



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1924/1

PJK:bjk:rs

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stay
v. mis...

DOA:.....Gauger - Uninsured and underinsured motorist coverage; auto insurance liability coverage limits

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

SA -

down of act

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

INSURANCE

Proof of financial responsibility

Current law does not generally require motor vehicles operated in this state to be covered by policies of bodily injury and property damage liability insurance. However, current law imposes certain financial responsibility requirements on owners and operators of motor vehicles involved in accidents. If a motor vehicle accident results in injury, death, or property damage of \$1,000 or more, the Department of Transportation (DOT) is required to notify the operator and owner of the vehicle involved in the accident that the person must deposit with DOT security for the accident in an amount specified by DOT, which DOT has determined is sufficient to satisfy any judgment for damages resulting from the accident. Unless an exception applies, if a person fails to timely deposit security after this notice, DOT must suspend the person's operating privilege if the person was the vehicle operator and suspend all vehicle registrations of the person if the person was the vehicle owner. One of the exceptions is that the person provides proof of financial responsibility. In addition, if DOT receives a certified copy of a judgment for damages of \$500 or more arising out of a motor vehicle accident, DOT must immediately suspend the operating privilege and all registrations of the person against whom the

excludes policies written by town mutuals from the requirement

judgment was rendered unless the person can provide proof of financial responsibility. In both situations, proof of financial responsibility includes coverage under a motor vehicle liability insurance policy with the following minimum limits for any single accident: \$25,000 for bodily injury to or death of one person, \$50,000 for bodily injury to or death of more than one person, and \$10,000 for property damage. This bill increases the minimum limits required under a policy that is acceptable proof of financial responsibility to \$100,000 for bodily injury to or death of one person, \$300,000 for bodily injury to or death of more than one person, and \$25,000 for property damage.

Uninsured motorist and medical payments coverages

Under current law, all motor vehicle liability insurance policies must include uninsured motorist coverage in limits of at least \$25,000 per person and \$50,000 per accident and medical payments coverage in the amount of at least \$1,000 per person. Uninsured motorist coverage provides coverage for persons who are legally entitled to recover damages for bodily injury from owners or operators of motor vehicles that are not insured. Medical payments coverage pays for medical or chiropractic services provided to persons who are injured while using the insured motor vehicle. The bill increases the level of uninsured motorist coverage that motor vehicle liability insurance policies must include to \$100,000 per person and \$300,000 per accident, and increases the level of medical payments coverage that those policies must include to \$10,000.

Underinsured motorist coverage

Current law, while not requiring that motor vehicle liability insurance policies include underinsured motorist coverage, requires insurers to provide written notice of the availability of that coverage to one insured under each policy written after October 1, 1995, that does not include the coverage, as well as to one insured under each motor vehicle liability insurance policy in effect on that date that did not include the coverage. If an insured accepts underinsured motorist coverage after receiving notice of its availability, the policy must include the coverage in limits of at least \$50,000 per person and \$100,000 per accident. Underinsured motorist coverage provides coverage for persons who are legally entitled to recover damages for bodily injury from owners or operators of underinsured motor vehicles. "Underinsured motor vehicle" is not defined in the statutes.

except for those written by town mutuals

The bill eliminates the requirement to provide notice of the availability of underinsured motorist coverage and requires every motor vehicle liability insurance policy to include that coverage in limits of at least \$100,000 per person and \$300,000 per accident. In addition, the bill defines an underinsured motor vehicle as a motor vehicle that is involved in an accident with an insured and which, at the time of the accident, was covered by a motor vehicle liability insurance policy with limits that are less than the amount needed to fully compensate the insured for his or her damages.

Umbrella and excess liability insurance policies

The Wisconsin Administrative Code exempts umbrella and excess liability insurance policies from the requirement under the statutes that a policy covering motor vehicle liability must include uninsured motorist coverage. Nothing in

↑ except for a town mutual

current law, however, exempts an insurer writing umbrella or excess liability insurance policies from the requirement to provide notice of the availability of underinsured motorist coverage. The bill affirmatively requires an insurer that writes umbrella or excess liability policies that cover motor vehicle liability to make a written offer of both uninsured motorist coverage and underinsured motorist coverage whenever application is made for such an umbrella or excess liability policy. The bill also requires an insurer to make a written offer of uninsured motorist coverage at the first renewal after the effective date of the bill of such a policy that does not include that coverage and a written offer of underinsured motorist coverage at the first renewal after the effective date of the bill of such a policy that does not include that coverage. An applicant or insured may reject the coverage, but must do so in writing. The bill provides that, if an insurer fails to provide a required written offer of uninsured or underinsured motorist coverage and the umbrella or excess liability policy does not include the coverage, or coverages, for which an offer was not given, a court must, on the request of the insured, reform the policy to include the coverage or coverages with the same limits as the liability coverage limits under the policy. This result modifies the decision of the Wisconsin Supreme Court in *Stone v. Acuity*, 2008 WI 30, 308 Wis. 2d 558, 747 N.W. 2d 766. In that case, the insurer had failed to provide notice of the availability of underinsured coverage for an umbrella insurance policy and the policy did not include that coverage. The court determined that in such a case the policy should be reformed to include underinsured coverage in the minimum amount that is required under the statute (\$50,000 per person and \$100,000 per accident).

Miscellaneous motor vehicle liability insurance provisions

Under current law, an uninsured motor vehicle is defined to include "an unidentified motor vehicle involved in a hit-and-run accident." The Wisconsin Supreme Court has held that, under this definition, actual contact is necessary. Consequently, uninsured motorist coverage does not apply if, for example, a motor vehicle is run off the road by another motor vehicle without actual contact between the two vehicles. The bill changes this so that actual contact is not necessary for uninsured motorist coverage to apply. All that is required is that an unidentified motor vehicle be involved in the accident.

Current law specifies a number of provisions that are permissible in a motor vehicle liability insurance policy and a number of provisions that are prohibited in such a policy. The bill makes the following currently permissible provisions prohibited in a motor vehicle liability insurance policy:

1. Providing that, regardless of the number of policies, persons, or vehicles involved, the limits for coverage under the policy may not be added to the limits for similar coverage applying to other motor vehicles to determine an overall limit of coverage available for a person in any one accident.

