



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #483

### **Motor Vehicle Liability Insurance Provisions (Insurance)**

[LFB 2009-11 Budget Summary: Page 420, #17 through 20]

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#### **CURRENT LAW**

*Financial Responsibility.* Wisconsin statutes set forth a number of requirements for motor vehicle liability insurance policies sold in the state. Although drivers are not required to purchase automobile insurance, all drivers must satisfy conditions of financial responsibility if involved in a reportable accident resulting in damages over \$1,000. The Department of Transportation (DOT) requires the owner or operator of a motor vehicle who is at fault in a reportable accident to deposit an amount with DOT that is sufficient to cover any judgment for damages. An individual is not required to make this deposit if he or she has a motor vehicle liability policy with the minimum limits described below. If the individual cannot satisfy this requirement for deposit and is uninsured, the operator's license and the owner's registration would be suspended. If the individual does satisfy the financial responsibility requirement, their license or registration would be reinstated, and they would be required to satisfy financial responsibility requirements for the future.

An individual may satisfy the proof of financial responsibility requirements by purchasing a motor vehicle liability policy with certain minimum coverage limits. These limits currently stand at \$25,000 for bodily injury or death to one person, \$50,000 for bodily injury or death in one accident, and \$10,000 for property damage (commonly referred to as limits of 25/50/10). All motor vehicle liability insurance policies sold in Wisconsin must meet these minimum requirements to satisfy the financial responsibility requirement, although purchasing motor vehicle liability insurance is not required.

*Uninsured Motorist (UM) Coverage.* Uninsured motorist (UM) coverage pays for an insured's damages in an accident with an individual who does not have a motor vehicle liability

insurance policy. All motor vehicle liability policies sold in Wisconsin must provide UM coverage. An "uninsured motor vehicle" is defined in statute to also include the following vehicles: (a) an insured vehicle where the insurer is insolvent; and (b) an unidentified vehicle involved in a hit-and-run accident, interpreted by the Wisconsin Supreme Court to require physical contact. UM coverage must cover a minimum of \$25,000 per person, and \$50,000 per accident. UM coverage does not cover property damage.

*Underinsured Motorist (UIM) Coverage.* Current law does not require motor vehicle liability policies to provide underinsured motorist (UIM) coverage, but does require insurers to provide written notice of the availability of such coverage. UIM coverage pays for damages that an insured individual is legally entitled to recover from an underinsured motorist. Statute does not define an "underinsured motor vehicle" (although most policies define this as a vehicle with a liability policy with coverage limits that are less than the insured's UIM coverage limits). Motor vehicle liability policies that include UIM coverage must provide a minimum coverage level of \$50,000 per person, and \$100,000 per accident. UIM coverage does not cover property damage.

*Medical Payments.* Medical payments coverage covers medical or chiropractic payments for persons injured while using the insured motor vehicle, including the driver and passengers. Medical payments coverage must be offered as part of a motor vehicle liability policy, but individuals may reject this coverage. Policies that include medical payments coverage must provide minimum coverage of \$1,000 per person.

*Umbrella and Excess Liability Insurance.* Under administrative rule, umbrella and excess liability insurance policies are exempt from the statutory requirement for motor vehicle liability insurance policies to include UM coverage, and the statutory requirement to offer UIM coverage.

*Permissible Policy Provisions.* Current law permits motor vehicle policies to contain certain provisions. These include anti-stacking provisions, reducing clauses, and drive-other-car exclusions, which are described below.

a. A policy may provide that regardless of the number of policies involved, vehicles involved, persons covered, claims made, vehicles or premiums shown on the policy, or premiums paid, the limits for any coverage under the policy may not be added to the limits for similar coverage applying to other motor vehicles to determine the limit of insurance coverage available for bodily injury or death suffered by a person in any one accident. This is referred to as "anti-stacking" language, with "stacking" generally interpreted in this context as the availability of more than one policy for the payment of an insured's damages.

b. A policy may provide that the maximum amount of UM, UIM or medical payments motorist coverage available for bodily injury or death suffered by a person who was not using a motor vehicle at the time of the accident is the highest single limit of UM, UIM or medical payments coverage, whichever is applicable, for any motor vehicle with respect to

which the individual is insured. This allows the prohibition of the stacking of policies for individuals who are not using a motor vehicle at the time of an accident.

