

## LEGISLATIVE BILL 1074

Approved by the Governor April 7, 1994

Introduced by Landis, 46; Lindsay, 9

AN ACT relating to insurance; to amend sections 60-571 to 60-573, 60-575 to 60-577, and 60-579 to 60-582, Reissue Revised Statutes of Nebraska, 1943, sections 60-574 and 60-578, Revised Statutes Supplement, 1992, and section 60-302, Revised Statutes Supplement, 1993; to rename the Underinsured Motorist Insurance Coverage Act; to change and eliminate provisions relating to underinsured and uninsured motorist coverages; to change provisions relating to motor vehicle registration and proof of financial responsibility; to authorize the Director of Insurance to appoint staff to investigate insurance fraud; to provide funding; to harmonize provisions; to provide duties for the Revisor of Statutes; to provide an operative date; and to repeal the original sections, and also sections 60-509.01 to 60-509.03, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 60-571, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~60-571-~~ Sections ~~60-571 to 60-582~~ 1 to 14 of this act shall be known and may be cited as the Uninsured and Underinsured Motorist Insurance Coverage Act.

Sec. 2. That section 60-572, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~60-572-~~ As used in the For purposes of the Uninsured and Underinsured Motorist Insurance Coverage Act, unless the context otherwise requires, the definitions found in sections 60-573 to 60-576 3 to 7 of this act shall apply.

Sec. 3. That section 60-576, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~60-576-~~ Affiliated insurer shall mean an insurer who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person.

Sec. 4. That section 60-573, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~60-573-~~ Motor vehicle shall mean a motor vehicle as defined in section 60-501.

Sec. 5. Uninsured motor vehicle shall mean a motor vehicle with respect to the ownership, operation, maintenance, or use of which:

(1) There is no bodily injury liability insurance or bond applicable at the time of the accident; or

(2) There is bodily injury liability insurance or a bond applicable at the time of the accident but the insurer writing such insurance or bond (a) denies coverage or (b) is or becomes insolvent as described in section 44-2403 within four years after the time of the accident which occurred while the named insured's uninsured motorist coverage was in effect.

Sec. 6. That section 60-574, Revised Statutes Supplement, 1992, be amended to read as follows:

~~60-574-~~ Underinsured motor vehicle shall mean a motor vehicle with respect to the ownership, operation, maintenance, or use of which there is bodily injury liability insurance or a bond applicable at the time of the accident and the amount of the insurance or bond is less than or has been reduced by payments to persons, other than an insured, injured in the accident to less than the damages for bodily injury, sickness, disease, or death sustained by the insured. Underinsured motor vehicle shall not include an uninsured motor vehicle.

Sec. 7. That section 60-575, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~60-575-~~ An uninsured or underinsured motor vehicle shall not include a motor vehicle:

(1) Insured under the liability coverage of the same policy of which the uninsured or underinsured motorist coverage is a part;

(2) Owned by, furnished, or available for the regular use of the named insured or any resident of the insured's household;

(3) Which is self-insured under sections 60-562 to 60-564 or is self-insured within the meaning of the motor vehicle financial responsibility law of any other state in which the motor vehicle is registered or any federal

law which requires maintenance of financial responsibility;

(4) Which is owned by any government, political subdivision, or agency thereof; or

(5) Which is located and used as a residence or premises and not as a vehicle.

Sec. 8. That section 60-577, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~60-577.~~ (1) ~~Unless the named insured has in writing rejected underinsured motorist coverage, no No policy insuring against liability imposed by law for bodily injury, sickness, disease, or death suffered by a natural person arising out of the ownership, operation, maintenance, or use of a motor vehicle within the United States, its territories or possessions, or Canada shall be delivered, issued for delivery, or renewed with respect to any motor vehicle principally garaged in this state unless coverage is provided for the protection of persons insured who are legally entitled to recover compensatory damages for bodily injury, sickness, disease, or death from (a) the owner or operator of an uninsured motor vehicle or a hit-and-run motor vehicle in limits of twenty-five thousand dollars because of bodily injury, sickness, disease, or death of one person in any one accident and, subject to such limit for one person, fifty thousand dollars because of bodily injury, sickness, disease, or death of two or more persons in any one accident, and (b) the owner or operator of an underinsured motor vehicle (a) in split limits of twenty-five thousand dollars because of bodily injury, sickness, disease, or death of one person in any one accident, subject to such limit for one person, (b) in the amount of fifty thousand dollars because of bodily injury, sickness, disease, or death of two or more persons in any one accident, or (c) at a combined single limit of one hundred thousand dollars.~~

