

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 3115

By: Peterson (Ron)

AS INTRODUCED

An Act relating to motor vehicle insurance; amending 36 O.S. 2001, Section 942, as amended by Section 11, Chapter 519, O.S.L. 2004 (36 O.S. 2001, Section 942), which relates to use of traffic records in determining certain actions regarding motor vehicle policies; modifying length of time record may be considered for certain offenses; amending 36 O.S. 2001, Section 3636, as amended by Section 25, Chapter 519, O.S.L. 2004 (36 O.S. Supp. 2005, Section 3636), which relates to uninsured motorist coverage; providing that form rejecting or selecting lower limits remains valid when modifications or changes in policy status occur; providing that completion of new forms is not required upon the happening of certain circumstances; providing that certain modifications or changes in status of policy to not create new coverage; modifying prescribed form; limiting recovery for damages or claims against insurer for liability for motor vehicle accidents in certain circumstances; providing exceptions; providing who may assert limitation; repealing 47 O.S. 2001, Section 7-608, which relates to certain notice requirements; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 2001, Section 942, as amended by Section 11, Chapter 519, O.S.L. 2004 (36 O.S. Supp. 2005, Section 942), is amended to read as follows:

Section 942. Any insurance carrier that issues motor vehicle liability or collision insurance policies in this state shall not establish or apply premium rates, increase premium rates, cancel a policy, or refuse to issue or renew a policy, based on any traffic record maintained by the Department of Public Safety which covers a period of time more than three (3) years prior to the date the insurance carrier makes a determination to take any such action; provided however, those offenses that are provided for in subsection

C of Section 941 of this title and the offense of reckless driving as provided for in Section 11-901 of Title 47 of the Oklahoma Statutes may be considered by an insurance carrier for a period of not more than five (5) years.

SECTION 2. AMENDATORY 36 O.S. 2001, Section 3636, as amended by Section 25, Chapter 519, O.S.L. 2004 (36 O.S. Supp. 2005, Section 3636), is amended to read as follows:

Section 3636. A. No policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be issued, delivered, renewed, or extended in this state with respect to a motor vehicle registered or principally garaged in this state unless the policy includes the coverage described in subsection B of this section.

B. The policy referred to in subsection A of this section shall provide coverage therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death resulting therefrom. Coverage shall be not less than the amounts or limits prescribed for bodily injury or death for a policy meeting the requirements of Section 7-204 of Title 47 of the Oklahoma Statutes, as the same may be hereafter amended; provided, however, that increased limits of liability shall be offered and purchased if desired, not to exceed the limits provided in the policy of bodily injury liability of the insured. The uninsured motorist coverage shall be upon a form approved by the Insurance Commissioner as otherwise provided in the Insurance Code and may provide that the parties to the contract shall, upon demand of either, submit their differences to arbitration; provided, that if agreement by arbitration is not reached within three (3) months from date of demand, the insured may sue the tort-feasor.

C. For the purposes of this coverage the term "uninsured motor vehicle" shall include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency. For the purposes of this coverage the term "uninsured motor vehicle" shall also include an insured motor vehicle, the liability limits of which are less than the amount of the claim of the person or persons making such claim, regardless of the amount of coverage of either of the parties in relation to each other.

D. An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within one (1) year after such an accident. Nothing herein contained shall be construed to prevent any insurer from according insolvency protection under terms and conditions more favorable to its insured than is provided hereunder.

E. For purposes of this section, there is no coverage for any insured while occupying a motor vehicle owned by, or furnished or available for the regular use of the named insured, a resident spouse of the named insured, or a resident relative of the named insured, if such motor vehicle is not insured by a motor vehicle insurance policy.

F. In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer. Provided, however, with respect to payments made by reason of the coverage

described in subsection C of this section, the insurer making such payment shall not be entitled to any right of recovery against such tort-feasor in excess of the proceeds recovered from the assets of the insolvent insurer of said tort-feasor. Provided further, that any payment made by the insured tort-feasor shall not reduce or be a credit against the total liability limits as provided in the insured's own uninsured motorist coverage. Provided further, that if a tentative agreement to settle for liability limits has been reached with an insured tort-feasor, written notice shall be given by certified mail to the uninsured motorist coverage insurer by its insured. Such written notice shall include:

1. Written documentation of pecuniary losses incurred, including copies of all medical bills; and
2. Written authorization or a court order to obtain reports from all employers and medical providers. Within sixty (60) days of receipt of this written notice, the uninsured motorist coverage insurer may substitute its payment to the insured for the tentative settlement amount. The uninsured motorist coverage insurer shall then be entitled to the insured's right of recovery to the extent of such payment and any settlement under the uninsured motorist coverage. If the uninsured motorist coverage insurer fails to pay the insured the amount of the tentative tort settlement within sixty (60) days, the uninsured motorist coverage insurer has no right to the proceeds of any settlement or judgment, as provided herein, for any amount paid under the uninsured motorist coverage.