2. Providing that the maximum amount of uninsured or underinsured motorist coverage available for bodily injury or death suffered by a person not using a motor vehicle in an accident (such as a pedestrian) is any single limit of uninsured or underinsured motorist coverage for any vehicle with respect to which the person is insured at the time of the accident.

3. Providing that the maximum amount of medical payments coverage available for bodily injury or death suffered by a person not using a motor vehicle in an accident is any single limit of medical payments coverage for any vehicle with respect to which the person is insured at the time of the accident.

4. Providing that the limits under the policy for uninsured or underinsured motorist coverage for bodily injury or death resulting from an accident shall be reduced by amounts paid or payable by or on behalf of a person or organization that is legally responsible for the bodily injury or death; amounts paid or payable under any worker's compensation law; or amounts paid or payable under any disability benefits laws.

5. Providing that any coverage under the policy does not apply to a loss resulting from the use of a motor vehicle that is owned by the named insured or a spouse or relative of the named insured who lives in the named insured's household, that is not described in the policy, and that is not covered under the terms of the policy as a newly acquired or replacement motor vehicle.

Requirement for health insurer to cover claims

Finally, the bill prohibits a health insurer from refusing to cover claims for health care services provided to an insured on the basis that there may be coverage for those services under a liability insurance policy.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 62.67 of the statutes is amended to read:

2 **62.67 Uninsured motorist coverage; 1st class cities.** A 1st class city shall
3 provide uninsured motorist motor vehicle liability insurance coverage for motor
4 vehicles owned by the city and operated by city employees in the course of
5 employment. The coverage required by this section shall have at least the limits
6 prescribed for uninsured motorist coverage under s. 632.32 (4) (a) 1.

7 **SECTION 2.** 121.555 (2) (a) of the statutes is amended to read:

8 **121.555 (2) (a) Insurance.** If the vehicle is owned or leased by a school or a
9 school bus contractor, or is a vehicle authorized under sub. (1) (b), it shall comply with
10 s. 121.53. If the vehicle is transporting 9 or less persons in addition to the operator
11 and is not owned or leased by a school or by a school bus contractor, it shall be insured
12 by a policy providing property damage coverage with a limit of not less than \$10,000

1 ~~\$25,000~~ and bodily injury liability coverage with limits of not less than ~~\$25,000~~
2 ~~\$100,000~~ for each person, and, subject to the limit for each person, a total limit of not
3 less than ~~\$50,000~~ \$300,000 for each accident.

4 **SECTION 3.** 344.01 (2) (d) of the statutes is amended to read:

5 344.01 (2) (d) "Proof of financial responsibility" or "proof of financial
6 responsibility for the future" means proof of ability to respond in damages for
7 liability on account of accidents occurring subsequent to the effective date of such
8 proof, arising out of the maintenance or use of a motor vehicle in the amount of
9 ~~\$25,000~~ \$100,000 because of bodily injury to or death of one person in any one
10 accident and, subject to such limit for one person, in the amount of ~~\$50,000~~ \$300,000
11 because of bodily injury to or death of 2 or more persons in any one accident and in
12 the amount of ~~\$10,000~~ \$25,000 because of injury to or destruction of property of
13 others in any one accident.

14 **SECTION 4.** 344.15 (1) of the statutes is amended to read:

15 344.15 (1) No policy or bond is effective under s. 344.14 unless issued by an
16 insurer authorized to do an automobile liability or surety business in this state,
17 except as provided in sub. (2), or unless the policy or bond is subject, if the accident
18 has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not
19 less than ~~\$25,000~~ \$100,000 because of bodily injury to or death of one person in any
20 one accident and, subject to that limit for one person, to a limit of not less than
21 ~~\$50,000~~ \$300,000 because of bodily injury to or death of 2 or more persons in any one
22 accident and, if the accident has resulted in injury to or destruction of property, to
23 a limit of not less than ~~\$10,000~~ \$25,000 because of injury to or destruction of property
24 of others in any one accident.

25 **SECTION 5.** 344.33 (2) of the statutes is amended to read:

1 344.33 (2) MOTOR VEHICLE LIABILITY POLICY. A motor vehicle policy of liability
2 insurance shall insure the person named therein using any motor vehicle with the
3 express or implied permission of the owner, or shall insure any motor vehicle owned
4 by the named insured and any person using such motor vehicle with the express or
5 implied permission of the named insured, against loss from the liability imposed by
6 law for damages arising out of the maintenance or use of the motor vehicle within
7 the United States of America or the Dominion of Canada, subject to the limits
8 exclusive of interest and costs, with respect to each such motor vehicle as follows:
9 \$25,000 \$100,000 because of bodily injury to or death of one person in any one
10 accident and, subject to such limit for one person, ~~\$50,000~~ \$300,000 because of bodily
11 injury to or death of 2 or more persons in any one accident, and ~~\$10,000~~ \$25,000
12 because of injury to or destruction of property of others in any one accident.

13 **SECTION 6.** 631.43 (3) of the statutes is amended to read:

14 631.43 (3) EXCEPTION. Subsection (1) does not affect the rights of insurers to
15 ~~exclude, limit or reduce~~ restrict coverage under s. 632.32 (5) (b), or (c) ~~or (f) to (j)~~.

16 **SECTION 7.** 632.32 (2) (a) of the statutes is renumbered 632.32 (2) (at).

17 **SECTION 8.** 632.32 (2) (am) of the statutes is created to read:

18 632.32 (2) (am) "Medical payments coverage" means coverage to indemnify for
19 medical payments or chiropractic payments or both for the protection of all persons
20 using the insured motor vehicle from losses resulting from bodily injury or death.

21 **SECTION 9.** 632.32 (2) (c) of the statutes is renumbered 632.32 (2) (h).

22 **SECTION 10.** 632.32 (2) (cm) of the statutes is created to read:

23 632.32 (2) (cm) "Umbrella or excess liability policy" means an insurance
24 contract providing at least \$1,000,000 of liability coverage per person or per

1 occurrence in excess of certain required underlying liability insurance coverage or
2 a specified amount of self-insured retention.