(2) At the written request of the named insured, the insurer shall provide higher limits of uninsured and underinsured motorist coverage coverages in accordance with its rating plan and rules, except that in no event shall the insurer be required to provide limits higher than the lesser of (a) one hundred thousand dollars per person and three hundred thousand dollars per accident, or (b) the combined single limit equivalent of three hundred thousand dollars per accident.

(3) After selection of limits by the insured or the exercise of the option not to purchase of uninsured and underinsured motorist coverages, no insurer or any affiliated insurer shall be required to notify any policyholder in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy as to the availability of such coverages or optional limits of such coverages. The named insured may, subject to the limitations of this section, make a written request for additional coverage or coverage more extensive than that provided in a prior policy.

Sec. 9. That section 60-578, Revised Statutes Supplement, 1992, be amended to read as follows:

~~60-578.~~ The maximum liability of the insurer under the uninsured motorist coverage or the underinsured motorist coverage shall be the amount of damages for bodily injury, sickness, disease, or death sustained by the insured less the amount paid to the insured by or for any person or organization which may be held legally liable for the bodily injury, sickness, disease, or death, but in no event shall the maximum liability of the insurer under either such coverage be more than the limits of the underinsured motorist coverage provided.

Sec. 10. That section 60-579, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~60-579.~~ Regardless of the number of vehicles involved, persons covered, claims made, vehicles or premiums shown on the policy, or premiums paid, the limits of liability for uninsured or underinsured motorist coverage for two or more motor vehicles insured under the same policy or separate policies shall not be added together, combined, or stacked to determine the limit of insurance coverage available to an injured person for any one accident except as provided in section 11 of this act.

Sec. 11. That section 60-580, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~60-580.~~ (1) In the event an insured is entitled to uninsured or underinsured motorist coverage under more than one policy of motor vehicle liability insurance, the maximum amount an insured may recover shall not exceed the highest limit of any one such policy.

(2) In the event of bodily injury, sickness, disease, or death of an insured while occupying a motor vehicle not owned by the insured, payment shall be made in the following order of priority, subject to the limitations in subsection (1) of this section: (a) The uninsured or underinsured motorist coverage on the occupied motor vehicle is primary; and (b) if such primary

coverage is exhausted, other uninsured or underinsured motorist coverage available to the insured is excess.

(3) When multiple policies apply, payment shall be made in the following order of priority, subject to the limit of liability for each applicable policy:

(a) A policy covering a motor vehicle occupied by the injured person at the time of the accident;

(b) A policy covering a motor vehicle which came into contact with causes bodily injury, sickness, disease, or death of the insured while a pedestrian; and

(c) A policy covering a motor vehicle not involved in the accident with respect to which the injured person is an insured.

Sec. 12. That section 60-581, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~60-581.~~ (1) In the event of payment under the uninsured or underinsured motorist coverage, the insurer making such payment shall, to the extent of such payment, be entitled to the proceeds of any settlement or judgment to the extent such settlement or judgment exceeds the amount paid under any applicable bodily injury liability policy or bond.

(2) If a tentative agreement to settle for liability limits has been reached with the owner or operator of an underinsured motor vehicle, written notice shall be given by certified or registered mail to the underinsured motorist coverage insurer by its insured. Such notice shall include written documentation of lost wages, medical bills, and written authorization to obtain reports from all employers and medical providers. Within thirty days of receipt of such notice, the underinsured motorist coverage insurer may substitute its payment to the insured for the tentative settlement amount. The underinsured motorist coverage insurer shall then be subrogated to the insured's right of recovery to the extent of such payment and any settlement under the underinsured motorist coverage. If the underinsured motorist coverage insurer fails to pay the insured the amount of the tentative settlement within thirty days of receipt of such notice, the underinsured motorist coverage insurer shall have no right of subrogation for any amount paid under the underinsured motorist coverage.

