



2011 SENATE BILL 7

January 14, 2011 – Introduced by Senators LASEE, LAZICH, TAYLOR, DARLING, HOPPER, WANGGAARD, GALLOWAY, KAPANKE, LEIBHAM, GROTHMAN, HARSDORF, KEDZIE, VINEHOUT and MOULTON, cosponsored by Representatives NYGREN, PETERSEN, STEINEKE, KLENKE, KNILANS, KRUG, PETRYK, RIVARD, ENDSLEY, TRANEL, MARKLEIN, SEVERSON, WYNN, BERNIER, TIFFANY, JACQUE, WEININGER, KNUDSON, T. LARSON, KOOYENGA, FARROW, KUGLITSCH, LITJENS, AUGUST, KAPENGA, THIESFELDT, WILLIAMS, HONADEL, RIPP, NERISON, J. FITZGERALD, KRAMER, SUDER, VOS, KNODL, BALLWEG, MURSAU, MURTHA, KESTELL, MEYER, PETROWSKI, TAUCHEN, BROOKS, A. OTT, BIES, VAN ROY, KAUFERT, STONE, KERKMAN, LEMAHIEU, STRACHOTA, KLEEFISCH, NASS, SPANBAUER, PRIDEMORE, ZIEGELBAUER and FIELDS. Referred to Committee on Insurance and Housing.

1 **AN ACT** *to repeal* 227.01 (13) (zz), 344.01 (2) (am), 344.11, 632.32 (4r), 632.32 (6)
2 (f) and 632.355; *to renumber and amend* 344.33 (2), 632.32 (6) (d), 632.32 (6)
3 (e) and 632.32 (6) (g); *to consolidate, renumber and amend* 344.15 (1)
4 (intro.), (a) and (b); *to amend* 121.555 (2) (a), 344.01 (2) (d), 344.55 (1) (intro.),
5 631.43 (3), 632.32 (2) (e) 3., 632.32 (2) (g) (intro.), 632.32 (4) (a) 1., 632.32 (4) (a)
6 2m., 632.32 (4) (a) 3m. and 632.32 (4) (d); *to repeal and recreate* 632.32 (2)
7 (g) 2.; and *to create* 344.33 (2) (a), 344.33 (2) (b), 344.33 (2) (c), 632.32 (2) (ac)
8 and 632.32 (2) (bh) of the statutes; **relating to:** automobile insurance coverage
9 limits, permissible policy provisions, and proof of financial responsibility.

Analysis by the Legislative Reference Bureau

Proof of financial responsibility

Under former law, prior to 2009 Wisconsin Act 28 (the biennial budget act), motor vehicles operated in this state were not required to be covered by policies of bodily injury and property damage liability insurance, but owners and operators of motor vehicles involved in accidents were subject to certain financial responsibility requirements. The biennial budget act retained and modified these financial responsibility requirements following a motor vehicle accident while also requiring insurance coverage for motor vehicles operated in this state.

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Under current law, if a motor vehicle accident results in injury, death, or property damage of \$1,000 or more, the Department of Transportation (DOT) is required to notify the operator and owner of the vehicle involved in the accident that the person must deposit with DOT security for the accident in an amount specified by DOT, which DOT has determined is sufficient to satisfy any judgment for damages resulting from the accident. Unless an exception applies, if a person fails to timely deposit security after this notice, DOT must suspend the person's operating privilege if the person was the vehicle operator and suspend all vehicle registrations of the person if the person was the vehicle owner. One of the exceptions is that the person provides proof of financial responsibility. In addition, if DOT receives a certified copy of a judgment for damages of \$500 or more arising out of a motor vehicle accident, DOT must immediately suspend the operating privilege and all registrations of the person against whom the judgment was rendered unless the person can provide proof of financial responsibility. In both situations, proof of financial responsibility includes coverage under a motor vehicle liability insurance policy with the following minimum limits, exclusive of interest and costs, for any single accident:

1. Before January 1, 2010, \$25,000 for bodily injury to or death of one person, \$50,000 for bodily injury to or death of more than one person, and \$10,000 for property damage.