3 **SECTION 11.** 632.32 (2) (d) of the statutes is created to read:

4 632.32 (2) (d) "Underinsured motor vehicle" means a motor vehicle to which all
5 of the following apply:

6 1. The motor vehicle is involved in an accident with a person who has
7 underinsured motorist coverage.

8 2. A bodily injury liability insurance policy applies to the motor vehicle at the
9 time of the accident.

10 3. The limits under the bodily injury liability insurance policy are less than the
11 amount needed to fully compensate the insured for his or her damages.

12 **SECTION 12.** 632.32 (2) (e) of the statutes is created to read:

13 632.32 (2) (e) "Underinsured motorist coverage" means coverage for the
14 protection of persons insured under that coverage who are legally entitled to recover
15 damages for bodily injury, death, sickness, or disease from owners or operators of
16 underinsured motor vehicles.

17 **SECTION 13.** 632.32 (2) (f) of the statutes is created to read:

18 632.32 (2) (f) "Uninsured motor vehicle" means a motor vehicle that is involved
19 in an accident with a person who has uninsured motorist coverage and with respect
20 to which, at the time of the accident, a bodily injury liability insurance policy is not
21 in effect and the owner or operator has not furnished proof of financial responsibility
22 for the future under subch. III of ch. 344. "Uninsured motor vehicle" also includes
23 both of the following motor vehicles involved in an accident with a person who has
24 uninsured motorist coverage:

1 1. An insured motor vehicle if before or after the accident the liability insurer
2 of the motor vehicle is declared insolvent by a court of competent jurisdiction.

3 2. An unidentified motor vehicle.

4 SECTION 14. 632.32 (2) (g) of the statutes is created to read:

5 632.32 (2) (g) "Uninsured motorist coverage" means coverage for the protection
6 of persons insured under that coverage who are legally entitled to recover damages
7 for bodily injury, death, sickness, or disease from owners or operators of uninsured
8 motor vehicles.

9 SECTION 15. 632.32 (4) (title) of the statutes is amended to read:

10 632.32 (4) (title) REQUIRED UNINSURED MOTORIST, UNDERINSURED MOTORIST, AND
11 MEDICAL PAYMENTS COVERAGES.

12 SECTION 16. 632.32 (4) (intro.) (except 632.32 (4) (title)) of the statutes is
13 renumbered 632.32 (4) (a) (intro.) and amended to read:

14 632.32 (4) (a) (intro.) Every policy of insurance subject to this section that
15 insures with respect to any motor vehicle registered or principally garaged in this
16 state against loss resulting from liability imposed by law for bodily injury or death
17 suffered by any person arising out of the ownership, maintenance, or use of a motor
18 vehicle shall contain therein or supplemental thereto ~~the following provisions~~ for all
19 of the following coverages:

20 SECTION 17. 632.32 (4) (a) (title) of the statutes is repealed.

21 SECTION 18. 632.32 (4) (a) 1. of the statutes is amended to read:

22 632.32 (4) (a) 1. ~~For the protection of persons injured who are legally entitled~~
23 ~~to recover damages from owners or operators of uninsured motor vehicles because~~
24 ~~of bodily injury, sickness or disease, including death resulting therefrom~~ Uninsured →

a town mutual organized under ch. 612, uninsured

Excluding a policy written by

Excluding a policy written by a town mutual organized under ch. 124

1 motorist coverage, in limits of at least \$25,000 \$100,000 per person and \$50,000
2 \$300,000 per accident.

3 SECTION 19. 632.32 (4) (a) 2. of the statutes is repealed.

4 SECTION 20. 632.32 (4) (a) 2m. of the statutes is created to read:

5 632.32 (4) (a) 2m. Underinsured motorist coverage, in limits of at least
6 \$100,000 per person and \$300,000 per accident.

7 SECTION 21. 632.32 (4) (a) 3. of the statutes is renumbered 632.32 (4) (c) and
8 amended to read:

9 632.32 (4) (c) Insurers Unless an insurer waives the right to subrogation,
10 insurers making payment under ~~the uninsured motorists' coverage~~ any of the
11 coverages under this subsection shall, to the extent of the payment, be subrogated
12 to the rights of their insureds.

13 SECTION 22. 632.32 (4) (b) (title) of the statutes is repealed.

14 SECTION 23. 632.32 (4) (b) of the statutes is renumbered 632.32 (4) (a) 3m. and
15 amended to read:

16 632.32 (4) (a) 3m. ~~To indemnify for medical payments or chiropractic payments~~
17 ~~or both~~ Medical payments coverage, in the amount of at least \$1,000 \$10,000 per
18 person for ~~protection of all persons using the insured motor vehicle from losses~~
19 ~~resulting from bodily injury or death. The named insured may reject the coverage.~~
20 ~~If the named insured rejects the coverage, it need not be provided in a subsequent~~
21 ~~renewal policy issued by the same insurer unless the insured requests it in writing.~~
22 ~~Under the medical or chiropractic payments coverage, the insurer shall be~~
23 ~~subrogated to the rights of its insured to the extent of its payments. Coverage written~~
24 ~~under this paragraph~~ subdivision may be excess coverage over any other source of
25 reimbursement to which the insured person has a legal right.

1 **SECTION 24.** 632.32 (4) (bc) of the statutes is created to read:

2 632.32 (4) (bc) Notwithstanding par. (a) 3m., the named insured may reject
3 medical payments coverage. If the named insured rejects the coverage, the coverage
4 need not be provided in a subsequent renewal policy issued by the same insurer
5 unless the insured requests it in writing.

6 **SECTION 25.** 632.32 (4m) of the statutes is repealed.

7 **SECTION 26.** 632.32 (4r) of the statutes is created to read:

8 632.32 (4r) REQUIRED WRITTEN OFFERS OF UNINSURED MOTORIST AND
9 UNDERINSURED MOTORIST COVERAGES FOR UMBRELLA OR EXCESS LIABILITY POLICIES. (a)
10 An insurer writing umbrella or excess liability policies that insure with respect to a
11 motor vehicle registered or principally garaged in this state against loss resulting
12 from liability imposed by law for bodily injury or death suffered by a person arising
13 out of the ownership, maintenance, or use of a motor vehicle shall provide written
14 offers of uninsured motorist coverage and underinsured motorist coverage, which
15 offers shall include a brief description of the coverage offered. An insurer is required
16 to provide the offers required under this subsection only one time with respect to any
17 policy in the manner provided in par. (b).

