

AMENDED IN ASSEMBLY APRIL 26, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1602**

**Introduced by Assembly Member Poochigian**

February 24, 1995

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1602, as amended, Poochigian. Insurance: uninsured motorist provisions.

Existing law requires uninsured motorist coverage for personal injury or death to be included in a policy of motor vehicle insurance unless waived by the insured. Existing law provides that no cause of action accrues under that coverage unless, within one year, suit is filed against the uninsured motorist, agreement as to the amount due has been concluded, or the insured has formally instituted arbitration proceedings.

This bill would require the ~~initiated~~ *insured to have informed the insurer of the* arbitration proceedings ~~to be~~, in writing. It would also provide that no ~~cause of action shall accrue to the insured~~ *benefits are payable* under that coverage ~~unless if the arbitration hearing has been completed~~ *claim is not concluded by settlement or arbitration award issued* within 3 years of the ~~date suit was filed against the uninsured motorist or the date the insured formally instituted arbitration proceedings, whichever is earliest~~ *accident*.

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



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

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

27 "The California Insurance Code requires an insurer to  
28 provide uninsured motorists coverage in each bodily  
29 injury liability insurance policy it issues covering liability  
30 arising out of the ownership, maintenance, or use of a  
31 motor vehicle. Those provisions also permit the insurer  
32 and the applicant to delete the coverage completely or to  
33 delete the coverage when a motor vehicle is operated by  
34 a natural person or persons designated by name.  
35 Uninsured motorists coverage insures the insured, his or  
36 her heirs, or legal representatives for all sums within the  
37 limits established by law, which the person or persons are  
38 legally entitled to recover as damages for bodily injury,  
39 including any resulting sickness, disease, or death, to the  
40 insured from the owner or operator of an uninsured



1 motor vehicle not owned or operated by the insured or  
2 a resident of the same household. An uninsured motor  
3 vehicle includes an underinsured motor vehicle as  
4 defined in subdivision (p) of Section 11580.2 of the  
5 Insurance Code.”

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

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

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

34 The agreement may contain additional statements not  
35 in derogation of or in conflict with this paragraph.  
36 However, it shall be presumed that an application for a  
37 policy of bodily injury liability insurance containing  
38 uninsured motorist coverage in an amount less than that  
39 required by subdivision (m), signed by the named  
40 insured and approved by the insurer, with a policy



1 effective date after January 1, 1985, shall be a valid  
2 agreement as to the amount of uninsured motorist  
3 coverage to be provided.

4 (b) As used in subdivision (a), "bodily injury" includes  
5 sickness or disease, including death, resulting therefrom;  
6 "named insured" means only the individual or  
7 organization named in the declarations of the policy of  
8 motor vehicle bodily injury liability insurance referred to  
9 in subdivision (a); as used in subdivision (a) if the named  
10 insured is an individual "insured" means the named  
11 insured and the spouse of the named insured and, while  
12 residents of the same household, relatives of either while  
13 occupants of a motor vehicle or otherwise, heirs and any  
14 other person while in or upon or entering into or alighting  
15 from an insured motor vehicle and any person with  
16 respect to damages he or she is entitled to recover for care  
17 or loss of services because of bodily injury to which the  
18 policy provisions or endorsement apply; as used in  
19 subdivision (a), if the named insured is an entity other  
20 than an individual, "insured" means any person while in  
21 or upon or entering into or alighting from an insured  
22 motor vehicle and any person with respect to damages he  
23 or she is entitled to recover for care or loss of services  
24 because of bodily injury to which the policy provisions or  
25 endorsement apply. As used in this subdivision,  
26 "individual" shall not include persons doing business as  
27 corporations, partnerships, or associations. As used in this  
28 subdivision "insured motor vehicle" means the motor  
29 vehicle described in the underlying insurance policy of  
30 which the uninsured motorist endorsement or coverage  
31 is a part, a temporary substitute automobile for which  
32 liability coverage is provided in the policy or a newly  
33 acquired automobile for which liability coverage is  
34 provided in the policy if the motor vehicle is used by the  
35 named insured or with his or her permission or consent,  
36 express or implied, and any other automobile not owned  
37 by or furnished for the regular use of the named insured  
38 or any resident of the same household, or by a natural  
39 person or persons for whom coverage has been deleted in  
40 accordance with subdivision (a) while being operated by