2. From January 1, 2010, to December 31, 2016, \$50,000 for bodily injury to or death of one person, \$100,000 for bodily injury to or death of more than one person, and \$15,000 for property damage.

3. After December 31, 2016, the limits specified in item 2., above, adjusted for inflation and published by DOT.

This bill decreases the minimum limits required under a policy that is acceptable proof of financial responsibility to \$25,000 for bodily injury to or death of one person, \$50,000 for bodily injury to or death of more than one person, and \$10,000 for property damage. The bill also eliminates inflation adjustments for these limits and eliminates statutory language that these limits are determined exclusive of interest and costs.

This bill does not eliminate the provisions of the biennial budget act that, as of June 1, 2010, prohibit a person from operating a motor vehicle in this state unless the owner or operator has a motor vehicle liability insurance policy in effect with respect to the motor vehicle. However, the bill affects these provisions by reducing the required coverage from the minimum limits specified in items 1. to 3., above, to \$25,000 for bodily injury to or death of one person, \$50,000 for bodily injury to or death of more than one person, and \$10,000 for property damage.

Uninsured motorist and medical payments coverages

Before the biennial budget act, all motor vehicle liability insurance policies were required to include uninsured motorist coverage in limits of at least \$25,000 per person and \$50,000 per accident and medical payments coverage in the amount of at least \$1,000 per person, although an insured could reject medical payments coverage. Uninsured motorist coverage provides coverage for persons who are legally entitled to recover damages for bodily injury from owners or operators of motor vehicles that are not insured. Medical payments coverage pays for medical or

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chiropractic services provided to persons who are injured while using the insured motor vehicle. Starting on November 1, 2009, as a result of provisions in the biennial budget act, the minimum limits for uninsured motorist coverage that motor vehicle liability insurance policies must include, except for those written by town mutuals, is \$100,000 per person and \$300,000 per accident and the minimum limits for medical payments coverage that those policies must include is \$10,000. This bill changes the required minimum limits back to \$25,000 per person and \$50,000 per accident for uninsured motorist coverage and back to \$1,000 per person for medical payments coverage.

Underinsured motorist coverage

Before the biennial budget act, motor vehicle liability insurance policies did not have to include underinsured motorist coverage but insurers were required to provide written notice of the availability of that coverage and, if an insured accepted underinsured motorist coverage after receiving notice of its availability, the policy had to include the coverage in limits of at least \$50,000 per person and \$100,000 per accident. Underinsured motorist coverage provides coverage for persons who are legally entitled to recover damages for bodily injury from owners or operators of underinsured motor vehicles. “Underinsured motor vehicle” was not defined in the statutes.

The biennial budget act eliminated the requirement to provide notice of the availability of underinsured motorist coverage and required, starting on November 1, 2009, every motor vehicle liability insurance policy, except for those written by town mutuals, to include that coverage in limits of at least \$100,000 per person and \$300,000 per accident. In addition, current law now defines an underinsured motor vehicle as a motor vehicle that is involved in an accident with an insured and which, at the time of the accident, was covered by a motor vehicle liability insurance policy with liability limits that are less than the amount needed to fully compensate the insured for his or her damages. The bill retains the requirement that underinsured motorist coverage be provided in every motor vehicle liability insurance policy, except for those written by town mutuals, and reduces the minimum required limits to \$50,000 per person and \$100,000 per accident. Also, the bill modifies the definition of an underinsured motor vehicle to one with liability limits that are lower than the limits of the insured’s underinsured motorist coverage. The effect of this change is that, regardless of the extent of the insured’s damages, there is no coverage under the insured’s underinsured motorist coverage if the other vehicle involved in the accident has liability limits at least as great as the limits of the insured’s underinsured motorist coverage.

