

ASSEMBLY BILL

No. 862

Introduced by Assembly Member Wieckowski

February 21, 2013

An act to amend Section 11580.2 of the Insurance Code, relating to automobile insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 862, as introduced, Wieckowski. Automobile insurance: underinsured motorist coverage.

Existing law prohibits a policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle from being issued or delivered in this state to the owner or operator of a motor vehicle, or from being issued or delivered by any insurer licensed in this state upon any motor vehicle then principally used or principally garaged in this state, unless the policy contains, or has added to it by endorsement, a provision with specified coverage limits insuring the insured, the insured's heirs, or legal representative for all sums within the limits that he, she, or they are legally entitled to recover as damages for bodily injury or wrongful death from the owner or operator of an uninsured motor vehicle, except as otherwise provided. Uninsured motorist coverage includes underinsured motorist coverage. Existing law prohibits the maximum liability of an insurer providing underinsured motorist coverage for bodily injury to the insured caused by one or more vehicles from exceeding the insured's underinsured motorist coverage limits, less the amount paid to the insured by or for any person or organization that may be held legally liable for the injury.

This bill would authorize an insurer to offer a separately rated underinsured motorist policy where the maximum liability to the insurer is the underinsured motorist coverage limit. The bill would require, if an insurer elects to offer this policy to its insureds, the insurer to notify its insureds of this fact at the time it begins offering the policy and every other year thereafter upon renewal of an insured’s policy, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11580.2 of the Insurance Code is
2 amended to read:
3 11580.2. (a) (1) No policy of bodily injury liability insurance
4 covering liability arising out of the ownership, maintenance, or
5 use of any motor vehicle, except for policies that provide insurance
6 in the Republic of Mexico issued or delivered in this state by
7 nonadmitted Mexican insurers, shall be issued or delivered in this
8 state to the owner or operator of a motor vehicle, or shall be issued
9 or delivered by any insurer licensed in this state upon any motor
10 vehicle then principally used or principally garaged in this state,
11 unless the policy contains, or has added to it by endorsement, a
12 provision with coverage limits at least equal to the limits specified
13 in subdivision (m) and in no case less than the financial
14 responsibility requirements specified in Section 16056 of the
15 Vehicle Code insuring the insured, the insured’s heirs or legal
16 representative for all sums within the limits that he, she, or they,
17 as the case may be, shall be legally entitled to recover as damages
18 for bodily injury or wrongful death from the owner or operator of
19 an uninsured motor vehicle. The insurer and any named insured,
20 prior to or subsequent to the issuance or renewal of a policy, may,
21 by agreement in writing, in the form specified in paragraph (2) or
22 paragraph (3), (1) delete the provision covering damage caused
23 by an uninsured motor vehicle completely, or (2) delete the
24 coverage when a motor vehicle is operated by a natural person or
25 persons designated by name, or (3) agree to provide the coverage
26 in an amount less than that required by subdivision (m) but not
27 less than the financial responsibility requirements specified in
28 Section 16056 of the Vehicle Code. Any of these agreements by
29 any named insured or agreement for the amount of coverage shall

1 be binding upon every insured to whom the policy or endorsement
2 provisions apply while the policy is in force, and shall continue to
3 be so binding with respect to any continuation or renewal of the
4 policy or with respect to any other policy that extends, changes,
5 supersedes, or replaces the policy issued to the named insured by
6 the same insurer, or with respect to reinstatement of the policy
7 within 30 days of any lapse thereof. A policy shall be excluded
8 from the application of this section if the automobile liability
9 coverage is provided only on an excess or umbrella basis. Nothing
10 in this section shall require that uninsured motorist coverage be
11 offered or provided in any homeowner policy, personal and
12 residents' liability policy, comprehensive personal liability policy,
13 manufacturers' and contractors' policy, premises liability policy,
14 special multiperil policy, or any other policy or endorsement where
15 automobile liability coverage is offered as incidental to some other
16 basic coverage, notwithstanding that the policy may provide
17 automobile or motor vehicle liability coverage on insured premises
18 or the ways immediately adjoining.