(3) Whenever an insurer makes payment under uninsured or underinsured motorist coverage because of an insurer insolvency, as described in section 44-2403, the paying insurer's right of recovery or reimbursement shall not include any rights either against the insured or such insolvent insurer, except for the amount which is in excess of the limits of liability of the policy of the insolvent insurer, or against a guaranty account established pursuant to the Nebraska Property and Liability Insurance Guaranty Association Act.

Sec. 13. That section 60-582, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~60-582.~~ (1) The uninsured and underinsured motorist coverages provided in the Uninsured and Underinsured Motorist Insurance Coverage Act shall not apply to:

(a) Bodily injury, sickness, disease, or death of the insured with respect to which the insured or his or her representative makes, without the written consent of the insurer, any settlement with or obtains any judgment against any person who may be legally liable for any injuries if such settlement adversely affects the rights of the insurer, except that this subdivision shall not apply to underinsured motorist coverage when the insured has given notice to the insurer, in compliance with subsection (2) of section 12 of this act, and the insurer has failed to make the required payment to protect its right of subrogation;

(b) Bodily injury, sickness, disease, or death of an insured while occupying a motor vehicle owned by, but not insured by, the named insured or a spouse or relative residing with the named insured;

(c) Bodily injury, sickness, disease, or death of an insured while occupying an owned motor vehicle which is used as a public or livery conveyance and which is not insured as such;

(d) Bodily injury, sickness, disease, or death of an insured through being struck by a vehicle owned by the named insured or a spouse or relative residing with the named insured; and

(e) Bodily injury, sickness, disease, or death of the insured with respect to which the applicable statute of limitations has expired on the insured's claim against the uninsured or underinsured motorist.

(2) Insurers providing motor vehicle liability insurance coverage on an excess or umbrella basis or incidental to some other basic coverage shall not be required to offer, provide, or make available coverage conforming to the Uninsured and Underinsured Motorist Insurance Coverage Act.

(3) Unless the named insured has in writing rejected underinsured coverage, an An insurer may make underinsured motorist coverage a part of uninsured motorist coverage.

(4) Nothing in the Uninsured and Underinsured Motorist Insurance Coverage Act shall be construed to prevent an insurer from offering, making available, or providing coverage under terms and conditions more favorable to its insured or in limits higher than are required by the act.

(5) The Director of Insurance shall adopt and promulgate rules and regulations as are necessary to provide that the language relating to coverages described in the Uninsured and Underinsured Motorist Insurance Coverage Act is not unfair, inequitable, misleading, or deceptive and does not encourage misrepresentation of the coverage.

Sec. 14. The Director of Insurance may adopt and promulgate rules and regulations to carry out the Uninsured and Underinsured Motorist Insurance Coverage Act.

Sec. 15. (1) In order to investigate activities involving insurance fraud, the Director of Insurance shall appoint a sufficient staff which may include two investigators and one attorney and such attorney shall have the same powers and prerogatives in each of the several counties of the state as the county attorneys have in their respective counties.

(2) The papers, documents, reports, and evidence of the Department of Insurance regarding the subject of an investigation of insurance fraud shall not be subject to public inspection for so long as the director deems reasonably necessary to complete the investigation or to protect the person investigated from unwarranted injury or so long as the director deems it to be in the public interest. Such papers, documents, reports, and evidence regarding the subject of an investigation of insurance fraud shall not be subject to subpoena until they are opened for public inspection by the department, unless the director consents, or until after notice to the department and a hearing, the court determines the department would not be unnecessarily hindered by such subpoena. Department investigators shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge regarding a pending insurance fraud investigation by the department.

(3) On or before March 1, 1995, and on or before each March 1 thereafter, each insurer as defined in section 44-103 holding a certificate of authority to transact the business of insurance in this state shall pay a fee as established by the director not to exceed one hundred dollars to the director to be remitted to the State Treasurer for credit to the Department of Insurance Cash Fund, which fees may be appropriated only to carry out the purposes of this section. Assessment associations and unincorporated mutual associations shall not be subject to this subsection.

