



2009 ASSEMBLY BILL 525

October 27, 2009 – Introduced by Representatives NYGREN, RIPP, MURTHA, M. WILLIAMS, NERISON, VAN ROY, BIES, HONADEL, BALLWEG, BROOKS, DAVIS, J. FITZGERALD, FRISKE, GOTTLIEB, GUNDERSON, GUNDRUM, HUEBSCH, KAUFERT, KERKMAN, KESTELL, KLEEFISCH, KNODL, KRAMER, LEMAHIEU, LOTHIAN, MEYER, MONTGOMERY, MURSAU, NASS, NEWCOMER, A. OTT, J. OTT, PETERSEN, PETROWSKI, PRIDEMORE, RHOADES, ROTH, SPANBAUER, STONE, STRACHOTA, SUDER, TAUCHEN, TOWNSEND, VOS, VUKMIR and ZIPPERER. Referred to Committee on Insurance.

1 **AN ACT** *to repeal* 227.01 (13) (zz), 344.01 (2) (am), 344.11, 632.32 (2) (am), 632.32
2 (2) (cm), 632.32 (2) (d), 632.32 (2) (e), 632.32 (2) (f), 632.32 (2) (g), 632.32 (4) (a)
3 2m., 632.32 (4) (bc) and 632.32 (4r); *to renumber* 632.32 (2) (at) and 632.32 (2)
4 (h); *to renumber and amend* 344.33 (2), 632.32 (4) (a) (intro.), 632.32 (4) (a)
5 3m., 632.32 (4) (c), 632.32 (6) (d), 632.32 (6) (e), 632.32 (6) (f) and 632.32 (6) (g);
6 *to consolidate, renumber and amend* 344.15 (1) (intro.), (a) and (b); *to*
7 *amend* 121.555 (2) (a), 344.01 (2) (d), 344.55 (1) (intro.), 631.43 (3), 632.32 (4)
8 (title) and 632.32 (4) (a) 1.; and *to create* 344.33 (2) (a), 344.33 (2) (b), 344.33
9 (2) (c), 632.32 (4) (a) (title), 632.32 (4) (a) 2. and 632.32 (4m) of the statutes;
10 **relating to:** automobile insurance coverage limits and proof of financial
11 responsibility.

Analysis by the Legislative Reference Bureau

Proof of financial responsibility

Under former law, prior to 2009 Wisconsin Act 28 (the biennial budget act), motor vehicles operated in this state were not required to be covered by policies of

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bodily injury and property damage liability insurance, but owners and operators of motor vehicles involved in accidents were subject to certain financial responsibility requirements. The biennial budget act retained and modified these financial responsibility requirements following a motor vehicle accident while also requiring insurance coverage for motor vehicles operated in this state.

Under current law, 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 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:

1. Before January 1, 2010, \$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.

2. From January 1, 2010, to December 31, 2016, \$50,000 for bodily injury to or death of one person, \$100,000 for bodily injury to or death of more than one person, and \$15,000 for property damage.

3. After December 31, 2016, the limits specified in item 2., above, adjusted for inflation and published by DOT.

This bill restores former law by decreasing the minimum limits required under a policy that is acceptable proof of financial responsibility to the limits applicable before the biennial budget act: \$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 does not eliminate the provisions of the biennial budget act that, beginning June 1, 2010, prohibit a person from operating a motor vehicle in this state unless the owner or operator has a motor vehicle liability insurance policy in effect with respect to the motor vehicle. However, the bill affects these provisions by reducing the required coverage from the minimum limits specified in items 1. to 3., above, to the applicable minimum limits for proof of financial responsibility under former law: \$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.

Uninsured motorist and medical payments coverages

Under former law, all motor vehicle liability insurance policies were required to include uninsured motorist coverage in limits of at least \$25,000 per person and

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\$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. Starting on November 1, 2009, as a result of provisions in the biennial budget act, the level of uninsured motorist coverage that motor vehicle liability insurance policies, except for those written by town mutuals, must include is increased to \$100,000 per person and \$300,000 per accident and the level of medical payments coverage that those policies must include is increased to \$10,000. This bill reinstates former law.