19 (2) The agreement specified in paragraph (1) to delete the
20 provision covering damage caused by an uninsured motor vehicle
21 completely or delete the coverage when a motor vehicle is operated
22 by a natural person or persons designated by name shall be in the
23 following form:

24 "The California Insurance Code requires an insurer to provide
25 uninsured motorists coverage in each bodily injury liability
26 insurance policy it issues covering liability arising out of the
27 ownership, maintenance, or use of a motor vehicle. Those
28 provisions also permit the insurer and the applicant to delete the
29 coverage completely or to delete the coverage when a motor vehicle
30 is operated by a natural person or persons designated by name.
31 Uninsured motorists coverage insures the insured, his or her heirs,
32 or legal representatives for all sums within the limits established
33 by law, that the person or persons are legally entitled to recover
34 as damages for bodily injury, including any resulting sickness,
35 disease, or death, to the insured from the owner or operator of an
36 uninsured motor vehicle not owned or operated by the insured or
37 a resident of the same household. An uninsured motor vehicle
38 includes an underinsured motor vehicle as defined in subdivision
39 (p) of Section 11580.2 of the Insurance Code."

1 The agreement may contain additional statements not in
2 derogation of or in conflict with the foregoing. The execution of
3 the agreement shall relieve the insurer of liability under this section
4 while the agreement remains in effect.

5 (3) The agreement specified in paragraph (1) to provide coverage
6 in an amount less than that required by subdivision (m) shall be
7 in the following form:

8 “The California Insurance Code requires an insurer to provide
9 uninsured motorists coverage in each bodily injury liability
10 insurance policy it issues covering liability arising out of the
11 ownership, maintenance, or use of a motor vehicle. Those
12 provisions also permit the insurer and the applicant to agree to
13 provide the coverage in an amount less than that required by
14 subdivision (m) of Section 11580.2 of the Insurance Code but not
15 less than the financial responsibility requirements. Uninsured
16 motorists coverage insures the insured, his or her heirs, or legal
17 representatives for all sums within the limits established by law,
18 that the person or persons are legally entitled to recover as damages
19 for bodily injury, including any resulting sickness, disease, or
20 death, to the insured from the owner or operator of an uninsured
21 motor vehicle not owned or operated by the insured or a resident
22 of the same household. An uninsured motor vehicle includes an
23 underinsured motor vehicle as defined in subdivision (p) of Section
24 11580.2 of the Insurance Code.”

25 The agreement may contain additional statements not in
26 derogation of or in conflict with this paragraph. However, it shall
27 be presumed that an application for a policy of bodily injury
28 liability insurance containing uninsured motorist coverage in an
29 amount less than that required by subdivision (m), signed by the
30 named insured and approved by the insurer, with a policy effective
31 date after January 1, 1985, shall be a valid agreement as to the
32 amount of uninsured motorist coverage to be provided.

33 (b) As used in subdivision (a), “bodily injury” includes sickness
34 or disease, including death, resulting therefrom; “named insured”
35 means only the individual or organization named in the declarations
36 of the policy of motor vehicle bodily injury liability insurance
37 referred to in subdivision (a); as used in subdivision (a) if the
38 named insured is an individual “insured” means the named insured
39 and the spouse of the named insured and, while residents of the
40 same household, relatives of either while occupants of a motor