1 the named insured or his or her spouse if a resident of the  
 2 same household, but “insured motor vehicle” shall not  
 3 include any automobile while used as a public or livery  
 4 conveyance. As used in this section, “uninsured motor  
 5 vehicle” means a motor vehicle with respect to the  
 6 ownership, maintenance or use of which there is no  
 7 bodily injury liability insurance or bond applicable at the  
 8 time of the accident, or there is the applicable insurance  
 9 or bond but the company writing the insurance or bond  
 10 denies coverage thereunder or refuses to admit coverage  
 11 thereunder except conditionally or with reservation, or  
 12 an “underinsured motor vehicle” as defined in  
 13 subdivision (p), or a motor vehicle used without the  
 14 permission of the owner thereof if there is no bodily  
 15 injury liability insurance or bond applicable at the time  
 16 of the accident with respect to the owner or operator  
 17 thereof, or the owner or operator thereof be unknown,  
 18 provided that, with respect to an “uninsured motor  
 19 vehicle” whose owner or operator is unknown:

20 (1) The bodily injury has arisen out of physical contact  
 21 of the automobile with the insured or with an automobile  
 22 which the insured is occupying.

23 (2) The insured or someone on his or her behalf has  
 24 reported the accident within 24 hours to the police  
 25 department of the city where the accident occurred or,  
 26 if the accident occurred in unincorporated territory then  
 27 either to the sheriff of the county where the accident  
 28 occurred or to the local headquarters of the California  
 29 Highway Patrol, and has filed with the insurer within 30  
 30 days thereafter a statement under oath that the insured  
 31 or his or her legal representative has or the insured’s heirs  
 32 have a cause of action arising out of the accident for  
 33 damages against a person or persons whose identity is  
 34 unascertainable and set forth facts in support thereof. As  
 35 used in this section, “uninsured motor vehicle” shall not  
 36 include a motor vehicle owned or operated by the named  
 37 insured or any resident of the same household or  
 38 self-insured within the meaning of the Financial  
 39 Responsibility Law of the state in which the motor vehicle  
 40 is registered or which is owned by the United States of



1 America, Canada, a state or political subdivision of any  
2 such government or an agency of any of the foregoing, or  
3 a land motor vehicle or trailer while located for use as a  
4 residence or premises and not as a vehicle, or any  
5 equipment or vehicle designed or modified for use  
6 primarily off public roads, except while actually upon  
7 public roads.

8 As used in this section, “uninsured motor vehicle” also  
9 means an insured motor vehicle where the liability  
10 insurer thereof is unable to make payment with respect  
11 to the legal liability of its insured within the limits  
12 specified therein because of insolvency. An insurer’s  
13 solvency protection shall be applicable only to accidents  
14 occurring during a policy period in which its insured’s  
15 motor vehicle coverage is in effect where the liability  
16 insurer of the tortfeasor becomes insolvent within one  
17 year of the accident. In the event of payment to any  
18 person under the coverage required by this section and  
19 subject to the terms and conditions of the coverage, the  
20 insurer making the payment, shall to the extent thereof,  
21 be entitled to any proceeds which may be recoverable  
22 from the assets of the insolvent insurer through any  
23 settlement or judgment of the person against the  
24 insolvent insurer.

25 Nothing in this section is intended to exclude from the  
26 definition of an uninsured motor vehicle any motorcycle  
27 or private passenger type four wheel drive motor vehicle  
28 if that vehicle was subject to and failed to comply with the  
29 Financial Responsibility Law of this state.

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

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

34 (2) To bodily injury of the insured while in or upon or  
35 while entering into or alighting from a motor vehicle  
36 other than the described motor vehicle if the owner  
37 thereof has insurance similar to that provided in this  
38 section.

39 (3) To bodily injury of the insured with respect to  
40 which the insured or his or her representative shall,



1 without the written consent of the insurer, make any  
2 settlement with or prosecute to judgment any action  
3 against any person who may be legally liable therefor.

4 (4) In any instance where it would inure directly or  
5 indirectly to the benefit of any workers' compensation  
6 carrier or to any person qualified as a self-insurer under  
7 any workers' compensation law, or directly to the benefit  
8 of the United States, or any state or any political  
9 subdivision thereof.

10 (5) To establish proof of financial responsibility as  
11 provided in subdivisions (a), (b), and (c) of Section 16054  
12 of the Vehicle Code.