c. A policy may provide that the limits under the policy for UM or UIM coverage for bodily injury or death resulting from any one accident shall be reduced by any of the following that apply: (a) amounts paid by or on behalf of any person or organization that may be legally responsible for the bodily injury or death for which the payment is made; (b) amounts paid or payable under any worker's compensation law; and (c) amounts paid or payable under any disability benefits laws. Generally, this provision allows a policy to include a "reducing clause," where payments made by a UM or UIM policy may be reduced by payments made from other sources (including another driver's motor vehicle liability policy).

d. A policy may provide that any coverage under the policy does not apply to a loss resulting from the use of a motor vehicle that meets all of the following conditions: (a) is owned by the named insured, or is owned by the named insured's spouse or a relative of the named insured if the spouse or relative resides in the same household as the named insured; (b) is not described in the policy under which the claim is made; and (c) is not covered under the terms of a policy as a newly acquired or replacement motor vehicle. This is referred to as a "drive-other-car" exclusion, and does not allow coverage for an owned automobile not described under a motor vehicle liability insurance policy.

## **GOVERNOR**

*Financial Responsibility.* Increase the minimum limits required for a policy that meets the requirements for 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 (100/300/25).

*Uninsured Motorist (UM). Coverage.* Increase the minimum required level of UM coverage to \$100,000 per person and \$300,000 per accident. Define uninsured motorist to include "unidentified motorist," rather than "an unidentified motorist involved in a hit-and-run accident."

*Underinsured Motorist (UIM) Coverage.* Require all motor vehicle liability policies sold in Wisconsin to include UIM coverage, with minimum limits of \$100,000 per person and \$300,000 per accident. Define "underinsured motor vehicle" as a motor vehicle to which all of the following apply: (a) the motor vehicle is involved in an accident with a person who has underinsured motorist coverage; (b) a bodily injury liability policy applies to the motor vehicle at the time of the accident; and (c) the limits under the bodily injury liability insurance policy are less than the amount needed to fully compensate the insured for his or her damages.

*Medical Payments.* Increase the minimum level of required medical payments coverage to \$10,000.

*Umbrella and Excess Liability Insurance.* Define "umbrella or excess liability policy" as an insurance contract providing at least \$1,000,000 of liability coverage per person or per occurrence in excess of certain required underlying liability insurance coverage or a specified amount of self-insured retention.

Require an insurer that writes umbrella or excess liability coverage, except for a town mutual, to make a written offer of both UM and UIM coverage, whenever an application is made for such coverage. For umbrella or excess liability insurance policies that are in effect on the effective date of this provision, an insurer would be required to make a written offer of UM or UIM coverage at the first renewal of a policy that does not include that coverage. An applicant or insured would be able to reject this coverage, but this rejection would be required in writing. If an insurer does not make a written offer of UM or UIM coverage for an umbrella or excess liability policy issued after the effective date of these provisions, a court may reform the policy (at the request of the insured) to include UM or UIM coverage with the same limits as the liability coverage limits under the policy.

*Prohibited Policy Provisions.* Prohibit motor vehicle policies from containing certain provisions, as described below.

a. No policy would be allowed to provide that, regardless of the number of policies involved, vehicles involved, persons covered, claims made, vehicles or premiums shown on the policy, or premiums paid, the limits for any coverage under the policy may not be added to the limits for similar coverage applying to other motor vehicles to determine the limit of insurance coverage available for bodily injury or death suffered by a person in any on accident.

b. No policy would be allowed to provide that the maximum amount of UM, UIM or medical payments motorist coverage available for bodily injury or death suffered by a person who was not using a motor vehicle at the time of the accident is any single limit of UM, UIM or medical payments coverage, whichever is applicable, for any motor vehicle with respect to which the individual is insured.

c. No policy would be allowed to provide that the limits under the policy for UM or UIM coverage for bodily injury or death resulting from any one accident shall be reduced by any of the following that apply: (a) amounts paid by or on behalf of any person or organization that may be legally responsible for the bodily injury or death for which the payment is made; (b) amounts paid or payable under any worker's compensation law; or (c) amounts paid or payable under any disability benefits laws.

d. No policy would be allowed to provide that any coverage under the policy does not apply to a loss resulting from the use of a motor vehicle that meets all of the following conditions: (a) is owned by the named insured, or is owned by the named insured's spouse or a relative of the named insured if the spouse or relative resides in the same household as the named insured; (b) is not described in the policy under which the claim is made; and (c) is not covered under the terms of a policy as a newly acquired or replacement motor vehicle.

