**A** **BILL**

AN ACT TO AMEND SECTION 38‑77‑30(1) OF THE 1976 CODE, TO CHANGE THE DEFINITION OF AUTOMOBILE INSURANCE TO INCLUDE UNDERINSURED MOTORIST COVERAGE; TO AMEND SECTION 38‑77‑150 OF THE 1976 CODE, TO REQUIRE UNDERINSURED MOTORIST COVERAGE ON ALL AUTOMOBILE INSURANCE POLICIES; TO AMEND SECTION 38‑77‑160 OF THE 1976 CODE, TO SPECIFY UNDERINSURED MOTORIST COVERAGE IS AVAILABLE ABOVE THE MANDATORY MINIMUM LIMITS AND TO REMOVE PROVISIONS ALLOWING INSURED THE OPTION TO PURCHASE UNDERINSURED MOTORIST COVERAGE; TO AMEND SECTION 38‑77‑200 OF THE 1976 CODE, TO INCLUDE UNDERINSURED MOTORIST COVERAGE IN THE PROVISION PREVENTING INSURERS FROM REQUIRING ARBITRATION OF CLAIMS; TO AMEND SECTION 38‑77‑210 OF THE 1976 CODE, TO PROVIDE PROPERTY COVERAGE IS NOT REQUIRED IN UNDERINSURED MOTORIST COVERAGE; AND TO AMEND SECTION 38‑77‑260 OF THE 1976 CODE, TO DELETE REFERENCES TO NON‑EXISTENT CODE SECTIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 38‑77‑30(1) of the 1976 Code is amended to read:

“(1) ‘Automobile insurance’ means automobile bodily injury and property damage liability insurance, including medical payments, ~~and~~ uninsured motorist coverage, underinsured motorist coverage, and automobile physical damage insurance such as automobile comprehensive physical damage, collision, fire, theft, combined additional coverage, and similar automobile physical damage insurance and economic loss benefits as provided by this chapter written or offered by automobile insurers. An automobile insurance policy includes a motor vehicle liability policy as defined in item (7) of Section 56‑9‑20 and any nonowner automobile insurance policy which covers an individual private passenger automobile not owned by the insured, a family member of the insured, or a resident of the same household as the insured.”

SECTION 2. Section 38‑77‑150 of the 1976 Code is amended to read:

“(A) No automobile insurance policy or contract may be issued or delivered unless it contains ~~a~~ provisions by endorsement or otherwise, herein referred to as the uninsured motorist provision and the underinsured motorist provision, undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured or underinsured motor vehicle, within limits which may be no less than the requirements of Section 38‑77‑140. The uninsured motorist provision and underinsured motorist provision also must provide for no less than twenty‑five thousand dollars’ coverage for injury to or destruction of the property of the insured in any one accident but may provide an exclusion of the first two hundred dollars of the loss or damage. The director or his designee may prescribe the form to be used in providing uninsured motorist coverage and underinsured motorist coverage and when prescribed and promulgated no other form may be used.

(B) No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision. The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear. The evidence of service upon the insurer may not be made a part of the record.

(C) Benefits paid pursuant to this section are subject to subrogation and assignment if an uninsured motorist or underinsured motorist has selected the option to be uninsured by paying the fee pursuant to Section 56‑10‑510.”

SECTION 3. Section 38‑77‑160 of the 1976 Code is amended to read:

“Automobile insurance carriers shall offer, at the option of the insured, uninsured motorist coverage and underinsured motorist coverage up to the limits of the insured’s liability coverage in addition to the mandatory coverage prescribed by Section 38‑77‑150. ~~Such carriers shall also offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at‑fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute.~~ If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. If none of the insured’s or named insured’s vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with the excess or underinsured coverage. Benefits paid pursuant to this section are not subject to subrogation and assignment.

No action may be brought under the underinsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the underinsured motorist provision. The insurer has the right to appear and defend in the name of the underinsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear. The evidence of service upon the insurer may not be made a part of the record. In the event the automobile insurance insurer for the putative at‑fault insured chooses to settle in part the claims against its insured by payment of its applicable liability limits on behalf of its insured, the underinsured motorist insurer may assume control of the defense of action for its own benefit. No underinsured motorist policy may contain a clause requiring the insurer’s consent to settlement with the at‑fault party.”

SECTION 4. Section 38‑77‑200 of the 1976 Code is amended to read:

“The uninsured motorist provision and the underinsured motorist provision may not require arbitration of any claim arising under it, nor may anything not otherwise herein provided for or as may be provided in the form prescribed by the director or his designee be required of the insured except the establishment of legal liability of the uninsured motorist or underinsured motorist, nor may the insured be restricted or prevented in any manner from employing legal counsel or instituting legal proceedings.”

SECTION 5. Section 38‑77‑210 of the 1976 Code is amended to read:

“The uninsured motorist provision and the underinsured motorist provision need not insure any liability for property damages for which loss a policyholder has been compensated by insurance or otherwise.”

SECTION 6. Section 38‑77‑260 of the 1976 Code is amended to read:

“~~(a)~~ No person making payment or settlement of benefits for which the person is obligated under Sections ~~38‑77‑240~~ 38‑77‑250 to 38‑77‑340 and no insurer may in connection with the payment or settlement of a claim for these first‑party benefits or for any first‑party benefits arising under an automobile insurer’s coverage including, but not limited to, medical payments and uninsured motorist coverage, obtain or attempt to obtain from the claimant receiving the benefits any general release, covenant not to sue, assignment, article of subrogation, or any other instrument or document which purports to assign to that person or insurer all or any portion of any claim which the claimant may have against any other party or his insurer arising out of legal liability or which purports to constitute an agreement by the claimant that any amount received as first party benefits must be deducted from any settlement or judgment recoverable from any other party or his insurer arising out of legal liability. Every such purported general release, covenant not to sue, or similar instrument is null and void unless (1) the insurer or other person has delivered to the person entitled to the first‑party benefits, or his legal representative, a disclosure statement, on a form approved by the director or his designee, fully and fairly disclosing the fact that the first‑party benefits payable under Sections ~~38‑77‑240~~ 38‑77‑250 to 38‑77‑340 are contractual obligations of the insurer or other person and are entirely separate and distinct from any obligation which the insurer or other person may have because of the legal liability of any person and that the person receiving the first‑party benefits is not required and may not be required to release or relinquish any rights which he may have arising out of the legal liability of any person in order to receive payment or settlement of the first‑party benefits arising under Sections ~~38‑77‑240~~ 38‑77‑250 to 38‑77‑340 and (2) an interval of not less than three days has elapsed between the later of (i) the delivery of the disclosure statement or (ii) the payment or settlement of the first‑party benefits and the execution of the general release, covenant not to sue, or similar instrument.”

SECTION 7. This act takes effect upon approval by the Governor.

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