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

19 (7) To bodily injury of the insured when struck by a  
20 vehicle owned by an insured.

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

24 (d) Subject to paragraph (2) of subdivision (c), the  
25 policy or endorsement may provide that if the insured has  
26 insurance available to the insured under more than one  
27 uninsured motorist coverage provision, any damages  
28 shall not be deemed to exceed the higher of the  
29 applicable limits of the respective coverages, and the  
30 damages shall be prorated between the applicable  
31 coverages as the limits of each coverage bear to the total  
32 of the limits.

33 (e) The policy or endorsement added thereto may  
34 provide that if the insured has valid and collectible  
35 automobile medical payment insurance available to him  
36 or her, the damages which the insured shall be entitled to  
37 recover from the owner or operator of an uninsured  
38 motor vehicle shall be reduced for purposes of uninsured  
39 motorist coverage by the amounts paid or due to be paid  
40 under the automobile medical payment insurance.



1 (f) The policy or an endorsement added thereto shall  
2 provide that the determination as to whether the insured  
3 shall be legally entitled to recover damages, and if so  
4 entitled, the amount thereof, shall be made by agreement  
5 between the insured and the insurer or, in the event of  
6 disagreement, by arbitration. The arbitration shall be  
7 conducted by a single neutral arbitrator. An award or a  
8 judgment confirming an award shall not be conclusive on  
9 any party in any action or proceeding between (i) the  
10 insured, his or her insurer, his or her legal representative,  
11 or his or her heirs and (ii) the uninsured motorist to  
12 recover damages arising out of the accident upon which  
13 the award is based. If the insured has or may have rights  
14 to benefits, other than nonoccupational disability  
15 benefits, under any workers' compensation law, the  
16 arbitrator shall not proceed with the arbitration until the  
17 insured's physical condition is stationary and ratable. In  
18 those cases in which the insured claims a permanent  
19 disability, the claims shall, unless good cause be shown, be  
20 adjudicated by award or settled by compromise and  
21 release before the arbitration may proceed. Any demand  
22 or petition for arbitration shall contain a declaration,  
23 under penalty of perjury, stating whether (i) the insured  
24 has a workers' compensation claim; (ii) the claim has  
25 proceeded to findings and award or settlement on all  
26 issues reasonably contemplated to be determined in that  
27 claim; and (iii) if not, what reasons amounting to good  
28 cause are grounds for the arbitration to proceed  
29 immediately. The arbitration shall be deemed to be a  
30 proceeding and the hearing before the arbitrator shall be  
31 deemed to be the trial of an issue therein for purposes of  
32 issuance of a subpoena by an attorney of a party to the  
33 arbitration under Section 1985 of the Code of Civil  
34 Procedure. Article 3 (commencing with Section 2016) of  
35 Chapter 3 of Title 3 of Part 4 of the Code of Civil  
36 Procedure shall be applicable to these determinations,  
37 and all rights, remedies, obligations, liabilities and  
38 procedures set forth in Article 3 shall be available to both  
39 the insured and the insurer at any time after the accident,



1 both before and after the commencement of arbitration,  
2 if any, with the following limitations:

3 (1) Whenever in Article 3, reference is made to the  
4 court in which the action is pending, or provision is made  
5 for application to the court or obtaining leave of court or  
6 approval by the court, the court which shall have  
7 jurisdiction for the purposes of this section shall be the  
8 superior court of the State of California, in and for any  
9 county which is a proper county for the filing of a suit for  
10 bodily injury arising out of the accident, against the  
11 uninsured motorist, or any county specified in the policy  
12 or an endorsement added thereto as a proper county for  
13 arbitration or action thereon.

14 (2) Any proper court to which application is first made  
15 by either the insured or the insurer under Article 3 for any  
16 discovery or other relief or remedy, shall thereafter be  
17 the only court to which either of the parties shall make  
18 any applications under Article 3 with respect to the same  
19 accident, subject, however, to the right of the court to  
20 grant a change of venue after a hearing upon notice, upon  
21 any of the grounds upon which change of venue might be  
22 granted in an action filed in the superior court.

23 (3) A deposition pursuant to Section 2016 of the Code  
24 of Civil Procedure may be taken without leave of court,  
25 except that leave of court, granted with or without notice  
26 and for good cause shown, must be obtained if the notice  
27 of the taking of the deposition is served by either party  
28 within 20 days after the accident.