*Health Insurer Coverage of Claims.* Prohibit a health insurer from refusing to cover health care services that are provided under a health care plan on the basis that there may be coverage for the services under a liability insurance policy.

*Effective Date.* These provisions would take effect on the first day of the fifth month beginning after publication.

## **DISCUSSION POINTS**

1. The following points briefly describe bodily injury, uninsured (UM) coverage, underinsured (UIM) coverage, and medical payments coverage, and the situations in which each type of coverage takes effect.

a. Bodily injury liability coverage pays for claims made by individuals who sustain damages in an accident caused by an insured individual.

b. Property damage liability coverage pays for any damage that an insured individual causes to another individual's or entity's property.

c. UM coverage provides coverage to the policyholder, the policyholder's family, or other occupants of the policyholder's vehicle, when damages are incurred in an accident with an uninsured motorist or in an accident with a hit-and-run driver.

d. UIM coverage provides coverage to the policyholder, the policyholder's family, and other occupants of the policyholder's vehicle, when the party who caused the accident has lower bodily injury limits than the UIM coverage limits.

e. Medical payments coverage pays medical payments or chiropractic payments for the policyholder or other individuals using the insured vehicle who incur damages in an accident, regardless of who caused the accident.

2. Table 1 compares the minimum required limits for each type of coverage under current law and under AB 75, and the year when the current minimum limits were last revised.

**TABLE 1**

**Minimum Required Limits, Current Law and AB 75**

	<u>Current</u>	<u>Year Current Limit Was Last Revised</u>	<u>AB 75</u>
<u>Liability Coverage</u>			
Bodily Injury or Death to One Person in an Accident	\$25,000	1982	\$100,000
Bodily Injury or Death to More than One Person in an Accident	50,000	1982	300,000
Property Damage	10,000	1978	25,000
<u>Uninsured Motorist Coverage</u>			
Per Person	25,000	1982	100,000
Per Accident	50,000	1982	300,000
<u>Underinsured Motorist Coverage*</u>			
Per Person	50,000	1995	100,000
Per Accident	100,000	1995	300,000
<u>Medical Payments</u>			
	1,000	1976	10,000

\*Current law does not require motor vehicle liability insurance policies to include UIM coverage; the bill would require motor vehicle liability insurance policies to include UIM coverage at the new minimum coverage levels.

3. Legislation enacted in 1995 (1995 Wisconsin Act 21) allowed a motor vehicle liability policy to include the following provisions: (a) anti-stacking language; (b) reducing clauses; and (c) drive-other-car exclusions.

4. The following discussion points provide simplified examples of how each of these provisions may work under current law and under the bill. These examples should not be interpreted as applicable to every incident where UM or UIM coverage take effect, as the circumstances of any given incident and the wording of any given policy affect how these provisions may be interpreted. Further, these provisions have been the subject of extensive litigation, which cannot be summarized in this document. These examples are provided to explain the general effect of the provisions in the bill, when applied to a simplified situation.

5. *Stacking.* As an example of how stacking may be treated under current law and under the bill, consider a situation where an individual ("Driver A") owns two cars. Driver A has a separate motor vehicle liability policy on each of those cars, and each of these policies include unambiguous anti-stacking language, as permitted under current law. The UM coverage limit for each policy is \$100,000 per person and \$300,000 per accident.

a. Under current law, if Driver A is involved in an accident with an uninsured motorist, Driver A would be able to use the coverage limits from the vehicle which was being used at the time to compensate for damages, but not the coverage limits under the vehicle that was not involved in the accident. The maximum coverage that Driver A would be allowed to apply to the incident would be \$100,000.

b. Under the bill, the policies held by Driver A would not be allowed to include anti-stacking language. Driver A would be able to "stack" the coverage of the two policies, and the UM coverage limits under both policies would be available to compensate for losses. The maximum coverage that Driver A would be allowed to apply to the incident would be \$200,000, the total limit on the two separate policies.