Umbrella and excess liability insurance policies

Current law, as a result of provisions in the biennial budget act, requires an insurer, except for a town mutual, that writes umbrella or excess liability policies that cover motor vehicle liability to make a written offer of both uninsured motorist coverage and underinsured motorist coverage whenever application is made for such an umbrella or excess liability policy. An applicant or insured may reject the coverage, but must do so in writing. If an insurer fails to provide a required written offer of uninsured or underinsured motorist coverage and the umbrella or excess

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liability policy does not include the coverage, or coverages, for which an offer was not given, a court must, on the request of the insured, reform the policy to include the coverage or coverages with the same limits as the liability coverage limits under the policy. Current law also excludes umbrella and excess liability policies from the statutory requirements related to the types of coverage that must be provided in a policy that covers motor vehicles and the minimum limits required for those types of coverage (coverage and limits requirements).

The bill restores former law by eliminating the requirement that an insurer writing an umbrella or excess liability policy must make a written offer of uninsured motorist coverage and underinsured motorist coverage and the requirement that a court must reform such a policy to include either coverage. However, the bill retains the current law provision that umbrella and excess liability policies are not subject to the coverage and limits requirements. In addition, the bill also excludes commercial liability policies from the coverage and limits requirements and defines those policies as ones that are intended principally to provide primary coverage for an insured's general liability arising out of its business or other commercial activities but that include coverage for the insured's liability arising out of the ownership, maintenance, or use of a motor vehicle as one component of the policy.

Miscellaneous motor vehicle insurance provisions

Current law, as a result of provisions in the biennial budget act, defines an uninsured motor vehicle as including not only an unidentified motor vehicle involved in a hit-and-run accident with an insured but also an unidentified motor vehicle that is simply involved in an accident with the insured, provided that an independent third party provides evidence in support of the unidentified motor vehicle's involvement in the accident. The bill replaces that part of the definition of an uninsured motor vehicle with a "phantom motor vehicle," which is defined as one that is involved in an accident with the insured, that does not make contact with the insured or a vehicle the insured is occupying at the time of the accident, and for which neither the owner nor the operator can be ascertained. Additionally, the facts of the accident must be corroborated by competent evidence provided by someone other than the insured or any other person who makes an underinsured motorist claim as a result of the accident, the accident must be reported to the police or other authorities within 72 hours, and the insured or his or her legal representative must, within 30 days, file with the insurer a statement under oath that the insured has a cause of action for damages against a person whose identity cannot be ascertained and that sets forth the facts supporting the statement. The bill also excludes a motor vehicle that is owned by a governmental unit from the definition of an uninsured motor vehicle.

Current law, as a result of provisions in the biennial budget act, makes a number of formerly permissible provisions prohibited in a motor vehicle liability insurance policy. The bill restores former law, making the following provisions permissible in a motor vehicle liability insurance policy:

1. Providing that, regardless of the number of policies, persons, or vehicles involved, the limits for any coverage under the policy may not be added to the limits

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for similar coverage applying to other motor vehicles to determine an overall limit of coverage available for a person in any one accident.

2. Providing that the maximum amount of uninsured or underinsured motorist coverage available for bodily injury or death suffered by a person not using a motor vehicle in an accident (such as a pedestrian) is the highest single limit of uninsured or underinsured motorist coverage for any vehicle with respect to which the person is insured at the time of the accident.

3. Providing that the maximum amount of medical payments coverage available for bodily injury or death suffered by a person not using a motor vehicle in an accident is the highest single limit of medical payments coverage for any vehicle with respect to which the person is insured at the time of the accident.

4. Providing that the limits under the policy for uninsured or underinsured motorist coverage for bodily injury or death resulting from an accident shall be reduced by amounts paid or payable by or on behalf of a person or organization that is legally responsible for the bodily injury or death; amounts paid or payable under any worker's compensation law; or amounts paid or payable under any disability benefits laws.

