

AMENDED IN ASSEMBLY MAY 1, 2013

AMENDED IN ASSEMBLY APRIL 11, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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 amended, 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

1 Section 16056 of the Vehicle Code. Any of these agreements by
2 any named insured or agreement for the amount of coverage shall
3 be binding upon every insured to whom the policy or endorsement
4 provisions apply while the policy is in force, and shall continue to
5 be so binding with respect to any continuation or renewal of the
6 policy or with respect to any other policy that extends, changes,
7 supersedes, or replaces the policy issued to the named insured by
8 the same insurer, or with respect to reinstatement of the policy
9 within 30 days of any lapse thereof. A policy shall be excluded
10 from the application of this section if the automobile liability
11 coverage is provided only on an excess or umbrella basis. Nothing
12 in this section shall require that uninsured motorist coverage be
13 offered or provided in any homeowner policy, personal and
14 residents' liability policy, comprehensive personal liability policy,
15 manufacturers' and contractors' policy, premises liability policy,
16 special multiperil policy, or any other policy or endorsement where
17 automobile liability coverage is offered as incidental to some other
18 basic coverage, notwithstanding that the policy may provide
19 automobile or motor vehicle liability coverage on insured premises
20 or the ways immediately adjoining.

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

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

1 includes an underinsured motor vehicle as defined in subdivision
2 (p) of Section 11580.2 of the Insurance Code.”

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

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

10 “The California Insurance Code requires an insurer to provide
11 uninsured motorists coverage in each bodily injury liability
12 insurance policy it issues covering liability arising out of the
13 ownership, maintenance, or use of a motor vehicle. Those
14 provisions also permit the insurer and the applicant to agree to
15 provide the coverage in an amount less than that required by
16 subdivision (m) of Section 11580.2 of the Insurance Code but not
17 less than the financial responsibility requirements. Uninsured
18 motorists coverage insures the insured, his or her heirs, or legal
19 representatives for all sums within the limits established by law,
20 that the person or persons are legally entitled to recover as damages
21 for bodily injury, including any resulting sickness, disease, or
22 death, to the insured from the owner or operator of an uninsured
23 motor vehicle not owned or operated by the insured or a resident
24 of the same household. An uninsured motor vehicle includes an
25 underinsured motor vehicle as defined in subdivision (p) of Section
26 11580.2 of the Insurance Code.”

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

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

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

1 unknown, provided that, with respect to an “uninsured motor
2 vehicle” whose owner or operator is unknown:

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

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

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

1 Nothing in this section is intended to exclude from the definition
2 of an uninsured motor vehicle any motorcycle or private
3 passenger-type four-wheel drive motor vehicle if that vehicle was
4 subject to and failed to comply with the Financial Responsibility
5 Law of this state.

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

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

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

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

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

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

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

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

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

38 (d) Subject to paragraph (2) of subdivision (c), the policy or
39 endorsement may provide that if the insured has insurance available
40 to the insured under more than one uninsured motorist coverage

1 provision, any damages shall not be deemed to exceed the higher
2 of the applicable limits of the respective coverages, and the
3 damages shall be prorated between the applicable coverages as
4 the limits of each coverage bear to the total of the limits.

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

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

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

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

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

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

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

38 (5) For the purposes of discovery under this section, the insured
39 and the insurer shall each be deemed to be “a party to the action,”

1 where that phrase is used in Section 2025.260 of the Code of Civil
2 Procedure.

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

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

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

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

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

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

38 (i) (1) No cause of action shall accrue to the insured under any
39 policy or endorsement provision issued pursuant to this section

1 unless one of the following actions have been taken within two
2 years from the date of the accident:

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

5 (B) Agreement as to the amount due under the policy has been
6 concluded.

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

11 (2) Any arbitration instituted pursuant to this section shall be
12 concluded either:

13 (A) Within five years from the institution of the arbitration
14 proceeding.

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

18 (A), whichever occurs later.

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

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

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

32 (k) Notwithstanding subdivision (i), any insurer whose insured
33 has made a claim under his or her uninsured motorist coverage,
34 and the claim is pending, shall, at least 30 days before the
35 expiration of the applicable statute of limitation, notify its insured
36 in writing of the statute of limitation applicable to the injury or
37 death. Failure of the insurer to provide the written notice shall
38 operate to toll any applicable statute of limitation or other time
39 limitation for a period of 30 days from the date the written notice

1 is actually given. The notice shall not be required if the insurer
2 has received notice that the insured is represented by an attorney.

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

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

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

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

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

30 (o) If an insured has failed to provide an insurer with wage loss
31 information or medical treatment record releases within 15 days
32 of the insurer’s request or has failed to submit to a medical
33 examination arranged by the insurer within 20 days of the insurer’s
34 request, the insurer may, at any time prior to 30 days before the
35 actual arbitration proceedings commence, request, and the insured
36 shall furnish, wage loss information or medical treatment record
37 releases, and the insurer may require the insured, except during
38 periods of hospitalization, to make himself or herself available for
39 a medical examination. The wage loss information or medical
40 treatment record releases shall be submitted by the insured within

1 10 days of request and the medical examination shall be arranged
2 by the insurer no sooner than 10 days after request, unless the
3 insured agrees to an earlier examination date, and not later than
4 20 days after the request. If the insured fails to comply with the
5 requirements of this subdivision, the actual arbitration proceedings
6 shall be stayed for at least 30 days following compliance by the
7 insured. The proceedings shall be scheduled as soon as practicable
8 following expiration of the 30-day period.