6. *Reducing.* The attachment to this paper illustrates three examples that compare how a reducing clause may be applied under current law, and how these situations would work under the bill. The three scenarios involve an accident between two vehicles, where Driver A sustains a certain amount of damages in an accident caused by Driver B. Driver A has \$100,000 of UIM coverage for one person involved in an accident, and Driver B has \$50,000 of liability coverage for bodily injury to one person. In these examples, Driver A's UIM policy contains a reducing clause, as permitted under current law. The following describe each example illustrated in Attachment 1:

a. In Example 1, Driver A sustains \$80,000 of damages. Driver B's liability policy would pay \$50,000, and Driver A's UIM policy would pay \$30,000, for a total of \$80,000. This situation would be the same under current law and AB 75.

b. In Example 2, Driver A sustains \$120,000 of damages. Under current law, Driver B's liability policy would pay \$50,000, and Driver A's UIM policy would pay \$50,000, for a total of \$100,000. In this scenario, Driver A's UIM policy is "reduced" by the amount paid by Driver B's liability policy. Under the bill, Driver B's liability policy would pay \$50,000, and Driver A's UIM policy would pay \$70,000, for a total of \$120,000.

c. In Example 3, Driver A sustains \$180,000 of damages. Under current law, Driver B's liability policy would pay \$50,000, and Driver A's UIM policy would pay \$50,000, for a total of \$100,000. In this scenario, Driver A's UIM policy is "reduced" by the amount paid by Driver B's liability policy. Under the bill, Driver B's liability policy would pay \$50,000, and Driver A's UIM policy would pay \$100,000, for a total of \$150,000.

7. *Drive-other-car.* Under the provisions in the Governor's bill, no policy could provide that the policy's coverage does not apply to a vehicle owned by the named insured (or the named insured's spouse or relative that resides in the same household as the named insured) that is not listed under the motor vehicle liability policy, and is not covered as a newly acquired or replacement motor vehicle. This would allow an insured to list one automobile on a policy, pay the premium for that automobile, then extend the coverage under that policy to other vehicles owned by the insured or members of the insured's household.

8. The Office of the Commissioner of Insurance (OCI) has not prepared, nor does it plan to prepare, an estimate of the effect the provisions in AB 75 would have on premiums paid for motor vehicle liability insurance. However, OCI expects that the provisions of AB 75 would increase motor vehicle liability insurance premiums, reflecting the increase in coverage that would be provided by these policies.

9. The Wisconsin Insurance Alliance (WIA), an organization that represents property and casualty insurance companies, estimates that auto insurance premiums for individuals that

currently purchase the minimum liability coverage levels of 25/50/10 would increase by 33% to 43%, if limits are raised to 100/300/25 and the provisions relating to stacking policies were enacted.

10. This office shared the results of the WIA analysis with faculty at the University of Wisconsin-Madison Department of Actuarial Science, Risk Management, and Insurance, and with faculty at the School of Risk Management and Actuarial Science at St. John's University in New York. In both cases, the faculty members opined that the approach WIA used to reach its conclusion appeared reasonable.

11. It should be noted that the effect on premiums cited in the previous point represents the estimated effect on individuals who purchase the current minimum level needed to satisfy financial responsibility requirements. Individuals who purchase more than these minimum levels would expect to see smaller premium increases, and any actual effect would depend upon the characteristics of the insured individual in question. It is estimated that approximately 20% to 25% of insured drivers currently purchase less than the 100/300/25 levels of liability coverage that would be required under the bill.

12. Wisconsin and New Hampshire are the only states that do not currently have compulsory motor vehicle liability policy laws. Although Wisconsin does not require drivers to have motor vehicle liability insurance, the rate of uninsured motorists in the state was 15% in 2007, slightly above the national average of 13.8% at that time. Table 2 provides the estimated percentage of uninsured motorists by state in 2007.