Current law provides that an insurer may not place an applicant for motor vehicle insurance in a high-risk category on the basis that the applicant has not previously had motor vehicle insurance. The bill removes this prohibition.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 121.555 (2) (a) of the statutes is amended to read:
- 2 121.555 (2) (a) *Insurance.* If the vehicle is owned or leased by a school or a
- 3 school bus contractor, or is a vehicle authorized under sub. (1) (b), it shall comply with
- 4 s. 121.53. If the vehicle is transporting 9 or less fewer persons in addition to the
- 5 operator and is not owned or leased by a school or by a school bus contractor, it shall
- 6 be insured by a policy providing property damage coverage with a limit of not less
- 7 than \$10,000 and bodily injury liability coverage with limits, ~~as of the policy's~~
- 8 ~~effective date, equal to or greater than the minimum liability limits, as defined in s.~~
- 9 344.01 (2) (am) of not less than \$25,000 for each person, and, subject to the limit for
- 10 each person, a total limit of not less than \$50,000 for each accident.
- 11 **SECTION 2.** 227.01 (13) (zz) of the statutes is repealed.

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1 **SECTION 3.** 344.01 (2) (am) of the statutes is repealed.

2 **SECTION 4.** 344.01 (2) (d) of the statutes is amended to read:

3 344.01 **(2)** (d) “Proof of financial responsibility” or “proof of financial
4 responsibility for the future” means proof of ability to respond in damages for
5 liability on account of accidents occurring subsequent to the effective date of such
6 proof, arising out of the maintenance or use of a motor vehicle, in ~~an~~ the amount, ~~as~~
7 ~~of the date that proof is furnished to the department, equal to or greater than the~~
8 minimum liability limits \$25,000 because of bodily injury to or death of one person
9 in any one accident and, subject to that limit for one person, in the amount of \$50,000
10 because of bodily injury to or death of 2 or more persons in any one accident and in
11 the amount of \$10,000 because of injury to or destruction of property of others in any
12 one accident.

13 **SECTION 5.** 344.11 of the statutes is repealed.

14 **SECTION 6.** 344.15 (1) (intro.), (a) and (b) of the statutes are consolidated,
15 renumbered 344.15 (1) and amended to read:

16 344.15 **(1)** No policy or bond is effective under s. 344.14 unless ~~all of the~~
17 ~~following apply:~~ (a) ~~The policy or bond is issued by an insurer authorized to do an~~
18 ~~automobile liability or surety business in this state, except as provided in sub. (2).~~
19 ~~(b) The limits of liability under the, or unless the policy or bond, as of the date of the~~
20 ~~accident, are equal to or greater than the minimum liability limits~~ is subject, if the
21 accident has resulted in bodily injury or death, to a limit of not less than \$25,000
22 because of bodily injury to or death of one person in any one accident and, subject to
23 that limit for one person, to a limit of not less than \$50,000 because of bodily injury
24 to or death of 2 or more persons in any one accident and, if the accident has resulted

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1 in injury to or destruction of property, to a limit of not less than \$10,000 because of
2 injury to or destruction of property of others in any one accident.

3 **SECTION 7.** 344.33 (2) of the statutes is renumbered 344.33 (2) (intro.) and
4 amended to read:

5 344.33 (2) MOTOR VEHICLE LIABILITY POLICY. (intro.) A motor vehicle policy of
6 liability insurance shall insure the person named therein using any motor vehicle
7 with the express or implied permission of the owner, or shall insure any motor vehicle
8 owned by the named insured and any person using such motor vehicle with the
9 express or implied permission of the named insured, against loss from the liability
10 imposed by law for damages arising out of the maintenance or use of the motor
11 vehicle within the United States of America or the Dominion of Canada, subject to
12 the ~~minimum liability~~ following limits with respect to each such motor vehicle.:

13 **SECTION 8.** 344.33 (2) (a) of the statutes is created to read:

14 344.33 (2) (a) Twenty-five thousand dollars because of bodily injury to or death
15 of one person in any one accident.