1 vehicle or otherwise, heirs and any other person while in or upon
2 or entering into or alighting from an insured motor vehicle and
3 any person with respect to damages he or she is entitled to recover
4 for care or loss of services because of bodily injury to which the
5 policy provisions or endorsement apply; as used in subdivision
6 (a), if the named insured is an entity other than an individual,
7 “insured” means any person while in or upon or entering into or
8 alighting from an insured motor vehicle and any person with
9 respect to damages he or she is entitled to recover for care or loss
10 of services because of bodily injury to which the policy provisions
11 or endorsement apply. As used in this subdivision, “individual”
12 shall not include persons doing business as corporations,
13 partnerships, or associations. As used in this subdivision, “insured
14 motor vehicle” means the motor vehicle described in the underlying
15 insurance policy of which the uninsured motorist endorsement or
16 coverage is a part, a temporary substitute automobile for which
17 liability coverage is provided in the policy or a newly acquired
18 automobile for which liability coverage is provided in the policy
19 if the motor vehicle is used by the named insured or with his or
20 her permission or consent, express or implied, and any other
21 automobile not owned by or furnished for the regular use of the
22 named insured or any resident of the same household, or by a
23 natural person or persons for whom coverage has been deleted in
24 accordance with subdivision (a) while being operated by the named
25 insured or his or her spouse if a resident of the same household,
26 but “insured motor vehicle” shall not include any automobile while
27 used as a public or livery conveyance. As used in this section,
28 “uninsured motor vehicle” means a motor vehicle with respect to
29 the ownership, maintenance or use of which there is no bodily
30 injury liability insurance or bond applicable at the time of the
31 accident, or there is the applicable insurance or bond but the
32 company writing the insurance or bond denies coverage thereunder
33 or refuses to admit coverage thereunder except conditionally or
34 with reservation, or an “underinsured motor vehicle” as defined
35 in subdivision (p), or a motor vehicle used without the permission
36 of the owner thereof if there is no bodily injury liability insurance
37 or bond applicable at the time of the accident with respect to the
38 owner or operator thereof, or the owner or operator thereof be
39 unknown, provided that, with respect to an “uninsured motor
40 vehicle” whose owner or operator is unknown:

1 (1) The bodily injury has arisen out of physical contact of the
2 automobile with the insured or with an automobile that the insured
3 is occupying.

4 (2) The insured or someone on his or her behalf has reported
5 the accident within 24 hours to the police department of the city
6 where the accident occurred or, if the accident occurred in
7 unincorporated territory then either to the sheriff of the county
8 where the accident occurred or to the local headquarters of the
9 California Highway Patrol, and has filed with the insurer within
10 30 days thereafter a statement under oath that the insured or his
11 or her legal representative has or the insured's heirs have a cause
12 of action arising out of the accident for damages against a person
13 or persons whose identity is unascertainable and set forth facts in
14 support thereof. As used in this section, "uninsured motor vehicle"
15 shall not include a motor vehicle owned or operated by the named
16 insured or any resident of the same household or self-insured within
17 the meaning of the Financial Responsibility Law of the state in
18 which the motor vehicle is registered or that is owned by the United
19 States of America, Canada, a state or political subdivision of any
20 of those governments or an agency of any of the foregoing, or a
21 land motor vehicle or trailer while located for use as a residence
22 or premises and not as a vehicle, or any equipment or vehicle
23 designed or modified for use primarily off public roads, except
24 while actually upon public roads.

25 As used in this section, "uninsured motor vehicle" also means
26 an insured motor vehicle where the liability insurer thereof is
27 unable to make payment with respect to the legal liability of its
28 insured within the limits specified therein because of insolvency.
29 An insurer's solvency protection shall be applicable only to
30 accidents occurring during a policy period in which its insured's
31 motor vehicle coverage is in effect where the liability insurer of
32 the tortfeasor becomes insolvent within one year of the accident.
33 In the event of payment to any person under the coverage required
34 by this section and subject to the terms and conditions of the
35 coverage, the insurer making the payment, shall to the extent
36 thereof, be entitled to any proceeds that may be recoverable from
37 the assets of the insolvent insurer through any settlement or
38 judgment of the person against the insolvent insurer.

39 Nothing in this section is intended to exclude from the definition
40 of an uninsured motor vehicle any motorcycle or private

1 passenger-type four-wheel drive motor vehicle if that vehicle was
2 subject to and failed to comply with the Financial Responsibility
3 Law of this state.

4 (c) The insurance coverage provided for in this section does not
5 apply either as primary or as excess coverage:

6 (1) To property damage sustained by the insured.

7 (2) To bodily injury of the insured while in or upon or while
8 entering into or alighting from a motor vehicle other than the
9 described motor vehicle if the owner thereof has insurance similar
10 to that provided in this section.

11 (3) To bodily injury of the insured with respect to which the
12 insured or his or her representative shall, without the written
13 consent of the insurer, make any settlement with or prosecute to
14 judgment any action against any person who may be legally liable
15 therefor.