G. A named insured or applicant shall have the right to reject uninsured motorist coverage in writing, ~~and except that unless a named insured or applicant requests such coverage in writing, such coverage need not be provided in or supplemental to any renewal, reinstatement, substitute, amended or replacement policy where a named insured or applicant had rejected the coverage in connection with a policy previously issued to him by the same insurer.~~ The form

signed by the insured or applicant which initially rejects coverage or selects lower limits shall remain valid for the life of the policy and the completion of a new selection form shall not be required when a renewal, reinstatement, substitute, replacement, or amended policy is issued to the same named insured by the same insurer or any of its affiliates. Any changes to an existing policy, regardless of whether these changes create new coverage, do not create a new policy and do not require the completion of a new form.

H. ~~Notwithstanding the provisions of this section, the following are the only instances in which a new form affecting uninsured motorist coverage shall be required:~~

~~1. When an insurer is notified of a change in or an additional named insured;~~

~~2. When there is an additional vehicle that is not a replacement vehicle; provided, a new form shall not be required for the addition, substitution or deletion of a vehicle from a commercial automobile liability policy; or~~

~~3. When the amount of bodily injury liability coverage is amended. Provided, any change in premium alone shall not require the issuance of a new form.~~

After selection of limits, rejection, or exercise of the option not to purchase uninsured motorist coverage by a named insured or applicant for insurance, the insurer shall not be required to notify any insured in any renewal, reinstatement, substitute, amended or replacement policy as to the availability of such uninsured motorist coverage or such optional limits. Such selection, rejection, or exercise of the option not to purchase uninsured motorist coverage by a named insured or an applicant shall be valid for all insureds under the policy and shall continue until a named insured requests in writing that the uninsured motorist coverage be added to an existing or future policy of insurance.

I. Effective for forms required before April 1, 2005, the offer of the coverage required by subsection B of this section shall be in the following form which shall be filed with and approved by the Insurance Commissioner. The form shall be provided to the proposed insured in writing separately from the application and shall read substantially as follows:

OKLAHOMA UNINSURED MOTORIST COVERAGE LAW

Oklahoma law gives you the right to buy Uninsured Motorist coverage in the same amount as your bodily injury liability coverage. THE LAW REQUIRES US TO ADVISE YOU OF THIS VALUABLE RIGHT FOR THE PROTECTION OF YOU, MEMBERS OF YOUR FAMILY, AND OTHER PEOPLE WHO MAY BE HURT WHILE RIDING IN YOUR INSURED VEHICLE. YOU SHOULD SERIOUSLY CONSIDER BUYING THIS COVERAGE IN THE SAME AMOUNT AS YOUR LIABILITY INSURANCE COVERAGE LIMIT.

Uninsured Motorist coverage, unless otherwise provided in your policy, pays for bodily injury damages to you, members of your family who live with you, and other people riding in your car who are injured by: (1) an uninsured motorist, (2) a hit-and-run motorist, or (3) an insured motorist who does not have enough liability insurance to pay for bodily injury damages to any insured person. Uninsured Motorist coverage, unless otherwise provided in your policy, protects you and family members who live with you while riding in any vehicle or while a pedestrian. THE COST OF THIS COVERAGE IS SMALL COMPARED WITH THE BENEFITS!

You may make one of four choices about Uninsured Motorist Coverage:

1. You may buy Uninsured Motorist coverage equal to your bodily injury liability coverage for \$_____ for ____ months.

2. You may buy Uninsured Motorist coverage in the amount of \$10,000.00 for each person injured, not to exceed \$20,000.00 for two or more persons injured in one occurrence (the smallest coverage which Oklahoma law allows) for \$_____ for ____ months.

3. You may buy Uninsured Motorist coverage in an amount less than your bodily injury liability coverage but more than the minimum levels.

4. You may reject Uninsured Motorist coverage.

Please indicate below what Uninsured Motorist coverage you want:

___ I want the same amount of Uninsured Motorist coverage as my bodily injury liability coverage.

___ I want minimum Uninsured Motorist coverage (\$10,000.00 per person/\$20,000.00 per occurrence).

___ I want Uninsured Motorist coverage in the following amount:
\$ _____ per person/\$ _____ per occurrence.

___ I want to reject Uninsured Motorist coverage.

Proposed Insured

THIS FORM IS NOT A PART OF YOUR POLICY AND DOES NOT PROVIDE COVERAGE.

J. The Insurance Commissioner shall approve a deviation to the form described in subsection I of this section if the form includes substantially the same information.

K. The following are effective on forms required on or after April 1, 2005. The offer of the coverage required by subsection B of this section shall be in the following form which shall be filed with and approved by the Insurance Commissioner. The form shall be provided to the proposed insured in writing separately from the application and shall read substantially as follows:

OKLAHOMA UNINSURED MOTORIST COVERAGE LAW

Oklahoma law gives you the right to buy Uninsured Motorist coverage in the same amount as your bodily injury liability coverage. THE LAW REQUIRES US TO ADVISE YOU OF THIS VALUABLE RIGHT FOR THE PROTECTION OF YOU, MEMBERS OF YOUR FAMILY, AND OTHER PEOPLE WHO MAY BE HURT WHILE RIDING IN YOUR INSURED VEHICLE. YOU SHOULD

SERIOUSLY CONSIDER BUYING THIS COVERAGE IN THE SAME AMOUNT AS YOUR LIABILITY INSURANCE COVERAGE LIMIT.