16 **SECTION 9.** 344.33 (2) (b) of the statutes is created to read:

17 344.33 (2) (b) Subject to the limit under par. (a) for one person, \$50,000 because
18 of bodily injury to or death of 2 or more persons in any one accident.

19 **SECTION 10.** 344.33 (2) (c) of the statutes is created to read:

20 344.33 (2) (c) Ten thousand dollars because of injury to or destruction of
21 property of others in any one accident.

22 **SECTION 11.** 344.55 (1) (intro.) of the statutes is amended to read:

23 344.55 (1) (intro.) No motor vehicle may be used as a human service vehicle
24 unless a policy of bodily injury and property damage liability insurance, issued by
25 an insurer authorized to transact business in this state, is maintained thereon. The

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1 policy shall provide property damage liability coverage with a limit of not less than
2 \$10,000. The policy also shall provide bodily injury liability coverage with limits, as
3 of the policy's effective date, of at least the minimum liability limits or, if greater, of
4 not less than \$75,000 for each person and, subject to such limit for each person, total
5 limits as follows:

6 **SECTION 12.** 631.43 (3) of the statutes is amended to read:

7 631.43 (3) EXCEPTION. Subsection (1) does not affect the rights of insurers to
8 limit ~~or~~, restrict, reduce, or exclude coverage under s. 632.32 (5) (b) ~~or~~, (c), or (f) to (j).

9 **SECTION 13.** 632.32 (2) (ac) of the statutes is created to read:

10 632.32 (2) (ac) “Commercial liability policy” means any form of liability
11 insurance policy, including a commercial or business package policy or a policy
12 written on farm and agricultural operations, that is intended principally to provide
13 primary coverage for the insured’s general liability arising out of its business or other
14 commercial activities, and that includes coverage for the insured’s liability arising
15 out of the ownership, maintenance, or use of a motor vehicle as only one component
16 of the policy or as coverage that is only incidental to the principal purpose of the
17 policy. “Commercial liability policy” does not include a worker’s compensation policy.

18 **SECTION 14.** 632.32 (2) (bh) of the statutes is created to read:

19 632.32 (2) (bh) “Phantom motor vehicle” means a motor vehicle to which all of
20 the following apply:

21 1. The motor vehicle is involved in an accident with a person who has uninsured
22 motorist coverage.

23 2. In the accident, the motor vehicle makes no physical contact with the insured
24 or with a vehicle the insured is occupying.

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1 3. The identity of neither the operator nor the owner of the motor vehicle can
2 be ascertained.

3 **SECTION 15.** 632.32 (2) (e) 3. of the statutes is amended to read:

4 632.32 (2) (e) 3. The limits under the bodily injury liability insurance policy or
5 with respect to the proof of financial responsibility or self-insurance are less than
6 the amount needed to fully compensate the insured for his or her damages limits of
7 the insured's underinsured motorist coverage.

8 **SECTION 16.** 632.32 (2) (g) (intro.) of the statutes is amended to read:

9 632.32 (2) (g) (intro.) “Uninsured motor vehicle” means a motor vehicle, other
10 than a motor vehicle owned by a governmental unit, that is involved in an accident
11 with a person who has uninsured motorist coverage and with respect to which, at the
12 time of the accident, a bodily injury liability insurance policy is not in effect and the
13 owner or operator has not furnished proof of financial responsibility for the future
14 under subch. III of ch. 344 and is not a self-insurer under any other applicable motor
15 vehicle law. “Uninsured motor vehicle” also includes any of the following motor
16 vehicles, other than a motor vehicle owned by a governmental unit, involved in an
17 accident with a person who has uninsured motorist coverage:

18 **SECTION 17.** 632.32 (2) (g) 2. of the statutes is repealed and recreated to read:

19 632.32 (2) (g) 2. A phantom motor vehicle, if all of the following apply:

20 a. The facts of the accident are corroborated by competent evidence that is
21 provided by someone other than the insured or any other person who makes a claim
22 against the uninsured motorist coverage as a result of the accident.