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

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

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

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

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

36 (B) (i) Notwithstanding subparagraph (A) and subdivision (q),
37 an insurer may offer a separately rated, nonsetoff underinsured
38 motorist policy, subject to all other provisions of this subdivision,
39 for which the maximum liability of the insurer providing the
40 underinsured motorist coverage is the insured’s underinsured

1 motorist coverage limit without subtracting the amount paid to the
2 insured by or for any person or organization that may be held
3 legally liable for the injury. *However, the insured's recovery from*
4 *the insured's uninsured motorist coverage and the amount paid*
5 *to the insured by or for any person or organization that may be*
6 *held legally liable for the injury shall not exceed the sum of all of*
7 *the economic and noneconomic losses sustained by the insured.*
8 If an insurer elects to offer a nonsetoff policy, the insurer shall
9 notify its insureds of this fact at the time the insurer begins offering
10 it and every other year thereafter, upon the renewal of an insured's
11 policy. ~~the policy.~~ The notification shall be in writing and shall
12 contain a clear and concise, plain-language explanation of the
13 benefit to the insured of obtaining a nonsetoff underinsured
14 motorist policy and of any additional costs the insured will incur
15 by purchasing that policy. In enacting this subparagraph, the
16 Legislature finds and declares that it is in the public interest that
17 consumers have additional options available when purchasing
18 automobile liability insurance. *writing, in the form specified in*
19 *clause (ii).*

20 (ii) *The notice specified in clause (i) shall be in the following*
21 *form:*

22 *"The California Insurance Code requires an insurer to provide*
23 *uninsured motorists coverage in each bodily injury liability*
24 *insurance policy it issues covering liability arising out of the*
25 *ownership, maintenance, or use of a motor vehicle. Those*
26 *provisions also permit an insurer to sell two kinds of underinsured*
27 *motorist coverage: a "setoff" policy and a "nonsetoff" policy.*
28 *Not all insurers offer both types of underinsured motorist coverage;*
29 *some will offer only "setoff" policies. You are receiving this notice*
30 *because your insurer has elected to offer a "nonsetoff" policy in*
31 *addition to offering a "setoff" policy.*

32 *If you are covered by a "setoff" policy, the stated policy limit*
33 *reflects the total coverage available to you when the insurance*
34 *policy limit of the other driver, who was at fault, is added to your*
35 *insurer's contribution. For example, if the other driver, who was*
36 *at fault, has a \$25,000 insurance policy limit, and your "setoff"*
37 *policy has a \$100,000 limit, your insurer would be liable for up*
38 *to \$75,000. If the other driver, who was at fault, has a \$50,000*
39 *insurance policy limit, your insurer would be liable for up to*
40 *\$50,000. In each example, the total available for your damages is*

1 \$100,000, the policy limit of your underinsured motorist coverage,
2 and the amount your insurer potentially has to pay varies
3 depending on the amount of coverage the other driver has, even
4 if your actual damages exceeded \$100,000.

5 If you are covered by a “nonsetoff” policy, however, the stated
6 policy limit reflects the amount of coverage available to you in
7 addition to the insurance policy limit of the other driver, who was
8 at fault. For example, if the other driver, who was at fault, has a
9 \$25,000 insurance policy, and your “nonsetoff” policy has a
10 \$100,000 limit, you would potentially be entitled to recover \$25,000
11 from the insurance policy of the other driver, who was at fault,
12 and \$100,000 from your insurer under your “nonsetoff” policy.
13 If the other driver, who was at fault, has a \$50,000 insurance
14 policy limit, you would potentially be entitled to recover \$50,000
15 from the insurance policy of the other driver, who was at fault,
16 and \$100,000 from your insurer under your “nonsetoff” policy.
17 In each example, you can potentially recover up to \$100,000 from
18 your insurer, and the total available for your damages will vary
19 depending on the amount of coverage the other driver has. You
20 are still subject to the \$100,000 limit, but none of the \$100,000
21 would be “offset” by the other driver’s insurance.

22 To find out more about the difference in cost between a “setoff”
23 and “nonsetoff” underinsured motorist coverage policy, please
24 contact your insurer, agent, or broker, who will provide you more
25 information on the premium associated with each of these coverage
26 options.”

27 (iii) Nothing in this subparagraph is intended to alter or
28 otherwise affect insurer and agent liability.

29 (iv) In enacting this subparagraph, the Legislature finds and
30 declares that it is in the public interest that consumers have
31 additional options available when purchasing automobile liability
32 insurance.

33 (5) The insurer paying a claim under this subdivision shall, to
34 the extent of the payment, be entitled to reimbursement or credit
35 in the amount received by the insured from the owner or operator
36 of the underinsured motor vehicle or the insurer of the owner or
37 operator.

38 (6) If the insured brings an action against the owner or operator
39 of an underinsured motor vehicle, he or she shall forthwith give
40 to the insurer providing the underinsured motorist coverage a copy

1 of the complaint by personal service or certified mail. All pleadings
2 and depositions shall be made available for copying or copies
3 furnished the insurer, at the insurer's expense, within a reasonable
4 time.

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

12 (q) Regardless of the number of vehicles involved whether
13 insured or not, persons covered, claims made, premiums paid or
14 the number of premiums shown on the policy, in no event shall
15 the limit of liability for two or more motor vehicles or two or more
16 policies be added together, combined, or stacked to determine the
17 limit of insurance coverage available to injured persons.