Underinsured motorist coverage

Former law did not require motor vehicle liability insurance policies to include underinsured motorist coverage but required insurers to provide written notice of the availability of that coverage to one insured under each policy written after October 1, 1995, that did 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 accepted underinsured motorist coverage after receiving notice of its availability, the policy had to 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” was not defined in the statutes.

The biennial budget act eliminated the requirement to provide notice of the availability of underinsured motorist coverage and required, starting on November 1, 2009, 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, current law now 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. The bill reinstates former law.

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 former law, however, exempted an insurer writing umbrella or excess liability insurance policies from the requirement in the statutes to provide notice of the availability of underinsured motorist coverage.

Current law, as a result of provisions in the biennial budget act, 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. Current law also requires an insurer to make a written offer of uninsured motorist coverage at the first renewal after the effective

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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. 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. The bill restores former law by eliminating the requirement that an insurer writing an umbrella or excess liability policy make a written offer of uninsured motorist coverage and underinsured motorist coverage.

Miscellaneous motor vehicle liability insurance provisions

Former law defined an uninsured motor vehicle as including “an unidentified motor vehicle involved in a hit-and-run accident.” The Wisconsin Supreme Court has held that, under that definition, actual contact was necessary. Consequently, uninsured motorist coverage did not apply if, for example, a motor vehicle was run off the road by another motor vehicle without actual contact between the two vehicles. Provisions in the biennial budget act changed 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. However, if there is no contact, an independent third party must provide evidence in support of the unidentified motor vehicle’s involvement. The bill restores the definition in former law.

Current law, as a result of provisions in the biennial budget act, makes a number of formerly permissible provisions prohibited in a motor vehicle liability insurance policy. The bill restores former law, making the following provisions permissible in a motor vehicle liability insurance policy:

1. Providing that, regardless of the number of policies, persons, or vehicles involved, the limits for uninsured or underinsured motorist 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 the highest 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 the highest 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

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any worker's compensation law; or amounts paid or payable under any disability benefits laws.

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

1 **SECTION 1.** 121.555 (2) (a) of the statutes, as affected by 2009 Wisconsin Act 28,
2 is amended to read:

3 121.555 (2) (a) *Insurance.* If the vehicle is owned or leased by a school or a
4 school bus contractor, or is a vehicle authorized under sub. (1) (b), it shall comply with
5 s. 121.53. If the vehicle is transporting 9 or less fewer persons in addition to the
6 operator and is not owned or leased by a school or by a school bus contractor, it shall
7 be insured by a policy providing property damage coverage with a limit of not less
8 than \$10,000 and bodily injury liability coverage with limits, ~~as of the policy's~~
9 ~~effective date, equal to or greater than the minimum liability limits, as defined in s.~~
10 ~~344.01 (2) (am) of not less than \$25,000 for each person, and, subject to the limit for~~
11 ~~each person, a total limit of not less than \$50,000 for each accident.~~

12 **SECTION 2.** 227.01 (13) (zz) of the statutes, as created by 2009 Wisconsin Act
13 28, is repealed.

14 **SECTION 3.** 344.01 (2) (am) of the statutes, as created by 2009 Wisconsin Act
15 28, is repealed.

16 **SECTION 4.** 344.01 (2) (d) of the statutes, as affected by 2009 Wisconsin Act 28,
17 is amended to read:

18 344.01 (2) (d) “Proof of financial responsibility” or “proof of financial
19 responsibility for the future” means proof of ability to respond in damages for
20 liability on account of accidents occurring subsequent to the effective date of such
21 proof, arising out of the maintenance or use of a motor vehicle, in an the amount, ~~as~~

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1 of the date that proof is furnished to the department, equal to or greater than the
2 minimum liability limits \$25,000 because of bodily injury to or death of one person
3 in any one accident and, subject to that limit for one person, in the amount of \$50,000
4 because of bodily injury to or death of 2 or more persons in any one accident and in
5 the amount of \$10,000 because of injury to or destruction of property of others in any
6 one accident.