**TABLE 2**

**Estimated Percentage of Uninsured Motorists, 2007**

Source: Insurance Research Council

New Mexico	29%	Nevada	15%	Kansas	10%
Mississippi	28	Texas	15	Connecticut	9
Alabama	26	<b>Wisconsin</b>	<b>15</b>	Idaho	9
Oklahoma	24	Indiana	14	South Carolina	9
Florida	23	Missouri	14	Virginia	9
Tennessee	20	Rhode Island	14	Wyoming	9
Arizona	18	Alaska	13	Nebraska	8
California	18	Georgia	12	New Jersey	8
Michigan	17	Hawaii	12	Utah	8
Kentucky	16	Iowa	12	West Virginia	8
Ohio	16	Louisiana	12	Pennsylvania	7
Washington	16	Maryland	12	South Dakota	7
Arkansas	15	Minnesota	12	Vermont	6
Colorado	15	North Carolina	12	New York	5
D.C.	15	New Hampshire	11	North Dakota	5
Illinois	15	Oregon	11	Maine	4
Montana	15	Delaware	10	Massachusetts	1



13. To the extent that individuals are unable or unwilling to pay a potential increase in premiums, the number of uninsured drivers in Wisconsin may rise. However, it is not possible to project the percentage of drivers that would decide to drop motor vehicle liability insurance coverage as a result of these provisions.

14. The purpose of these provisions is to increase insurance coverage available to individuals who are involved in motor vehicle accidents. If the Committee determines that the need to provide this additional coverage is a priority at this time, it could approve all of the Governor's recommendations (Alternative 1). A technical modification is required to change a reference in Section 3161 of the bill from "uninsured motorist coverage" to "underinsured motorist coverage." An additional modification should be made so that it is clear that umbrella and excess liability insurance policies are not subject to the statutory requirement to provide UM or UIM coverage. This corrects a possible contradiction in the bill language.

15. However, the Committee could decide to delete some or all of these provisions from the bill, due to concerns over the potential effect of these changes on the cost of motor vehicle liability coverage (Alternative 3).

16. The Committee could also decide that increasing the minimum limits for motor vehicle liability insurance policies, and the prohibition of certain policy provisions, are separate issues. Consequently, the Committee could delete the prohibition of certain policy provisions (described on page 4), while maintaining the remaining provisions in the bill. Alternatively, it could delete the provisions that increase the minimum mandated limits only, while maintaining the remaining provisions in the bill (Alternative 2). If the Committee acts on any one of these alternatives, all other provisions in the bill relating to motor vehicle liability insurance policies would remain in the bill.

## **ALTERNATIVES**

1. Approve the Governor's recommendations, but change a reference in Section 3161 of the bill from "uninsured motorist coverage" to "underinsured motorist coverage," and clarify that umbrella and excess liability policies are not mandated to include UM and UIM coverage.

2. Delete the following provisions from the bill:

a. Delete the provision provides that no policy would be allowed to provide that, regardless of the number of policies involved, vehicles involved, persons covered, claims made, vehicles or premiums shown on the policy, or premiums paid, the limits for any coverage under the policy may not be added to the limits for similar coverage applying to other motor vehicles to determine the limit of insurance coverage available for bodily injury or death suffered by a person in any on accident.

b. Delete the provision provides that no policy would be allowed to provide that the maximum amount of UM, UIM or medical payments motorist coverage available for bodily

injury or death suffered by a person who was not using a motor vehicle at the time of the accident is any single limit of UM, UIM or medical payments coverage, whichever is applicable, for any motor vehicle with respect to which the individual is insured.

c. Delete the provision provides that no policy would be allowed to provide that the limits under the policy for UM or UIM coverage for bodily injury or death resulting from any one accident shall be reduced by any of the following that apply: (a) amounts paid by or on behalf of any person or organization that may be legally responsible for the bodily injury or death for which the payment is made; (b) amounts paid or payable under any worker's compensation law; or (c) amounts paid or payable under any disability benefits laws.

d. Delete the provision provides that no policy would be allowed to provide that any coverage under the policy does not apply to a loss resulting from the use of a motor vehicle that meets all of the following conditions: (a) is owned by the named insured, or is owned by the named insured's spouse or a relative of the named insured if the spouse or relative resides in the same household as the named insured; (b) is not described in the policy under which the claim is made; and (c) is not covered under the terms of a policy as a newly acquired or replacement motor vehicle.

e. Delete the provision that would prohibit a health insurer from refusing to cover health care services that are provided under a health care plan on the basis that there may be coverage for the services under a liability insurance policy.

f. Delete the provisions that increase the minimum limits that a motor vehicle liability insurance policy must have to satisfy requirements for financial responsibility.

g. Delete the provisions that increase the minimum required coverage limits of UM coverage.

h. Delete the provisions that increase the minimum required coverage limits of UIM coverage.