16 (4) In any instance where it would inure directly or indirectly
17 to the benefit of any workers' compensation carrier or to any person
18 qualified as a self-insurer under any workers' compensation law,
19 or directly to the benefit of the United States, or any state or any
20 political subdivision thereof.

21 (5) To establish proof of financial responsibility as provided in
22 Section 16054 of the Vehicle Code.

23 (6) To bodily injury of the insured while occupying a motor
24 vehicle owned by an insured or leased to an insured under a written
25 contract for a period of six months or longer, unless the occupied
26 vehicle is an insured motor vehicle. "Motor vehicle" as used in
27 this paragraph means any self-propelled vehicle.

28 (7) To bodily injury of the insured when struck by a vehicle
29 owned by an insured, except when the injured insured's vehicle
30 is being operated, or caused to be operated, by a person without
31 the injured insured's consent in connection with criminal activity
32 that has been documented in a police report and that the injured
33 insured is not a party to.

34 (8) To bodily injury of the insured while occupying a motor
35 vehicle rented or leased to the insured for public or livery purposes.

36 (d) Subject to paragraph (2) of subdivision (c), the policy or
37 endorsement may provide that if the insured has insurance available
38 to the insured under more than one uninsured motorist coverage
39 provision, any damages shall not be deemed to exceed the higher
40 of the applicable limits of the respective coverages, and the

1 damages shall be prorated between the applicable coverages as
2 the limits of each coverage bear to the total of the limits.

3 (e) The policy or endorsement added thereto may provide that
4 if the insured has valid and collectible automobile medical payment
5 insurance available to him or her, the damages that the insured
6 shall be entitled to recover from the owner or operator of an
7 uninsured motor vehicle shall be reduced for purposes of uninsured
8 motorist coverage by the amounts paid or due to be paid under the
9 automobile medical payment insurance.

10 (f) The policy or an endorsement added thereto shall provide
11 that the determination as to whether the insured shall be legally
12 entitled to recover damages, and if so entitled, the amount thereof,
13 shall be made by agreement between the insured and the insurer
14 or, in the event of disagreement, by arbitration. The arbitration
15 shall be conducted by a single neutral arbitrator. An award or a
16 judgment confirming an award shall not be conclusive on any party
17 in any action or proceeding between (i) the insured, his or her
18 insurer, his or her legal representative, or his or her heirs and (ii)
19 the uninsured motorist to recover damages arising out of the
20 accident upon which the award is based. If the insured has or may
21 have rights to benefits, other than nonoccupational disability
22 benefits, under any workers' compensation law, the arbitrator shall
23 not proceed with the arbitration until the insured's physical
24 condition is stationary and ratable. In those cases in which the
25 insured claims a permanent disability, the claims shall, unless good
26 cause be shown, be adjudicated by award or settled by compromise
27 and release before the arbitration may proceed. Any demand or
28 petition for arbitration shall contain a declaration, under penalty
29 of perjury, stating whether (i) the insured has a workers'
30 compensation claim; (ii) the claim has proceeded to findings and
31 award or settlement on all issues reasonably contemplated to be
32 determined in that claim; and (iii) if not, what reasons amounting
33 to good cause are grounds for the arbitration to proceed
34 immediately. The arbitration shall be deemed to be a proceeding
35 and the hearing before the arbitrator shall be deemed to be the trial
36 of an issue therein for purposes of issuance of a subpoena by an
37 attorney of a party to the arbitration under Section 1985 of the
38 Code of Civil Procedure. Title 4 (commencing with Section
39 2016.010) of Part 4 of the Code of Civil Procedure shall be
40 applicable to these determinations, and all rights, remedies,

1 obligations, liabilities and procedures set forth in Title 4
2 (commencing with Section 2016.010) of Part 4 of the Code of
3 Civil Procedure shall be available to both the insured and the
4 insurer at any time after the accident, both before and after the
5 commencement of arbitration, if any, with the following
6 limitations:

7 (1) Whenever in Title 4 (commencing with Section 2016.010)
8 of Part 4 of the Code of Civil Procedure, reference is made to the
9 court in which the action is pending, or provision is made for
10 application to the court or obtaining leave of court or approval by
11 the court, the court that shall have jurisdiction for the purposes of
12 this section shall be the superior court of the State of California,
13 in and for any county that is a proper county for the filing of a suit
14 for bodily injury arising out of the accident, against the uninsured
15 motorist, or any county specified in the policy or an endorsement
16 added thereto as a proper county for arbitration or action thereon.