7 **SECTION 5.** 344.11 of the statutes, as created by 2009 Wisconsin Act 28, is
8 repealed.

9 **SECTION 6.** 344.15 (1) (intro.), (a) and (b) of the statutes, as affected by 2009
10 Wisconsin Act 28, are consolidated, renumbered 344.15 (1) and amended to read:

11 344.15 (1) No policy or bond is effective under s. 344.14 unless all of the
12 following apply: (a) ~~The policy or bond is issued by an insurer authorized to do an~~
13 ~~automobile liability or surety business in this state, except as provided in sub. (2).~~
14 (b) ~~The limits of liability under the, or unless the policy or bond, as of the date of the~~
15 ~~accident, are equal to or greater than the minimum liability limits is subject, if the~~
16 accident has resulted in bodily injury or death, to a limit, exclusive of interest and
17 costs, of not less than \$25,000 because of bodily injury to or death of one person in
18 any one accident and, subject to that limit for one person, to a limit of not less than
19 \$50,000 because of bodily injury to or death of 2 or more persons in any one accident
20 and, if the accident has resulted in injury to or destruction of property, to a limit of
21 not less than \$10,000 because of injury to or destruction of property of others in any
22 one accident.

23 **SECTION 7.** 344.33 (2) of the statutes, as affected by 2009 Wisconsin Act 28, is
24 renumbered 344.33 (2) (intro.) and amended to read:

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1 344.33 (2) MOTOR VEHICLE LIABILITY POLICY. (intro.) A motor vehicle policy of
2 liability insurance shall insure the person named therein using any motor vehicle
3 with the express or implied permission of the owner, or shall insure any motor vehicle
4 owned by the named insured and any person using such motor vehicle with the
5 express or implied permission of the named insured, against loss from the liability
6 imposed by law for damages arising out of the maintenance or use of the motor
7 vehicle within the United States of America or the Dominion of Canada, subject to
8 the ~~minimum liability following limits, exclusive of interest and costs,~~ with respect
9 to each such motor vehicle.;

10 **SECTION 8.** 344.33 (2) (a) of the statutes is created to read:

11 344.33 (2) (a) Twenty-five thousand dollars because of bodily injury to or death
12 of one person in any one accident and in the amount of \$10,000 because of injury to
13 or destruction of property of others in any one accident.

14 **SECTION 9.** 344.33 (2) (b) of the statutes is created to read:

15 344.33 (2) (b) Subject to the limit under par. (a) for one person, \$50,000 because
16 of bodily injury to or death of 2 or more persons in any one accident.

17 **SECTION 10.** 344.33 (2) (c) of the statutes is created to read:

18 344.33 (2) (c) Ten thousand dollars because of injury to or destruction of
19 property of others in any one accident.

20 **SECTION 11.** 344.55 (1) (intro.) of the statutes, as affected by 2009 Wisconsin
21 Act 28, is amended to read:

22 344.55 (1) (intro.) No motor vehicle may be used as a human service vehicle
23 unless a policy of bodily injury and property damage liability insurance, issued by
24 an insurer authorized to transact business in this state, is maintained thereon. The
25 policy shall provide property damage liability coverage with a limit of not less than

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1 \$10,000. The policy also shall provide bodily injury liability coverage with limits, as
2 of the policy's effective date, of at least the minimum liability limits or, if greater, of
3 not less than \$75,000 for each person and, subject to such limit for each person, total
4 limits as follows:

5 **SECTION 12.** 631.43 (3) of the statutes, as affected by 2009 Wisconsin Act 28,
6 is amended to read:

7 631.43 (3) EXCEPTION. Subsection (1) does not affect the rights of insurers to
8 exclude, limit, or restrict reduce coverage under s. 632.32 (5) (b) ~~or~~ (c) or (f) to (j).

