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HOUSE BILL 1804

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State of Washington

54th Legislature

1995 Regular Session

By Representatives Beeksma, L. Thomas and Koster

Read first time 02/09/95. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to underinsured motor vehicle insurance coverage;  
2 and amending RCW 48.22.030.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 48.22.030 and 1985 c 328 s 1 are each amended to read  
5 as follows:

6 (1) "Underinsured motor vehicle" means a motor vehicle with respect  
7 to the ownership, maintenance, or use of which either no bodily injury  
8 or property damage liability bond or insurance policy applies at the  
9 time of an accident, or with respect to which the sum of the limits of  
10 liability under all bodily injury or property damage liability bonds  
11 and insurance policies applicable to a covered person after an accident  
12 is less than the applicable damages which the covered person is legally  
13 entitled to recover. A vehicle owned or leased by a governmental  
14 entity or the political subdivisions or agencies thereof, or a vehicle  
15 operated within the scope of their employment by an employee or agent  
16 of a governmental entity, including its subdivisions or agencies, is  
17 not an "underinsured motor vehicle" within the meaning of this section.  
18 However any such vehicle is considered an "underinsured motor vehicle"

1 if the government entity is unable to satisfy a claim because of  
2 financial inability or insolvency.

3 (2) No new policy or renewal of an existing policy insuring against  
4 loss resulting from liability imposed by law for bodily injury, death,  
5 or property damage, suffered by any person arising out of the  
6 ownership, maintenance, or use of a motor vehicle shall be issued with  
7 respect to any motor vehicle registered or principally garaged in this  
8 state unless coverage is (~~provided therein or supplemental thereto~~)  
9 available for the protection of persons insured thereunder who are  
10 legally entitled to recover damages from owners or operators of  
11 underinsured motor vehicles, hit-and-run motor vehicles, and phantom  
12 vehicles because of bodily injury, death, or property damage, resulting  
13 therefrom, except while operating or occupying a motorcycle or motor-  
14 driven cycle, and except while operating or occupying a motor vehicle  
15 owned or available for the regular use by the named insured or any  
16 family member, and which is not insured under the liability coverage of  
17 the policy. The coverage required to be offered under this chapter is  
18 not applicable to general liability policies, commonly known as  
19 umbrella policies, or other policies which apply only as excess to the  
20 insurance directly applicable to the vehicle insured.

21 (3) Except as to property damage, coverage (~~required~~) made  
22 available under subsection (2) of this section shall be in the same  
23 amount as the insured's third party liability coverage (~~unless the~~  
24 ~~insured rejects all or part of the coverage as provided in subsection~~  
25 ~~(4) of this section~~). Coverage for property damage need only be  
26 issued in conjunction with coverage for bodily injury or death.  
27 Property damage coverage required under subsection (2) of this section  
28 shall mean physical damage to the insured motor vehicle unless the  
29 policy specifically provides coverage for the contents thereof or other  
30 forms of property damage.

31 (4) A named insured (~~or spouse may reject, in writing,~~  
32 ~~underinsured coverage for bodily injury or death, or property damage,~~  
33 ~~and the requirements of subsections (2) and (3) of this section shall~~  
34 ~~not apply.~~ If a named insured or spouse has rejected underinsured  
35 coverage, such coverage shall not be included in any supplemental or  
36 renewal policy unless a named insured or spouse subsequently requests  
37 such coverage in writing. The requirement of a written rejection under  
38 this subsection shall apply only to the original issuance of policies  
39 issued after July 24, 1983, and not to any renewal or replacement

1 policy)) must affirmatively indicate, in the customary way, the desire  
2 to have the underinsured coverage provided for under this section  
3 included in his or her policy; the named insured does not have to  
4 reject the coverage in writing.

5 (5) The limit of liability under the policy coverage may be defined  
6 as the maximum limits of liability for all damages resulting from any  
7 one accident regardless of the number of covered persons, claims made,  
8 or vehicles or premiums shown on the policy, or premiums paid, or  
9 vehicles involved in an accident.

10 (6)(a) The policy may provide that if an injured person has other  
11 similar insurance available to him under other policies, the total  
12 limits of liability of all coverages shall not exceed the higher of the  
13 applicable limits of the respective coverages.

14 (b) Before seeking to recover benefits under the coverage described  
15 in this section, the injured person must first recover damages from the  
16 owners or operators of any underinsured motor vehicle whose fault is a  
17 basis for the injured person's claim against the insurer, to the extent  
18 that the owners or operators have available liability insurance. If  
19 the injured person settles the claim against any such owner or operator  
20 for an amount less than the applicable limit of that person's available  
21 liability insurance, then the coverage described in this section does  
22 not apply to a claim based on the owner's or operator's fault.

23 (c) An insurer providing the coverage described in this section is  
24 entitled to offset against the injured person's damages any amounts  
25 paid to or on behalf of the injured person because of the accident.  
26 This provision does not apply to a payment under a life insurance  
27 policy.

28 (7)(a) The policy may provide for a deductible of not more than  
29 three hundred dollars for payment for property damage when the damage  
30 is caused by a hit-and-run driver or a phantom vehicle.

31 (b) In all other cases of underinsured property damage coverage,  
32 the policy may provide for a deductible of not more than one hundred  
33 dollars.

34 (8) For the purposes of this chapter, a "phantom vehicle" shall  
35 mean a motor vehicle which causes bodily injury, death, or property  
36 damage to an insured and has no physical contact with the insured or  
37 the vehicle which the insured is occupying at the time of the accident  
38 if:

1 (a) The facts of the accident can be corroborated by competent  
2 evidence other than ((the)) statements, declarations, or testimony of  
3 the insured or any person having an underinsured motorist claim  
4 resulting from the accident; and

5 (b) The accident has been reported to the appropriate law  
6 enforcement agency within seventy-two hours of the accident.

7 (9) The policy may provide that the injured person must provide  
8 written notice within three years of the date of the accident of intent  
9 to pursue a claim under the coverage described in this section and that  
10 failure to do so is a complete defense to any such claim.

11 (10) There is no presumption that any policy exclusion or  
12 limitation not specifically authorized by this section is invalid. The  
13 enforceability of such limitations or exclusions must be determined  
14 based on their particular application, the purpose of this section, and  
15 other existing laws.

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