18 (b) 1. Each application for an umbrella or excess liability policy issued on or
19 after the effective date of this subdivision [LRB inserts date], shall contain a
20 written offer of uninsured motorist coverage and a written offer of underinsured
21 motorist coverage.

22 2. For umbrella or excess liability policies that are in effect on the effective date
23 of this subdivision [LRB inserts date], the insurer shall provide a written offer of
24 uninsured motorist coverage to the named insureds under each policy that does not
25 include uninsured motorist coverage and a written offer of underinsured motorist

1 coverage to the named insureds under each policy that does not include
2 underinsured motorist coverage. The insurer shall provide an offer under this
3 subdivision in conjunction with the notice of the first renewal of the policy occurring
4 after the effective date of this subdivision [LRB inserts date].

5 (c) An applicant or named insureds may reject one or both of the coverages
6 offered, but must do so in writing. If the applicant or named insureds reject either
7 of the coverages offered, the insurer is not required to provide the rejected coverage
8 under a policy that is renewed to the person by that insurer unless an insured under
9 the policy subsequently requests the rejected coverage in writing.

10 (d) If an umbrella or excess liability policy that was issued on or after the
11 effective date of this paragraph [LRB inserts date], or an umbrella or excess
12 liability policy that was in effect on, but renewed after, the effective date of this
13 paragraph [LRB inserts date], includes neither uninsured motorist coverage nor
14 underinsured motorist coverage, or only one of the coverages, and the insurer did not
15 provide a written offer required under par. (b) 1. or 2. with respect to the coverage
16 or coverages not included, on the request of the insured the court shall reform the
17 policy to include the coverage or coverages not included and for which the insurer did
18 not provide a written offer, with the same limits as the liability coverage limits under
19 the policy.

20 (e) This subsection does not apply to a commercial liability policy, as defined
21 in s. INS 6.77 (3) (am), Wis. Adm. Code, issued or renewed after June 30, 2007, that
22 limits coverage of the insured's liability arising out of the maintenance or use of a
23 motor vehicle to coverage for nonowned motor vehicles.

24 **SECTION 27.** 632.32 (5) (f) of the statutes is renumbered 632.32 (6) (d) and
25 amended to read:

*town mutual organized under
ch 0612*

1 632.32 (6) (d) ~~A~~ No policy may provide that, regardless of the number of
2 policies involved, vehicles involved, persons covered, claims made, vehicles or
3 premiums shown on the policy, or premiums paid, the limits for any coverage under
4 the policy may not be added to the limits for similar coverage applying to other motor
5 vehicles to determine the limit of insurance coverage available for bodily injury or
6 death suffered by a person in any one accident.

7 **SECTION 28.** 632.32 (5) (g) of the statutes is renumbered 632.32 (6) (e) and
8 amended to read:

9 632.32 (6) (e) ~~A~~ No policy may provide that the maximum amount of uninsured
10 motorist coverage or underinsured motorist coverage available for bodily injury or
11 death suffered by a person who was not using a motor vehicle at the time of an
12 accident is ~~the highest~~ any single limit of uninsured motorist coverage or
13 underinsured motorist coverage, whichever is applicable, for any motor vehicle with
14 respect to which the person is insured.

15 **SECTION 29.** 632.32 (5) (h) of the statutes is renumbered 632.32 (6) (f) and
16 amended to read:

17 632.32 (6) (f) ~~A~~ No policy may provide that the maximum amount of medical
18 payments coverage available for bodily injury or death suffered by a person who was
19 not using a motor vehicle at the time of an accident is ~~the highest~~ any single limit of
20 medical payments coverage for any motor vehicle with respect to which the person
21 is insured.

22 **SECTION 30.** 632.32 (5) (i) of the statutes is renumbered 632.32 (6) (g), and
23 632.32 (6) (g) (intro.), as renumbered, is amended to read:

24 632.32 (6) (g) (intro.) ~~A~~ No policy may provide that the limits under the policy
25 for uninsured motorist coverage or underinsured motorist coverage for bodily injury

1 or death resulting from any one accident shall be reduced by any of the following that
2 apply:

3 **SECTION 31.** 632.32 (5) (j) of the statutes is renumbered 632.32 (6) (h), and
4 632.32 (6) (h) (intro.), as renumbered, is amended to read:

5 632.32 (6) (h) (intro.) ~~A~~ No policy may provide that any coverage under the
6 policy does not apply to a loss resulting from the use of a motor vehicle that meets
7 all of the following conditions:

8 **SECTION 32.** 632.845 of the statutes is created to read:

9 **632.845 Prohibiting refusal to cover services because liability policy**
10 **may cover.** (1) In this section, "health care plan" has the meaning given in s. 628.36
11 (2) (a) 1.

12 (2) An insurer that provides coverage under a health care plan may not refuse
13 to cover health care services that are provided to an insured under the plan and for
14 which there is coverage under the plan on the basis that there may be coverage for
15 the services under a liability insurance policy.

16 **SECTION 9326. Initial applicability; Insurance.**

17 (1) MOTOR VEHICLE INSURANCE COVERAGES. The treatment of sections 62.67,
18 121.555 (2) (a), 631.43 (3), and 632.32 (2) (a), (am), (c), (cm), (d), (e), (f), and (g), (4)
19 (title), (intro.), (a) (title), 1., 2., 2m., and 3., (bc), (4m), and (5) (f), (g), (h), (i), and (j)
20 of the statutes, the repeal of section 632.32 (4) (b) (title) of the statutes, and the
21 renumbering and amendment of section 632.32 (4) (b) of the statutes first apply to
22 motor vehicle insurance policies issued or renewed on the effective date of this
23 subsection.

24 (2) FINANCIAL RESPONSIBILITY.

1 (a) The treatment of section 344.15 (1) of the statutes first applies with respect
2 to accidents occurring on the effective date of this paragraph.