9 **SECTION 13.** 632.32 (2) (am) of the statutes, as created by 2009 Wisconsin Act
10 28, is repealed.

11 **SECTION 14.** 632.32 (2) (at) of the statutes, as affected by 2009 Wisconsin Act
12 28, is renumbered 632.32 (2) (a).

13 **SECTION 15.** 632.32 (2) (cm) of the statutes, as created by 2009 Wisconsin Act
14 28, is repealed.

15 **SECTION 16.** 632.32 (2) (d) of the statutes, as created by 2009 Wisconsin Act 28,
16 is repealed.

17 **SECTION 17.** 632.32 (2) (e) of the statutes, as created by 2009 Wisconsin Act 28,
18 is repealed.

19 **SECTION 18.** 632.32 (2) (f) of the statutes, as created by 2009 Wisconsin Act 28,
20 is repealed.

21 **SECTION 19.** 632.32 (2) (g) of the statutes, as created by 2009 Wisconsin Act 28,
22 is repealed.

23 **SECTION 20.** 632.32 (2) (h) of the statutes, as affected by 2009 Wisconsin Act
24 28, is renumbered 632.32 (2) (c).

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1 **SECTION 21.** 632.32 (4) (title) of the statutes, as affected by 2009 Wisconsin Act
2 28, is amended to read:

3 632.32 **(4)** (title) ~~REQUIRED UNINSURED MOTORIST, UNDERINSURED MOTORIST, AND~~
4 MEDICAL PAYMENTS COVERAGES.

5 **SECTION 22.** 632.32 (4) (a) (title) of the statutes, as affected by 2009 Wisconsin
6 Act 28, is created to read:

7 632.32 **(4)** (a) (title) *Uninsured motorist.*

8 **SECTION 23.** 632.32 (4) (a) (intro.) of the statutes, as affected by 2009 Wisconsin
9 Act 28, is renumbered 632.32 (4) (intro.) and amended to read:

10 632.32 **(4)** (intro.) Every policy of insurance subject to this section that insures
11 with respect to any motor vehicle registered or principally garaged in this state
12 against loss resulting from liability imposed by law for bodily injury or death suffered
13 by any person arising out of the ownership, maintenance, or use of a motor vehicle
14 shall contain therein or supplemental thereto the following provisions ~~for all of the~~
15 ~~following coverages:~~

16 **SECTION 24.** 632.32 (4) (a) 1. of the statutes, as affected by 2009 Wisconsin Act
17 28, is amended to read:

18 632.32 **(4)** (a) 1. ~~Excluding a policy written by a town mutual organized under~~
19 ~~ch. 612, uninsured motorist coverage~~ For the protection of persons injured who are
20 legally entitled to recover damages from owners or operators of uninsured motor
21 vehicles because of bodily injury, sickness, or disease, including death resulting
22 therefrom, in limits of at least \$100,000 \$25,000 per person and \$300,000 \$50,000
23 per accident.

24 **SECTION 25.** 632.32 (4) (a) 2. of the statutes, as affected by 2009 Wisconsin Act
25 28, is created to read:

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1 632.32 (4) (a) 2. In this paragraph, “uninsured motor vehicle” also includes any
2 of the following:

3 a. 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 b. An unidentified motor vehicle involved in a hit-and-run accident.

6 **SECTION 26.** 632.32 (4) (a) 2m. of the statutes, as created by 2009 Wisconsin Act
7 28, is repealed.

8 **SECTION 27.** 632.32 (4) (a) 3m. of the statutes, as affected by 2009 Wisconsin
9 Act 28, is renumbered 632.32 (4) (b) and amended to read:

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

20 **SECTION 28.** 632.32 (4) (bc) of the statutes, as created by 2009 Wisconsin Act
21 28, is repealed.