29 (4) Paragraph (4) of subdivision (a) of Section 2019 of  
30 the Code of Civil Procedure is not applicable to discovery  
31 under this section.

32 (5) For the purposes of discovery under this section,  
33 the insured and the insurer shall each be deemed to be “a  
34 party to the record of any civil action or proceedings,”  
35 where that phrase is used in paragraph (2) of subdivision  
36 (b) of Section 2019 of the Code of Civil Procedure.

37 (6) Interrogatories under Section 2030 of the Code of  
38 Civil Procedure and requests for admission under Section  
39 2033 of the Code of Civil Procedure may be served by  
40 either the insured or the insurer upon the other at any



1 time more than 20 days after the accident without leave  
2 of court.

3 (7) Nothing in this section limits the rights of any party  
4 to discovery in any action pending or which may  
5 hereafter be pending in any court.

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

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

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

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

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



1 have been taken within one year from the date of the  
2 accident:

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

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

7 (C) The insured has formally instituted arbitration  
8 proceedings ~~in writing~~ and has notified the insurer in  
9 *writing sent by certified mail, return receipt requested.*

10 ~~(2) No cause of action shall accrue to the insured under  
11 any policy or endorsement provision issued pursuant to  
12 this section unless the arbitration hearing shall have been  
13 completed within three years of the date suit was filed  
14 against the uninsured motorist or the date the insured  
15 formally instituted arbitration proceedings, whichever is  
16 earliest.~~

17 *(2) No benefits are payable under this section if the  
18 claim is not concluded by settlement or by arbitration  
19 award issued within three years of the accident.*

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

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



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

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

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

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

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

34 (o) If an insured has failed to provide an insurer with  
35 wage loss information or medical treatment record  
36 releases within 15 days of the insurer’s request or has  
37 failed to submit to a medical examination arranged by the  
38 insurer within 20 days of the insurer’s request, the insurer  
39 may, at any time prior to 30 days before the actual  
40 arbitration proceedings commence, request, and the



1 insured shall furnish, wage loss information or medical  
2 treatment record releases, and the insurer may require  
3 the insured, except during periods of hospitalization, to  
4 make himself or herself available for a medical  
5 examination. The wage loss information or medical  
6 treatment record releases shall be submitted by the  
7 insured within 10 days of request and the medical  
8 examination shall be arranged by the insurer no sooner  
9 than 10 days after request, unless the insured agrees to an  
10 earlier examination date, and not later than 20 days after  
11 the request. If the insured fails to comply with the  
12 requirements of this subdivision, the actual arbitration  
13 proceedings shall be stayed for at least 30 days following  
14 compliance by the insured. The proceedings shall be  
15 scheduled as soon as practicable following expiration of  
16 the 30-day period.

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

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

27 (2) “Underinsured motor vehicle” means a motor  
28 vehicle that is an insured motor vehicle but insured for an  
29 amount that is less than the uninsured motorist limits  
30 carried on the motor vehicle of the injured person.

31 (3) This coverage does not apply to any bodily injury  
32 until the limits of bodily injury liability policies applicable  
33 to all insured motor vehicles causing the injury have been  
34 exhausted by payment of judgments or settlements, and  
35 proof of the payment is submitted to the insurer  
36 providing the underinsured motorist coverage.

37 (4) When bodily injury is caused by one or more motor  
38 vehicles, whether insured, underinsured, or uninsured,  
39 the maximum liability of the insurer providing the  
40 underinsured motorist coverage shall not exceed the



1 insured's underinsured motorist coverage limits, less the  
2 amount paid to the insured by or for any person or  
3 organization that may be held legally liable for the injury.

4 (5) The insurer paying a claim under this subdivision  
5 shall, to the extent of the payment, be entitled to  
6 reimbursement or credit in the amount received by the  
7 insured from the owner or operator of the underinsured  
8 motor vehicle or the insurer of the owner or operator.

9 (6) If the insured brings an action against the owner or  
10 operator of an underinsured motor vehicle, he or she shall  
11 forthwith give to the insurer providing the underinsured  
12 motorist coverage a copy of the complaint by personal  
13 service or certified mail. All pleadings and depositions  
14 shall be made available for copying or copies furnished  
15 the insurer, at the insurer's expense, within a reasonable  
16 time.

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

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