Uninsured Motorist coverage, unless otherwise provided in your policy, pays for bodily injury damages to you, members of your family who live with you, and other people riding in your car who are injured by: (1) an uninsured motorist, (2) a hit-and-run motorist, or (3) an insured motorist who does not have enough liability insurance to pay for bodily injury damages to any insured person. Uninsured Motorist coverage, unless otherwise provided in your policy, protects you and family members who live with you while riding in any vehicle or while a pedestrian. THE COST OF THIS COVERAGE IS SMALL COMPARED WITH THE BENEFITS!

You may make one of four choices about Uninsured Motorist Coverage:

~~1. You may buy Uninsured Motorist coverage equal to your bodily injury liability coverage for \$ _____ for _____ months.~~

~~2. You may buy Uninsured Motorist coverage in the amount of \$25,000.00 for each person injured, not to exceed \$50,000.00 for two or more persons injured in one occurrence (the smallest coverage which Oklahoma allows) for \$ _____ for _____ months.~~

~~3. You may buy Uninsured Motorist coverage in an amount less than your bodily injury liability coverage, but more than the minimum levels.~~

~~4. You may reject Uninsured Motorist coverage.~~

_____ I want the same amount of Uninsured Motorist coverage as my bodily injury liability coverage.

_____ I want minimum Uninsured Motorist coverage \$25,000.00 per person/\$50,000.00 per occurrence.

_____ I want Uninsured Motorist coverage in the following amount:
\$ _____ per person/\$ _____ per occurrence.

_____ I want to reject Uninsured Motorist coverage.

Proposed Insured

THIS FORM IS NOT A PART OF YOUR POLICY AND DOES NOT PROVIDE
COVERAGE.

L. The Insurance Commissioner shall approve a deviation from the form described in subsection K of this section if the form includes substantially the same information.

M. A change in the bodily injury liability coverage due to a change in the amount or limits prescribed for bodily injury or death by a policy meeting the requirements of Section 7-204 of Title 47 of the Oklahoma Statutes shall not be considered an amendment of the bodily injury liability coverage ~~under paragraph 3 of subsection H of this section~~ and shall not require the completion of a new form.

N. On the first renewal on or after April 1, 2005, the insurer shall change the Uninsured Motorist coverage limits to \$25,000.00 per person/\$50,000.00 per occurrence and charge the corresponding premium for existing policyholders who have selected Uninsured Motorist coverage limits less than \$25,000.00 per person/\$50,000.00 per occurrence. At the first renewal on or after April 1, 2005, the insurer shall provide existing policyholders who have selected Uninsured Motorist coverage limits less than \$25,000.00 per person/\$50,000.00 per occurrence a notice of the change of their Uninsured Motorist coverage limits and that notice shall state how such policyholders may reject Uninsured Motorist coverage limits or select Uninsured Motorist coverage with limits higher than \$25,000.00 per person/\$50,000.00 per occurrence. No notice shall be required to existing policyholders who have rejected Uninsured Motorist coverage or have selected Uninsured Motorist coverage limits equal to or greater than \$25,000.00 per person/\$50,000.00 per occurrence. For purposes of this subsection an existing policyholder is a policyholder who purchased a policy from the insurer before April 1, 2005, and such policy renews on or after April 1, 2005.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7-611 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection B of this section, in any civil action to recover damages arising out of an accident involving the operation of a motor vehicle or for any claim against another party's motor vehicle liability insurance coverage, the maximum amount that a plaintiff or claimant may receive, if the plaintiff or claimant is not in compliance with the Compulsory Insurance Law, shall be limited to the amount of medical costs, property damage, and lost income and shall not include any award for pain and suffering.

B. The limitations provided for in subsection A of this section shall not apply:

1. If the plaintiff or claimant was injured by a motorist who at the time of the accident was operating or using a motor vehicle while intoxicated in violation of any provision of law relating to the illegal operation or use of a motor vehicle while intoxicated, and that motorist was convicted of, or pled guilty or nolo contendere to, the offense;

2. If the plaintiff or claimant was a passenger in a motor vehicle involved in the accident, unless the plaintiff or claimant is an owner of the vehicle;

3. If the plaintiff or claimant was not in any motor vehicle involved in the accident;

4. To wrongful death claims; or

5. If the motorist who caused the accident:

a. intentionally causes the accident,

b. leaves the scene of the accident, or

c. at the time of the accident, is acting in furtherance of the commission of a felony.

C. Each person who is involved in the accident which is the basis for the action or claim by the plaintiff or claimant and who is found liable for damages to the plaintiff or claimant may assert the limitation of recovery provided for in subsection A of this section, unless any of the provisions of subsection B of this section apply. The person's motor vehicle liability insurer also may assert the limitation.

SECTION 4. REPEALER 47 O.S. 2001, Section 7-608, is hereby repealed.

SECTION 5. This act shall become effective November 1, 2006.

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