22 **SECTION 29.** 632.32 (4) (c) of the statutes, as affected by 2009 Wisconsin Act 28,
23 is renumbered 632.32 (4) (a) 3. and amended to read:

24 632.32 (4) (a) 3. ~~Unless an insurer waives the right to subrogation, insurers~~
25 Insurers making payment under any of the coverages under this subsection the

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1 uninsured motorists' coverage shall, to the extent of the payment, be subrogated to
2 the rights of their insureds.

3 **SECTION 30.** 632.32 (4m) of the statutes, as affected by 2009 Wisconsin Act 28,
4 is created to read:

5 **632.32 (4m) UNDERINSURED MOTORIST COVERAGE.** (a) An insurer writing policies
6 that insure with respect to a motor vehicle registered or principally garaged in this
7 state against loss resulting from liability imposed by law for bodily injury or death
8 suffered by a person arising out of the ownership, maintenance, or use of a motor
9 vehicle shall provide to one insured under each such insurance policy that goes into
10 effect after October 1, 1995, that is written by the insurer and that does not include
11 underinsured motorist coverage written notice of the availability of underinsured
12 motorist coverage, including a brief description of the coverage. An insurer is
13 required to provide the notice required under this subdivision only one time and in
14 conjunction with the delivery of the policy.

15 (b) Acceptance or rejection of underinsured motorist coverage by a person after
16 being notified under par. (a) need not be in writing. The absence of a premium
17 payment for underinsured motorist coverage is conclusive proof that the person has
18 rejected such coverage. The rejection of such coverage by the person notified under
19 par. (a) shall apply to all persons insured under the policy, including any renewal of
20 the policy.

21 (c) If a person rejects underinsured motorist coverage after being notified under
22 par. (a), the insurer is not required to provide such coverage under a policy that is
23 renewed to the person by that insurer unless an insured under the policy
24 subsequently requests such underinsured motorist coverage in writing.

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1 (d) If an insured who is notified under par. (a) accepts underinsured motorist
2 coverage, the insurer shall include the coverage under the policy just delivered to the
3 insured in limits of at least \$50,000 per person and \$100,000 per accident.

4 **SECTION 31.** 632.32 (4r) of the statutes, as created by 2009 Wisconsin Act 28,
5 is repealed.

6 **SECTION 32.** 632.32 (6) (d) of the statutes, as affected by 2009 Wisconsin Act 28,
7 is renumbered 632.32 (5) (f) and amended to read:

8 632.32 (5) (f) ~~No~~ A policy may provide that, regardless of the number of policies
9 involved, vehicles involved, persons covered, claims made, vehicles or premiums
10 shown on the policy, or premiums paid, the limits for any uninsured motorist
11 coverage or underinsured motorist coverage under the policy may not be added to the
12 limits for similar coverage applying to other motor vehicles to determine the limit of
13 insurance coverage available for bodily injury or death suffered by a person in any
14 one accident, ~~except that a policy may limit the number of motor vehicles for which~~
15 ~~the limits for coverage may be added to 3 vehicles.~~

16 **SECTION 33.** 632.32 (6) (e) of the statutes, as affected by 2009 Wisconsin Act 28,
17 is renumbered 632.32 (5) (g) and amended to read:

18 632.32 (5) (g) ~~No~~ A policy may provide that the maximum amount of uninsured
19 motorist coverage or underinsured motorist coverage available for bodily injury or
20 death suffered by a person who was not using a motor vehicle at the time of an
21 accident is any the highest single limit of uninsured motorist coverage or
22 underinsured motorist coverage, whichever is applicable, for any motor vehicle with
23 respect to which the person is insured, ~~except that a policy may limit the number of~~
24 ~~motor vehicles for which coverage limits may be added to 3 vehicles.~~