Sec. 16. That section 60-302, Revised Statutes Supplement, 1993, be amended to read as follows:

60-302. (1) No motor vehicle, trailer, semitrailer, or cabin trailer, unless otherwise expressly provided, shall be operated or parked on the highways of this state unless such vehicle is registered in accordance with Chapter 60, article 3. There shall be a rebuttable presumption that any vehicle stored and kept more than thirty days in the state is being operated or parked on the highways of this state and shall be registered in accordance with Chapter 60, article 3. Every owner of a vehicle required to be registered shall make application for registration to the county treasurer of the county in which the vehicle has tax situs as defined in section 77-1238. The application shall be a copy of a certificate of title or, in the case of a renewal of a registration, the application shall be the previous registration period's certificate. A salvage certificate of title as defined in section 60-129 and a nontransferable certificate of title provided for in section 60-131 shall not be valid for registration purposes.

(2) All applications for registration of motor vehicles shall be accompanied by proof of financial responsibility. Proof of financial responsibility shall be evidenced by a copy of proof of financial responsibility filed pursuant to subdivision (2), (3), or (4) of section 60-528 bearing the seal of the Department of Motor Vehicles or by a certificate or policy of insurance. Such certificate or policy of insurance shall be written by an insurance carrier duly authorized to do business in this state and shall certify that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility in limits for bodily injury or death and for injury to or destruction of property of others set forth in section 60-509. Such certificate or policy shall give the effective dates of such motor vehicle liability policy, which dates shall be evidence that the coverage is in effect on and following the date of registration, and shall designate, by explicit

description or by appropriate reference, all motor vehicles covered thereby. Such certificate or policy of motor vehicle liability insurance shall not exclude liability coverage under such certificate or policy solely because the injured person making a claim is the named insured in such certificate or policy or a spouse or relative residing in the same household with the named insured.

(3) Any nonresident owner who desires to register a vehicle or vehicles in this state shall register in the county where the vehicle is domiciled or where the owner conducts a bona fide business.

(4) Each new application shall contain, in addition to such other information as may be required by the department, the name and post office address of the applicant and a description of the vehicle, including the color, the manufacturer, the identification number, and the weight of the vehicle required by Chapter 60, article 3. With such application and proof of financial responsibility, the applicant shall pay the proper registration fee as provided in sections 60-305.08 to 60-339 and shall state whether the vehicle is propelled by electricity, motor vehicle fuel as defined in section 66-482, or special fuel as defined in section 66-602, and if special fuel, the type of fuel. The form shall also contain a notice that bulk special or diesel fuel purchasers may be subject to federal excise tax liability. The department shall prescribe a form, containing such notice, for supplying the information for vehicles to be registered. The county assessor shall include the form in each mailing made pursuant to section 77-1240.01.

(5) The county treasurer or his or her agent shall collect, in addition to the registration fees, one dollar and fifty cents for each and every certificate issued and shall remit one dollar and fifty cents of each additional fee collected to the State Treasurer for credit to the Department of Motor Vehicles Computerization and Operations Fund.

(6) The county treasurer or his or her agent shall collect, in addition to other registration fees, the sum of one dollar and fifty cents for each and every certificate issued, which fee shall be remitted by the county treasurer to the State Treasurer for credit to the State Recreation Road Fund.

(7) If a citation is issued to an owner of a vehicle for a violation of this section and the owner, within ten days of issuance of the citation, properly registers and licenses the vehicle not in compliance, pays all taxes and fees due, and provides proof of such registration to the prosecuting attorney, no prosecution for the offense cited shall occur.

(8) If a county board consolidates services under the office of a designated county official other than the county treasurer pursuant to section 23-186, the powers and duties of the county treasurer relating to registration under sections 60-301 to 60-347 shall be performed by the designated county official.

Sec. 17. The Revisor of Statutes shall assign sections 1 to 14 of this act to Chapter 44 and section 15 of this act to Chapter 44, article 1.

Sec. 18. This act shall become operative on January 1, 1995.

Sec. 19. That original sections 60-571 to 60-573, 60-575 to 60-577, and 60-579 to 60-582, Reissue Revised Statutes of Nebraska, 1943, sections 60-574 and 60-578, Revised Statutes Supplement, 1992, and section 60-302, Revised Statutes Supplement, 1993, and also sections 60-509.01 to 60-509.03, Reissue Revised Statutes of Nebraska, 1943, are repealed.