3 (b) The treatment of sections 344.01 (2) (d) and 344.33 (2) of the statutes first
4 applies to proof of financial responsibility or proof of financial responsibility for the
5 future that is furnished on the effective date of this paragraph.

6 (3) PAYMENT FOR HEALTH CARE SERVICES.

7 (a) Subject to paragraph (b), the treatment of section 632.845 of the statutes
8 first applies to claims for payment of health care services that are made on the
9 effective date of this paragraph.

10 (b) If a health care plan that is in effect on the effective date of this paragraph
11 contains a provision that is inconsistent with the treatment of section 632.845 of the
12 statutes, the treatment of section 632.845 of the statutes first applies to that health
13 care plan on the date on which it is renewed.

14 **SECTION 9426. Effective dates; Insurance.**

15 (1) MOTOR VEHICLE COVERAGES AND LIABILITY PROVISIONS. The treatment of
16 sections 62.67, 121.555 (2) (a), 344.01 (2) (d), 344.15 (1), 344.33 (2), 631.43 (3), 632.32
17 (2) (a), (am), (c), (cm), (d), (e), (f), and (g), (4) (title), (intro.), (a) (title), 1., 2., 2m., and
18 3., and (bc), (4m), (4r), and (5) (f), (g), (h), (i), and (j), and 632.845 of the statutes, the
19 repeal of section 632.32 (4) (b) (title) of the statutes, the renumbering and
20 amendment of section 632.32 (4) (b) of the statutes, and SECTION 9326 (1), (2) (a) and
21 (b), and (3) (a) and (b) of this act take effect on the first day of the 5th month beginning
22 after publication.

23 (END)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1924/2

PJK:bjk:ph

DOA:.....Gauger - Uninsured and underinsured motorist coverage; auto insurance liability coverage limits

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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judgment was rendered unless the person can provide proof of financial responsibility. In both situations, proof of financial responsibility includes coverage under a motor vehicle liability insurance policy with the following minimum limits for any single accident: \$25,000 for bodily injury to or death of one person, \$50,000 for bodily injury to or death of more than one person, and \$10,000 for property damage. This bill increases the minimum limits required under a policy that is acceptable proof of financial responsibility to \$100,000 for bodily injury to or death of one person, \$300,000 for bodily injury to or death of more than one person, and \$25,000 for property damage.

Uninsured motorist and medical payments coverages

Under current law, all motor vehicle liability insurance policies must include uninsured motorist coverage in limits of at least \$25,000 per person and \$50,000 per accident and medical payments coverage in the amount of at least \$1,000 per person. Uninsured motorist coverage provides coverage for persons who are legally entitled to recover damages for bodily injury from owners or operators of motor vehicles that are not insured. Medical payments coverage pays for medical or chiropractic services provided to persons who are injured while using the insured motor vehicle. The bill increases the level of uninsured motorist coverage that motor vehicle liability insurance policies must include to \$100,000 per person and \$300,000 per accident, excludes policies written by town mutuals from the requirement to provide uninsured coverage, and increases the level of medical payments coverage that those policies must include to \$10,000.

Underinsured motorist coverage

Current law, while not requiring that motor vehicle liability insurance policies include underinsured motorist coverage, requires insurers to provide written notice of the availability of that coverage to one insured under each policy written after October 1, 1995, that does not include the coverage, as well as to one insured under each motor vehicle liability insurance policy in effect on that date that did not include the coverage. If an insured accepts underinsured motorist coverage after receiving notice of its availability, the policy must include the coverage in limits of at least \$50,000 per person and \$100,000 per accident. Underinsured motorist coverage provides coverage for persons who are legally entitled to recover damages for bodily injury from owners or operators of underinsured motor vehicles. "Underinsured motor vehicle" is not defined in the statutes.

The bill eliminates the requirement to provide notice of the availability of underinsured motorist coverage and requires every motor vehicle liability insurance policy, except for those written by town mutuals, to include that coverage in limits of at least \$100,000 per person and \$300,000 per accident. In addition, the bill defines an underinsured motor vehicle as a motor vehicle that is involved in an accident with an insured and which, at the time of the accident, was covered by a motor vehicle liability insurance policy with limits that are less than the amount needed to fully compensate the insured for his or her damages.

Umbrella and excess liability insurance policies

The Wisconsin Administrative Code exempts umbrella and excess liability insurance policies from the requirement under the statutes that a policy covering

motor vehicle liability must include uninsured motorist coverage. Nothing in current law, however, exempts an insurer writing umbrella or excess liability insurance policies from the requirement to provide notice of the availability of underinsured motorist coverage. The bill affirmatively requires an insurer, except for a town mutual, that writes umbrella or excess liability policies that cover motor vehicle liability to make a written offer of both uninsured motorist coverage and underinsured motorist coverage whenever application is made for such an umbrella or excess liability policy. The bill also requires an insurer to make a written offer of uninsured motorist coverage at the first renewal after the effective date of the bill of such a policy that does not include that coverage and a written offer of underinsured motorist coverage at the first renewal after the effective date of the bill of such a policy that does not include that coverage. An applicant or insured may reject the coverage, but must do so in writing. The bill provides that, if an insurer fails to provide a required written offer of uninsured or underinsured motorist coverage and the umbrella or excess liability policy does not include the coverage, or coverages, for which an offer was not given, a court must, on the request of the insured, reform the policy to include the coverage or coverages with the same limits as the liability coverage limits under the policy. This result modifies the decision of the Wisconsin Supreme Court in *Stone v. Acuity*, 2008 WI 30, 308 Wis. 2d 558, 747 N.W. 2d 766. In that case, the insurer had failed to provide notice of the availability of underinsured coverage for an umbrella insurance policy and the policy did not include that coverage. The court determined that in such a case the policy should be reformed to include underinsured coverage in the minimum amount that is required under the statute (\$50,000 per person and \$100,000 per accident).

Miscellaneous motor vehicle liability insurance provisions

Under current law, an uninsured motor vehicle is defined to include "an unidentified motor vehicle involved in a hit-and-run accident." The Wisconsin Supreme Court has held that, under this definition, actual contact is necessary. Consequently, uninsured motorist coverage does not apply if, for example, a motor vehicle is run off the road by another motor vehicle without actual contact between the two vehicles. The bill changes this so that actual contact is not necessary for uninsured motorist coverage to apply. All that is required is that an unidentified motor vehicle be involved in the accident.