17 (2) Any proper court to which application is first made by either
18 the insured or the insurer under Title 4 (commencing with Section
19 2016.010) of Part 4 of the Code of Civil Procedure for any
20 discovery or other relief or remedy, shall thereafter be the only
21 court to which either of the parties shall make any applications
22 under Title 4 (commencing with Section 2016.010) of Part 4 of
23 the Code of Civil Procedure with respect to the same accident,
24 subject, however, to the right of the court to grant a change of
25 venue after a hearing upon notice, upon any of the grounds upon
26 which change of venue might be granted in an action filed in the
27 superior court.

28 (3) A deposition pursuant to Chapter 9 (commencing with
29 Section 2025.010) of Title 4 of Part 4 of the Code of Civil
30 Procedure may be taken without leave of court, except that leave
31 of court, granted with or without notice and for good cause shown,
32 must be obtained if the notice of the taking of the deposition is
33 served by either party within 20 days after the accident.

34 (4) Subdivision (a) of Section 2025.280 of the Code of Civil
35 Procedure is not applicable to discovery under this section.

36 (5) For the purposes of discovery under this section, the insured
37 and the insurer shall each be deemed to be “a party to the action,”
38 where that phrase is used in Section 2025.260 of the Code of Civil
39 Procedure.

1 (6) Interrogatories under Chapter 13 (commencing with Section
2 2030.010) of Title 4 of Part 4 of the Code of Civil Procedure and
3 requests for admission under Chapter 16 (commencing with Section
4 2033.010) of Title 4 of Part 4 of the Code of Civil Procedure may
5 be served by either the insured or the insurer upon the other at any
6 time more than 20 days after the accident without leave of court.

7 (7) Nothing in this section limits the rights of any party to
8 discovery in any action pending or that may hereafter be pending
9 in any court.

10 (g) The insurer paying a claim under an uninsured motorist
11 endorsement or coverage shall be entitled to be subrogated to the
12 rights of the insured to whom the claim was paid against any person
13 legally liable for the injury or death to the extent that payment was
14 made. The action may be brought within three years from the date
15 that payment was made hereunder.

16 (h) An insured entitled to recovery under the uninsured motorist
17 endorsement or coverage shall be reimbursed within the conditions
18 stated herein without being required to sign any release or waiver
19 of rights to which he or she may be entitled under any other
20 insurance coverage applicable; nor shall payment under this section
21 to the insured be delayed or made contingent upon the decisions
22 as to liability or distribution of loss costs under other bodily injury
23 liability insurance or any bond applicable to the accident. Any loss
24 payable under the terms of the uninsured motorist endorsement or
25 coverage to or for any person may be reduced:

26 (1) By the amount paid and the present value of all amounts
27 payable to him or her, his or her executor, administrator, heirs, or
28 legal representative under any workers' compensation law,
29 exclusive of nonoccupational disability benefits.

30 (2) By the amount the insured is entitled to recover from any
31 other person insured under the underlying liability insurance policy
32 of which the uninsured motorist endorsement or coverage is a part,
33 including any amounts tendered to the insured as advance payment
34 on behalf of the other person by the insurer providing the
35 underlying liability insurance.

36 (i) (1) No cause of action shall accrue to the insured under any
37 policy or endorsement provision issued pursuant to this section
38 unless one of the following actions have been taken within two
39 years from the date of the accident:

1 (A) Suit for bodily injury has been filed against the uninsured
2 motorist, in a court of competent jurisdiction.

3 (B) Agreement as to the amount due under the policy has been
4 concluded.

5 (C) The insured has formally instituted arbitration proceedings
6 by notifying the insurer in writing sent by certified mail, return
7 receipt requested. Notice shall be sent to the insurer or to the agent
8 for process designated by the insurer filed with the department.

