shall disclose to an insured at the time of sale or issuance
182 the availability of, the premium cost and a description of underinsured
183 motorist conversion coverage. [Such description of coverage shall be
184 included in a conspicuous manner with the] Each insured who
185 declines underinsured motorist conversion coverage shall sign an
186 informed consent form as specified in subdivision (2) of subsection (a)
187 of section 38a-336, as amended by this act.

188 (b) Such underinsured motorist conversion coverage shall provide
189 for the protection of persons insured thereunder who are legally
190 entitled to recover damages from owners or operators of underinsured
191 motor vehicles.

192 (c) Each insurer shall be obligated to pay to the insured, up to the
193 limits of the policy's underinsured motorist conversion coverage, after
194 the limits of liability under all bodily injury liability bonds or
195 insurance policies applicable at the time of the accident have been
196 exhausted by payment of judgments or settlements. If the insured
197 purchases such underinsured motorist conversion coverage, then in no
198 event shall the underinsured motorist coverage be reduced on account
199 of any payment by or on behalf of the tortfeasor or by any third party.

200 (d) The selection of coverage under this section shall apply to all
201 subsequent renewals of coverage and to all policies or endorsements
202 [which] that extend, change, supersede or replace an existing policy
203 issued to the named insured, unless changed in writing by any named
204 insured.

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

210 Sec. 3. Section 38a-389 of the general statutes is repealed and the
211 following is substituted in lieu thereof (*Effective October 1, 2015*):

212 (a) (1) The General Assembly finds and concludes that the system of
213 bodily injury liability, basic and added reparations benefits and
214 uninsured and underinsured motorist insurance, as amended by the
215 provisions of public act 93-297, will generate premium savings for
216 policyholders with such coverages.

217 [(b)] (2) Each insurer licensed to sell private passenger automobile
218 insurance in this state shall refile, with the Insurance Commissioner, its
219 base rates for such coverages to reflect the elimination of mandatory
220 basic and added reparations benefits pursuant to public act 93-297 and
221 any additional premium savings attributable to said act. Such rates
222 shall be refiled, as soon as practicable, for use with policies effective on
223 or after January 1, 1994.

224 [(c)] (3) Upon receipt of the initial base rate filing made under this
225 section, the Insurance Commissioner, before permitting such filing to
226 become effective, shall consult with an independent actuary for the
227 purpose of assuring that such rates reflect both [(1)] (A) the insurer's
228 rates on file on May 1, 1993, adjusted for cost trends from the date of
229 filing to January 1, 1994, [; and (2)] and (B) the elimination of
230 mandatory basic and added reparations benefits pursuant to public act
231 93-297 and any additional premium savings attributable to said act.
232 Such revised rates shall be applicable to all new and renewal policies
233 effective on or after January 1, 1994.

234 [(d)] (4) The base rates for bodily injury liability coverage and
235 uninsured and underinsured motorist coverage that are filed
236 subsequent to the initial filing of base rates pursuant to this section
237 shall be subject to prior rate approval in the same manner as in a
238 noncompetitive market pursuant to subdivision (2) of subsection (a) of
239 section 38a-688.

240 (b) (1) Each insurer licensed to sell private passenger automobile

241 insurance in this state shall refile, with the Insurance Commissioner, its
242 base rates for such coverages to reflect the elimination of mandatory
243 uninsured and underinsured motorist coverage and any additional
244 premium savings attributable to such elimination. Such rates shall be
245 refiled, as soon as practicable, for use with policies effective on or after
246 January 1, 2016.

247 (2) Upon receipt of the initial base rate filing made under this
248 section, the Insurance Commissioner, before permitting such filing to
249 become effective, shall consult with an independent actuary for the
250 purpose of assuring that such rates reflect both (A) the insurer's rates
251 on file on May 1, 2015, adjusted for cost trends from the date of filing
252 to January 1, 2016; and (B) the elimination of mandatory uninsured
253 and underinsured motorist coverage and any additional premium
254 savings attributable to such elimination. Such revised rates shall be
255 applicable to all new and renewal policies effective on or after January
256 1, 2016.

257 (3) The base rates for bodily injury liability coverage and uninsured
258 and underinsured motorist coverage that are filed subsequent to the
259 initial filing of base rates pursuant to this section shall be subject to
260 prior rate approval in the same manner as in a noncompetitive market
261 pursuant to subdivision (2) of subsection (a) of section 38a-688.

262 Sec. 4. Section 38a-351a of the general statutes is repealed and the
263 following is substituted in lieu thereof (*Effective October 1, 2015*):

264 [Except as prohibited by section 38a-336b, if] If an insurer chooses to
265 exercise its right of subrogation pursuant to the terms of an automobile
266 liability insurance policy, such insurer shall include in such
267 subrogation demand the amount of any collision deductible paid by
268 such insured, unless such insured requests such insurer not to include
269 such amount. The insurer shall share subrogation recoveries with the
270 insured on a proportionate basis.

271 Sec. 5. Section 38a-336b of the general statutes is repealed. (*Effective*

272 October 1, 2015)

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2015	38a-336
Sec. 2	October 1, 2015	38a-336a
Sec. 3	October 1, 2015	38a-389
Sec. 4	October 1, 2015	38a-351a
Sec. 5	October 1, 2015	Repealer section

Statement of Purpose:

To make uninsured and underinsured motorist coverage optional rather than compulsory and repeal the prohibition on subrogation for underinsured motorist benefits paid or payable by the insurer.

[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.]

Co-Sponsors: REP. SAMPSON, 80th Dist.

H.B. 5195