Current law specifies a number of provisions that are permissible in a motor vehicle liability insurance policy and a number of provisions that are prohibited in such a policy. The bill makes the following currently permissible provisions prohibited in a motor vehicle liability insurance policy:

1. Providing that, regardless of the number of policies, persons, or vehicles involved, the limits for coverage under the policy may not be added to the limits for similar coverage applying to other motor vehicles to determine an overall limit of coverage available for a person in any one accident.

2. Providing that the maximum amount of uninsured or underinsured motorist coverage available for bodily injury or death suffered by a person not using a motor vehicle in an accident (such as a pedestrian) is any single limit of uninsured or

underinsured motorist coverage for any vehicle with respect to which the person is insured at the time of the accident.

3. Providing that the maximum amount of medical payments coverage available for bodily injury or death suffered by a person not using a motor vehicle in an accident is any single limit of medical payments coverage for any vehicle with respect to which the person is insured at the time of the accident.

4. Providing that the limits under the policy for uninsured or underinsured motorist coverage for bodily injury or death resulting from an accident shall be reduced by amounts paid or payable by or on behalf of a person or organization that is legally responsible for the bodily injury or death; amounts paid or payable under any worker's compensation law; or amounts paid or payable under any disability benefits laws.

5. Providing that any coverage under the policy does not apply to a loss resulting from the use of a motor vehicle that is owned by the named insured or a spouse or relative of the named insured who lives in the named insured's household, that is not described in the policy, and that is not covered under the terms of the policy as a newly acquired or replacement motor vehicle.

Requirement for health insurer to cover claims

Finally, the bill prohibits a health insurer from refusing to cover claims for health care services provided to an insured on the basis that there may be coverage for those services under a liability insurance policy.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 62.67 of the statutes is amended to read:

2 **62.67 Uninsured motorist coverage; 1st class cities.** A 1st class city shall
3 provide uninsured motorist motor vehicle liability insurance coverage for motor
4 vehicles owned by the city and operated by city employees in the course of
5 employment. The coverage required by this section shall have at least the limits
6 prescribed for uninsured motorist coverage under s. 632.32 (4) (a) 1.

7 **SECTION 2.** 121.555 (2) (a) of the statutes is amended to read:

8 121.555 (2) (a) *Insurance.* If the vehicle is owned or leased by a school or a
9 school bus contractor, or is a vehicle authorized under sub. (1) (b), it shall comply with
10 s. 121.53. If the vehicle is transporting 9 or less persons in addition to the operator

1 and is not owned or leased by a school or by a school bus contractor, it shall be insured
2 by a policy providing property damage coverage with a limit of not less than \$10,000
3 \$25,000 and bodily injury liability coverage with limits of not less than \$25,000
4 \$100,000 for each person, and, subject to the limit for each person, a total limit of not
5 less than \$50,000 \$300,000 for each accident.

6 **SECTION 3.** 344.01 (2) (d) of the statutes is amended to read:

7 344.01 (2) (d) "Proof of financial responsibility" or "proof of financial
8 responsibility for the future" means proof of ability to respond in damages for
9 liability on account of accidents occurring subsequent to the effective date of such
10 proof, arising out of the maintenance or use of a motor vehicle in the amount of
11 \$25,000 \$100,000 because of bodily injury to or death of one person in any one
12 accident and, subject to such limit for one person, in the amount of \$50,000 \$300,000
13 because of bodily injury to or death of 2 or more persons in any one accident and in
14 the amount of \$10,000 \$25,000 because of injury to or destruction of property of
15 others in any one accident.

16 **SECTION 4.** 344.15 (1) of the statutes is amended to read:

17 344.15 (1) No policy or bond is effective under s. 344.14 unless issued by an
18 insurer authorized to do an automobile liability or surety business in this state,
19 except as provided in sub. (2), or unless the policy or bond is subject, if the accident
20 has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not
21 less than \$25,000 \$100,000 because of bodily injury to or death of one person in any
22 one accident and, subject to that limit for one person, to a limit of not less than
23 \$50,000 \$300,000 because of bodily injury to or death of 2 or more persons in any one
24 accident and, if the accident has resulted in injury to or destruction of property, to

1 a limit of not less than \$10,000 \$25,000 because of injury to or destruction of property
2 of others in any one accident.

3 **SECTION 5.** 344.33 (2) of the statutes is amended to read:

4 344.33 (2) MOTOR VEHICLE LIABILITY POLICY. A motor vehicle policy of liability
5 insurance shall insure the person named therein using any motor vehicle with the
6 express or implied permission of the owner, or shall insure any motor vehicle owned
7 by the named insured and any person using such motor vehicle with the express or
8 implied permission of the named insured, against loss from the liability imposed by
9 law for damages arising out of the maintenance or use of the motor vehicle within
10 the United States of America or the Dominion of Canada, subject to the limits
11 exclusive of interest and costs, with respect to each such motor vehicle as follows:
12 \$25,000 \$100,000 because of bodily injury to or death of one person in any one
13 accident and, subject to such limit for one person, \$50,000 \$300,000 because of bodily
14 injury to or death of 2 or more persons in any one accident, and \$10,000 \$25,000
15 because of injury to or destruction of property of others in any one accident.

16 **SECTION 6.** 631.43 (3) of the statutes is amended to read:

17 631.43 (3) EXCEPTION. Subsection (1) does not affect the rights of insurers to
18 ~~exclude, limit or reduce~~ restrict coverage under s. 632.32 (5) (b), or (c) ~~or (f) to (j)~~.

19 **SECTION 7.** 632.32 (2) (a) of the statutes is renumbered 632.32 (2) (at).

20 **SECTION 8.** 632.32 (2) (am) of the statutes is created to read:

21 632.32 (2) (am) "Medical payments coverage" means coverage to indemnify for
22 medical payments or chiropractic payments or both for the protection of all persons
23 using the insured motor vehicle from losses resulting from bodily injury or death.