9 (2) Any arbitration instituted pursuant to this section shall be
10 concluded either:

11 (A) Within five years from the institution of the arbitration
12 proceeding.

13 (B) If the insured has a workers' compensation claim arising
14 from the same accident, within three years of the date the claim is
15 concluded, or within the five-year period set forth in subparagraph

16 (A), whichever occurs later.

17 (3) The doctrines of estoppel, waiver, impossibility,
18 impracticality, and futility apply to excuse a party's noncompliance
19 with the statutory timeframe, as determined by the court.

20 (4) Parties to the insurance contract may stipulate in writing to
21 extending the time to conclude arbitration.

22 (j) Notwithstanding subdivisions (b) and (i), in the event the
23 accident occurs in any other state or foreign jurisdiction to which
24 coverage is extended under the policy and the insurer of the
25 tortfeasor becomes insolvent, any action authorized pursuant to
26 this section may be maintained within three months of the
27 insolvency of the tortfeasor's insurer, but in no event later than
28 the pertinent period of limitation of the jurisdiction in which the
29 accident occurred.

30 (k) Notwithstanding subdivision (i), any insurer whose insured
31 has made a claim under his or her uninsured motorist coverage,
32 and the claim is pending, shall, at least 30 days before the
33 expiration of the applicable statute of limitation, notify its insured
34 in writing of the statute of limitation applicable to the injury or
35 death. Failure of the insurer to provide the written notice shall
36 operate to toll any applicable statute of limitation or other time
37 limitation for a period of 30 days from the date the written notice
38 is actually given. The notice shall not be required if the insurer
39 has received notice that the insured is represented by an attorney.

1 (l) As used in subdivision (b), “public or livery conveyance,”
2 or terms of similar import, shall not include the operation or use
3 of a motor vehicle by the named insured in the performance of
4 volunteer services for a nonprofit charitable organization or
5 governmental agency by providing social service transportation
6 as defined in subdivision (f) of Section 11580.1. This subdivision
7 shall apply only to policies of insurance issued, amended, or
8 renewed on or after January 1, 1976.

9 (m) Coverage provided under an uninsured motorist
10 endorsement or coverage shall be offered with coverage limits
11 equal to the limits of liability for bodily injury in the underlying
12 policy of insurance, but shall not be required to be offered with
13 limits in excess of the following amounts:

14 (1) A limit of thirty thousand dollars (\$30,000) because of bodily
15 injury to or death of one person in any one accident.

16 (2) Subject to the limit for one person set forth in paragraph (1),
17 a limit of sixty thousand dollars (\$60,000) because of bodily injury
18 to or death of two or more persons in any one accident.

19 (n) Underinsured motorist coverage shall be offered with limits
20 equal to the limits of liability for the insured’s uninsured motorist
21 limits in the underlying policy, and may be offered with limits in
22 excess of the uninsured motorist coverage. For the purposes of
23 this section, uninsured and underinsured motorist coverage shall
24 be offered as a single coverage. However, an insurer may offer
25 coverage for damages for bodily injury or wrongful death from
26 the owner or operator of an underinsured motor vehicle at greater
27 limits than an uninsured motor vehicle.

28 (o) If an insured has failed to provide an insurer with wage loss
29 information or medical treatment record releases within 15 days
30 of the insurer’s request or has failed to submit to a medical
31 examination arranged by the insurer within 20 days of the insurer’s
32 request, the insurer may, at any time prior to 30 days before the
33 actual arbitration proceedings commence, request, and the insured
34 shall furnish, wage loss information or medical treatment record
35 releases, and the insurer may require the insured, except during
36 periods of hospitalization, to make himself or herself available for
37 a medical examination. The wage loss information or medical
38 treatment record releases shall be submitted by the insured within
39 10 days of request and the medical examination shall be arranged
40 by the insurer no sooner than 10 days after request, unless the

1 insured agrees to an earlier examination date, and not later than
2 20 days after the request. If the insured fails to comply with the
3 requirements of this subdivision, the actual arbitration proceedings
4 shall be stayed for at least 30 days following compliance by the
5 insured. The proceedings shall be scheduled as soon as practicable
6 following expiration of the 30-day period.