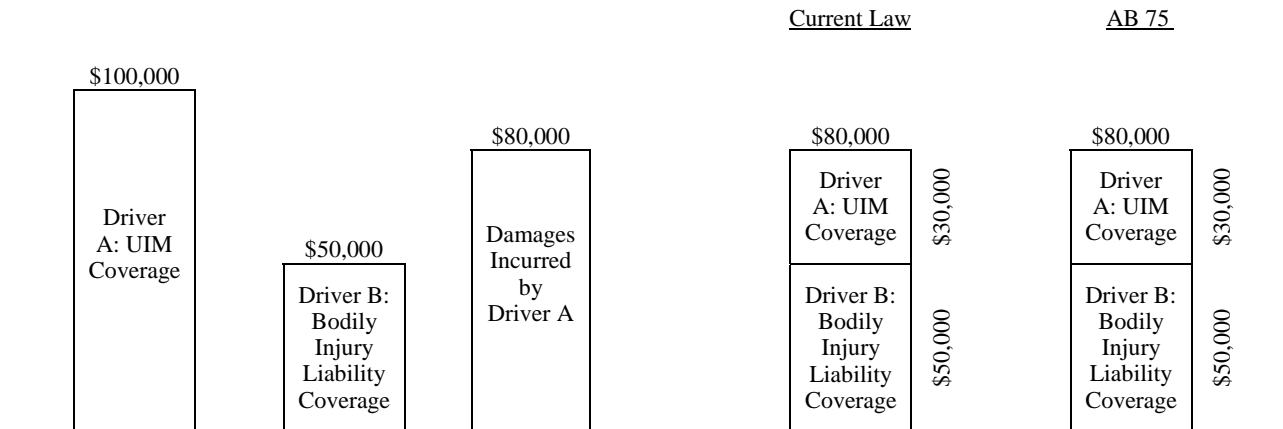
i. Delete the provisions that increase the minimum required coverage limits of medical payments coverage.

3. Delete all of the provisions relating to motor vehicle liability insurance in the bill.

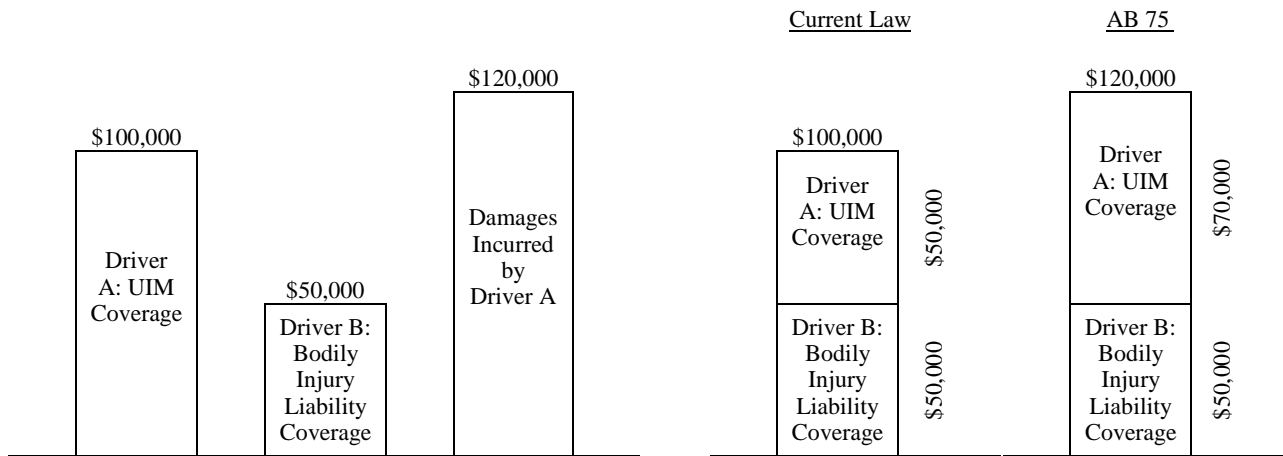
Prepared by: Sam Austin  
Attachment

# ATTACHMENT 1

## Reducing Clauses Example 1



## Reducing Clauses Example 2



## Reducing Clauses Example 3