24 **SECTION 9.** 632.32 (2) (c) of the statutes is renumbered 632.32 (2) (h).

25 **SECTION 10.** 632.32 (2) (cm) of the statutes is created to read:

1 632.32 (2) (cm) “Umbrella or excess liability policy” means an insurance
2 contract providing at least \$1,000,000 of liability coverage per person or per
3 occurrence in excess of certain required underlying liability insurance coverage or
4 a specified amount of self-insured retention.

5 **SECTION 11.** 632.32 (2) (d) of the statutes is created to read:

6 632.32 (2) (d) “Underinsured motor vehicle” means a motor vehicle to which all
7 of the following apply:

8 1. The motor vehicle is involved in an accident with a person who has
9 underinsured motorist coverage.

10 2. A bodily injury liability insurance policy applies to the motor vehicle at the
11 time of the accident.

12 3. The limits under the bodily injury liability insurance policy are less than the
13 amount needed to fully compensate the insured for his or her damages.

14 **SECTION 12.** 632.32 (2) (e) of the statutes is created to read:

15 632.32 (2) (e) “Underinsured motorist coverage” means coverage for the
16 protection of persons insured under that coverage who are legally entitled to recover
17 damages for bodily injury, death, sickness, or disease from owners or operators of
18 underinsured motor vehicles.

19 **SECTION 13.** 632.32 (2) (f) of the statutes is created to read:

20 632.32 (2) (f) “Uninsured motor vehicle” means a motor vehicle that is involved
21 in an accident with a person who has uninsured motorist coverage and with respect
22 to which, at the time of the accident, a bodily injury liability insurance policy is not
23 in effect and the owner or operator has not furnished proof of financial responsibility
24 for the future under subch. III of ch. 344. “Uninsured motor vehicle” also includes

1 both of the following motor vehicles involved in an accident with a person who has
2 uninsured motorist coverage:

3 1. An insured motor vehicle if before or after the accident the liability insurer
4 of the motor vehicle is declared insolvent by a court of competent jurisdiction.

5 2. An unidentified motor vehicle.

6 **SECTION 14.** 632.32 (2) (g) of the statutes is created to read:

7 632.32 (2) (g) "Uninsured motorist coverage" means coverage for the protection
8 of persons insured under that coverage who are legally entitled to recover damages
9 for bodily injury, death, sickness, or disease from owners or operators of uninsured
10 motor vehicles.

11 **SECTION 15.** 632.32 (4) (title) of the statutes is amended to read:

12 632.32 (4) (title) REQUIRED UNINSURED MOTORIST, UNDERINSURED MOTORIST, AND
13 MEDICAL PAYMENTS COVERAGES.

14 **SECTION 16.** 632.32 (4) (intro.) (except 632.32 (4) (title)) of the statutes is
15 renumbered 632.32 (4) (a) (intro.) and amended to read:

16 632.32 (4) (a) (intro.) Every policy of insurance subject to this section that
17 insures with respect to any motor vehicle registered or principally garaged in this
18 state against loss resulting from liability imposed by law for bodily injury or death
19 suffered by any person arising out of the ownership, maintenance, or use of a motor
20 vehicle shall contain therein or supplemental thereto ~~the following provisions~~ for all
21 of the following coverages:

22 **SECTION 17.** 632.32 (4) (a) (title) of the statutes is repealed.

23 **SECTION 18.** 632.32 (4) (a) 1. of the statutes is amended to read:

24 632.32 (4) (a) 1. ~~For the protection of persons injured who are legally entitled~~
25 ~~to recover damages from owners or operators of uninsured motor vehicles because~~

1 of bodily injury, sickness or disease, including death resulting therefrom Excluding
2 a policy written by a town mutual organized under ch. 612, uninsured motorist
3 coverage, in limits of at least \$25,000 \$100,000 per person and \$50,000 \$300,000 per
4 accident.

5 **SECTION 19.** 632.32 (4) (a) 2. of the statutes is repealed.

6 **SECTION 20.** 632.32 (4) (a) 2m. of the statutes is created to read:

7 632.32 (4) (a) 2m. Excluding a policy written by a town mutual organized under
8 ch. 612, underinsured motorist coverage, in limits of at least \$100,000 per person and
9 \$300,000 per accident.

10 **SECTION 21.** 632.32 (4) (a) 3. of the statutes is renumbered 632.32 (4) (c) and
11 amended to read:

12 632.32 (4) (c) Insurers Unless an insurer waives the right to subrogation,
13 insurers making payment under the uninsured motorists' coverage any of the
14 coverages under this subsection shall, to the extent of the payment, be subrogated
15 to the rights of their insureds.

16 **SECTION 22.** 632.32 (4) (b) (title) of the statutes is repealed.

17 **SECTION 23.** 632.32 (4) (b) of the statutes is renumbered 632.32 (4) (a) 3m. and
18 amended to read:

19 632.32 (4) (a) 3m. ~~To indemnify for medical payments or chiropractic payments~~
20 ~~or both~~ Medical payments coverage, in the amount of at least \$1,000 \$10,000 per
21 person ~~for protection of all persons using the insured motor vehicle from losses~~
22 ~~resulting from bodily injury or death. The named insured may reject the coverage.~~
23 ~~If the named insured rejects the coverage, it need not be provided in a subsequent~~
24 ~~renewal policy issued by the same insurer unless the insured requests it in writing.~~
25 ~~Under the medical or chiropractic payments coverage, the insurer shall be~~

1 subrogated to the rights of its insured to the extent of its payments. Coverage written
2 under this ~~paragraph~~ subdivision may be excess coverage over any other source of
3 reimbursement to which the insured person has a legal right.

4 **SECTION 24.** 632.32 (4) (bc) of the statutes is created to read:

5 632.32 (4) (bc) Notwithstanding par. (a) 3m., the named insured may reject
6 medical payments coverage. If the named insured rejects the coverage, the coverage
7 need not be provided in a subsequent renewal policy issued by the same insurer
8 unless the insured requests it in writing.

9 **SECTION 25.** 632.32 (4m) of the statutes is repealed.

10 **SECTION 26.** 632.32 (4r) of the statutes is created to read:

11 632.32 (4r) REQUIRED WRITTEN OFFERS OF UNINSURED MOTORIST AND
12 UNDERINSURED MOTORIST COVERAGES FOR UMBRELLA OR EXCESS LIABILITY POLICIES. (a)
13 An insurer writing umbrella or excess liability policies that insure with respect to a
14 motor vehicle registered or principally garaged in this state against loss resulting
15 from liability imposed by law for bodily injury or death suffered by a person arising
16 out of the ownership, maintenance, or use of a motor vehicle shall provide written
17 offers of uninsured motorist coverage and underinsured motorist coverage, which
18 offers shall include a brief description of the coverage offered. An insurer is required
19 to provide the offers required under this subsection only one time with respect to any
20 policy in the manner provided in par. (b).

21 (b) 1. Each application for an umbrella or excess liability policy issued on or
22 after the effective date of this subdivision [LRB inserts date], shall contain a
23 written offer of uninsured motorist coverage and a written offer of underinsured
24 motorist coverage.

1 2. For umbrella or excess liability policies that are in effect on the effective date
2 of this subdivision ... [LRB inserts date], the insurer shall provide a written offer of
3 uninsured motorist coverage to the named insureds under each policy that does not
4 include uninsured motorist coverage and a written offer of underinsured motorist
5 coverage to the named insureds under each policy that does not include
6 underinsured motorist coverage. The insurer shall provide an offer under this
7 subdivision in conjunction with the notice of the first renewal of the policy occurring
8 after the effective date of this subdivision ... [LRB inserts date].

9 (c) An applicant or named insureds may reject one or both of the coverages
10 offered, but must do so in writing. If the applicant or named insureds reject either
11 of the coverages offered, the insurer is not required to provide the rejected coverage
12 under a policy that is renewed to the person by that insurer unless an insured under
13 the policy subsequently requests the rejected coverage in writing.

14 (d) If an umbrella or excess liability policy that was issued on or after the
15 effective date of this paragraph ... [LRB inserts date], or an umbrella or excess
16 liability policy that was in effect on, but renewed after, the effective date of this
17 paragraph ... [LRB inserts date], includes neither uninsured motorist coverage nor
18 underinsured motorist coverage, or only one of the coverages, and the insurer did not
19 provide a written offer required under par. (b) 1. or 2. with respect to the coverage
20 or coverages not included, on the request of the insured the court shall reform the
21 policy to include the coverage or coverages not included and for which the insurer did
22 not provide a written offer, with the same limits as the liability coverage limits under
23 the policy.

24 (e) This subsection does not apply to a town mutual organized under ch. 612.

1 **SECTION 27.** 632.32 (5) (f) of the statutes is renumbered 632.32 (6) (d) and
2 amended to read:

3 632.32 (6) (d) ~~A~~ No policy may provide that, regardless of the number of
4 policies involved, vehicles involved, persons covered, claims made, vehicles or
5 premiums shown on the policy, or premiums paid, the limits for any coverage under
6 the policy may not be added to the limits for similar coverage applying to other motor
7 vehicles to determine the limit of insurance coverage available for bodily injury or
8 death suffered by a person in any one accident.

9 **SECTION 28.** 632.32 (5) (g) of the statutes is renumbered 632.32 (6) (e) and
10 amended to read:

11 632.32 (6) (e) ~~A~~ No policy may provide that the maximum amount of uninsured
12 motorist coverage or underinsured motorist coverage available for bodily injury or
13 death suffered by a person who was not using a motor vehicle at the time of an
14 accident is ~~the highest~~ any single limit of uninsured motorist coverage or
15 underinsured motorist coverage, whichever is applicable, for any motor vehicle with
16 respect to which the person is insured.

17 **SECTION 29.** 632.32 (5) (h) of the statutes is renumbered 632.32 (6) (f) and
18 amended to read:

19 632.32 (6) (f) ~~A~~ No policy may provide that the maximum amount of medical
20 payments coverage available for bodily injury or death suffered by a person who was
21 not using a motor vehicle at the time of an accident is ~~the highest~~ any single limit of
22 medical payments coverage for any motor vehicle with respect to which the person
23 is insured.

24 **SECTION 30.** 632.32 (5) (i) of the statutes is renumbered 632.32 (6) (g), and
25 632.32 (6) (g) (intro.), as renumbered, is amended to read:

1 632.32 (6) (g) (intro.) ~~A~~ No policy may provide that the limits under the policy
2 for uninsured motorist coverage or underinsured motorist coverage for bodily injury
3 or death resulting from any one accident shall be reduced by any of the following that
4 apply:

5 **SECTION 31.** 632.32 (5) (j) of the statutes is renumbered 632.32 (6) (h), and
6 632.32 (6) (h) (intro.), as renumbered, is amended to read:

7 632.32 (6) (h) (intro.) ~~A~~ No policy may provide that any coverage under the
8 policy does not apply to a loss resulting from the use of a motor vehicle that meets
9 all of the following conditions:

10 **SECTION 32.** 632.845 of the statutes is created to read:

11 **632.845 Prohibiting refusal to cover services because liability policy**
12 **may cover. (1)** In this section, "health care plan" has the meaning given in s. 628.36
13 (2) (a) 1.

14 **(2)** An insurer that provides coverage under a health care plan may not refuse
15 to cover health care services that are provided to an insured under the plan and for
16 which there is coverage under the plan on the basis that there may be coverage for
17 the services under a liability insurance policy.

18 **SECTION 9326. Initial applicability; Insurance.**

19 (1) **MOTOR VEHICLE INSURANCE COVERAGES.** The treatment of sections 62.67,
20 121.555 (2) (a), 631.43 (3), and 632.32 (2) (a), (am), (c), (cm), (d), (e), (f), and (g), (4)
21 (title), (intro.), (a) (title), 1., 2., 2m., and 3., (bc), (4m), and (5) (f), (g), (h), (i), and (j)
22 of the statutes, the repeal of section 632.32 (4) (b) (title) of the statutes, and the
23 renumbering and amendment of section 632.32 (4) (b) of the statutes first apply to
24 motor vehicle insurance policies issued or renewed on the effective date of this
25 subsection.