7 (p) This subdivision applies only when bodily injury, as defined
8 in subdivision (b), is caused by an underinsured motor vehicle. If
9 the provisions of this subdivision conflict with subdivisions (a)
10 through (o), the provisions of this subdivision shall prevail.

11 (1) As used in this subdivision, “an insured motor vehicle” is
12 one that is insured under a motor vehicle liability policy, or
13 automobile liability insurance policy, self-insured, or for which a
14 cash deposit or bond has been posted to satisfy a financial
15 responsibility law.

16 (2) “Underinsured motor vehicle” means a motor vehicle that
17 is an insured motor vehicle but insured for an amount that is less
18 than the uninsured motorist limits carried on the motor vehicle of
19 the injured person.

20 (3) This coverage does not apply to any bodily injury until the
21 limits of bodily injury liability policies applicable to all insured
22 motor vehicles causing the injury have been exhausted by payment
23 of judgments or settlements, and proof of the payment is submitted
24 to the insurer providing the underinsured motorist coverage.

25 (4) (A) When bodily injury is caused by one or more motor
26 vehicles, whether insured, underinsured, or uninsured, the
27 maximum liability of the insurer providing the underinsured
28 motorist coverage shall not exceed the insured’s underinsured
29 motorist coverage limits, less the amount paid to the insured by
30 or for any person or organization that may be held legally liable
31 for the injury. *A policy for which the maximum liability of the*
32 *insurer is calculated in this manner shall hereafter be referred to*
33 *as a setoff policy.*

34 (B) *Notwithstanding subparagraph (A), an insurer may offer a*
35 *separately rated, nonsetoff underinsured motorist policy, subject*
36 *to all other provisions of this subdivision, for which the maximum*
37 *liability of the insurer providing the underinsured motorist*
38 *coverage is the insured’s underinsured motorist coverage limit*
39 *without subtracting the amount paid to the insured by or for any*
40 *person or organization that may be held legally liable for the*

1 *injury. If an insurer elects to offer a nonsetoff policy, the insurer*
 2 *shall notify its insureds of this fact at the time the insurer begins*
 3 *offering it and every other year thereafter, upon the renewal of an*
 4 *insured’s policy. The notification shall be in writing and shall*
 5 *contain a clear and concise, plain-language explanation of the*
 6 *benefit to the insured of obtaining a nonsetoff underinsured*
 7 *motorist policy and of any additional costs the insured will incur*
 8 *by purchasing that policy. In enacting this subparagraph, the*
 9 *Legislature finds and declares that it is in the public interest that*
 10 *consumers have additional options available when purchasing*
 11 *automobile liability insurance.*

12 (5) The insurer paying a claim under this subdivision shall, to
 13 the extent of the payment, be entitled to reimbursement or credit
 14 in the amount received by the insured from the owner or operator
 15 of the underinsured motor vehicle or the insurer of the owner or
 16 operator.

17 (6) If the insured brings an action against the owner or operator
 18 of an underinsured motor vehicle, he or she shall forthwith give
 19 to the insurer providing the underinsured motorist coverage a copy
 20 of the complaint by personal service or certified mail. All pleadings
 21 and depositions shall be made available for copying or copies
 22 furnished the insurer, at the insurer’s expense, within a reasonable
 23 time.

24 (7) Underinsured motorist coverage shall be included in all
 25 policies of bodily injury liability insurance providing uninsured
 26 motorist coverage issued or renewed on or after July 1, 1985.
 27 Notwithstanding this section, an agreement to delete uninsured
 28 motorist coverage completely, or with respect to a person or
 29 persons designated by name, executed prior to July 1, 1985, shall
 30 remain in full force and effect.

31 (q) Regardless of the number of vehicles involved whether
 32 insured or not, persons covered, claims made, premiums paid or
 33 the number of premiums shown on the policy, in no event shall
 34 the limit of liability for two or more motor vehicles or two or more
 35 policies be added together, combined, or stacked to determine the
 36 limit of insurance coverage available to injured persons.

O