23 b. Within 72 hours after the accident, the insured or someone on behalf of the
24 insured reports the accident to a police, peace, or judicial officer or to the department

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1 of transportation or, if the accident occurs outside of Wisconsin, the equivalent
2 agency in the state where the accident occurs.

3 c. Within 30 days after the accident occurs, the insured or someone on behalf
4 of the insured files with the insurer a statement under oath that the insured or a legal
5 representative of the insured has a cause of action arising out of the accident for
6 damages against a person whose identity is not ascertainable and setting forth the
7 facts in support of the statement.

8 **SECTION 18.** 632.32 (4) (a) 1. of the statutes is amended to read:

9 632.32 (4) (a) 1. Excluding a policy written by a town mutual organized under
10 ch. 612, uninsured motorist coverage, in limits of at least \$100,000 \$25,000 per
11 person and \$300,000 \$50,000 per accident.

12 **SECTION 19.** 632.32 (4) (a) 2m. of the statutes is amended to read:

13 632.32 (4) (a) 2m. Excluding a policy written by a town mutual organized under
14 ch. 612, underinsured motorist coverage, in limits of at least \$100,000 \$50,000 per
15 person and \$300,000 \$100,000 per accident.

16 **SECTION 20.** 632.32 (4) (a) 3m. of the statutes is amended to read:

17 632.32 (4) (a) 3m. Medical payments coverage, in the amount of at least \$10,000
18 \$1,000 per person. Coverage written under this subdivision may be excess coverage
19 over any other source of reimbursement to which the insured person has a legal right.

20 **SECTION 21.** 632.32 (4) (d) of the statutes is amended to read:

21 632.32 (4) (d) This subsection does not apply to commercial liability policies or
22 umbrella or excess liability policies, which are subject to sub. (4r).

23 **SECTION 22.** 632.32 (4r) of the statutes is repealed.

24 **SECTION 23.** 632.32 (6) (d) of the statutes is renumbered 632.32 (5) (f) and
25 amended to read:

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1 632.32 (5) (f) ~~No A~~ policy may provide that, regardless of the number of policies
2 involved, vehicles involved, persons covered, claims made, vehicles or premiums
3 shown on the policy, or premiums paid, the limits for any ~~uninsured motorist~~
4 ~~coverage or underinsured motorist coverage~~ under the policy may not be added to the
5 limits for similar coverage applying to other motor vehicles to determine the limit of
6 insurance coverage available for bodily injury or death suffered by a person in any
7 one accident, ~~except that a policy may limit the number of motor vehicles for which~~
8 ~~the limits for coverage may be added to 3 vehicles.~~

9 **SECTION 24.** 632.32 (6) (e) of the statutes is renumbered 632.32 (5) (g) and
10 amended to read:

11 632.32 (5) (g) ~~No A~~ policy may provide that the maximum amount of uninsured
12 motorist coverage ~~or~~, underinsured motorist coverage, or medical payments coverage
13 available for bodily injury or death suffered by a person who was not using a motor
14 vehicle at the time of an accident is ~~any~~ the highest single limit of uninsured motorist
15 coverage ~~or~~, underinsured motorist coverage, or medical payments coverage,
16 whichever is applicable, for any motor vehicle with respect to which the person is
17 insured, ~~except that a policy may limit the number of motor vehicles for which~~
18 ~~coverage limits may be added to 3 vehicles.~~

19 **SECTION 25.** 632.32 (6) (f) of the statutes is repealed.

20 **SECTION 26.** 632.32 (6) (g) of the statutes is renumbered 632.32 (5) (i), and
21 632.32 (5) (i) (intro.), as renumbered, is amended to read:

22 632.32 (5) (i) (intro.) ~~No A~~ policy may provide that the limits under the policy
23 for uninsured motorist coverage or underinsured motorist coverage for bodily injury
24 or death resulting from any one accident shall be reduced by any of the following that
25 apply:

