

THE HOUSE OF REPRESENTATIVES
Tuesday, February 27, 2007

House Bill No. 1961

HOUSE BILL NO. 1961 - By: PETERSON (Ron) of the House and BROWN of the Senate.

An Act relating to motor vehicle insurance; amending 36 O.S. 2001, Section 3636, as amended by Section 25, Chapter 519, O.S.L. 2004 (36 O.S. Supp. 2006, Section 3636), which relates to uninsured motorist coverage; providing that forms rejecting or selecting lower limits remain 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 do 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, as amended by Section 7, Chapter 322, O.S.L. 2006 (47 O.S. Supp. 2006, 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:

1 SECTION 1. AMENDATORY 36 O.S. 2001, Section 3636, as amended by
2 Section 25, Chapter 519, O.S.L. 2004 (36 O.S. Supp. 2006, Section 3636), is amended to
3 read as follows:
4 Section 3636. A. No policy insuring against loss resulting from liability imposed by
5 law for bodily injury or death suffered by any person arising out of the ownership,
6 maintenance or use of a motor vehicle shall be issued, delivered, renewed, or extended in
7 this state with respect to a motor vehicle registered or principally garaged in this state
8 unless the policy includes the coverage described in subsection B of this section.

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

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

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

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

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

17 Provided, however, with respect to payments made by reason of the coverage described in
18 subsection C of this section, the insurer making such payment shall not be entitled to
19 any right of recovery against such tortfeasor in excess of the proceeds recovered from the
20 assets of the insolvent insurer of said tortfeasor. Provided further, that any payment
21 made by the insured tortfeasor shall not reduce or be a credit against the total liability
22 limits as provided in the insured's own uninsured motorist coverage. Provided further,

1 that if a tentative agreement to settle for liability limits has been reached with an
2 insured tortfeasor, written notice shall be given by certified mail to the uninsured
3 motorist coverage insurer by its insured. Such written notice shall include:

4 1. Written documentation of pecuniary losses incurred, including copies of all
5 medical bills; and

6 2. Written authorization or a court order to obtain reports from all employers and
7 medical providers. Within sixty (60) days of receipt of this written notice, the uninsured
8 motorist coverage insurer may substitute its payment to the insured for the tentative
9 settlement amount. The uninsured motorist coverage insurer shall then be entitled to
10 the insured's right of recovery to the extent of such payment and any settlement under
11 the uninsured motorist coverage. If the uninsured motorist coverage insurer fails to pay
12 the insured the amount of the tentative tort settlement within sixty (60) days, the
13 uninsured motorist coverage insurer has no right to the proceeds of any settlement or
14 judgment, as provided herein, for any amount paid under the uninsured motorist
15 coverage.

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

1 H. ~~Notwithstanding the provisions of this section, the following are the only~~
2 ~~instances in which a new form affecting uninsured motorist coverage shall be required:~~
3 ~~1. When an insurer is notified of a change in or an additional named insured;~~
4 ~~2. When there is an additional vehicle that is not a replacement vehicle; provided, a~~
5 ~~new form shall not be required for the addition, substitution or deletion of a vehicle from~~
6 ~~a commercial automobile liability policy; or~~
7 ~~3. When the amount of bodily injury liability coverage is amended. Provided, any~~
8 ~~change in premium alone shall not require the issuance~~ The form signed by the insured
9 or applicant which initially rejects coverage or selects lower limits shall remain valid for
10 the life of the policy and the completion of a new selection form shall not be required
11 when a renewal, reinstatement, substitute, replacement, or amended policy is issued to
12 the same named insured by the same insurer or any of its affiliates. Any changes to an
13 existing policy, regardless of whether these changes create new coverage, do not create a
14 new policy and do not require the completion of a new form.

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

1 that the uninsured motorist coverage be added to an existing or future policy of
2 insurance.

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

8 OKLAHOMA UNINSURED MOTORIST COVERAGE LAW

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

16 Uninsured Motorist coverage, unless otherwise provided in your policy, pays for
17 bodily injury damages to you, members of your family who live with you, and other
18 people riding in your car who are injured by: (1) an uninsured motorist, (2) a hit-and-run
19 motorist, or (3) an insured motorist who does not have enough liability insurance to pay
20 for bodily injury damages to any insured person. Uninsured Motorist coverage, unless
21 otherwise provided in your policy, protects you and family members who live with you

1 while riding in any vehicle or while a pedestrian. THE COST OF THIS COVERAGE IS
2 SMALL COMPARED WITH THE BENEFITS!

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

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

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

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

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

13 Please indicate by indicating below what Uninsured Motorist coverage you want:

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

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

18 _____ I want Uninsured Motorist coverage in the following amount: \$_____

19 per person/\$_____ per occurrence.

20 _____ I want to reject Uninsured Motorist coverage.

21 _____

22 Proposed Insured

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

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

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

10 OKLAHOMA UNINSURED MOTORIST COVERAGE LAW

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

18 Uninsured Motorist coverage, unless otherwise provided in your policy, pays for
19 bodily injury damages to you, members of your family who live with you, and other
20 people riding in your car who are injured by: (1) an uninsured motorist, (2) a hit-and-run
21 motorist, or (3) an insured motorist who does not have enough liability insurance to pay
22 for bodily injury damages to any insured person. Uninsured Motorist coverage, unless

1 otherwise provided in your policy, protects you and family members who live with you
2 while riding in any vehicle or while a pedestrian. THE COST OF THIS COVERAGE IS
3 SMALL COMPARED WITH THE BENEFITS!

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

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

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

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

13 ~~4. You may reject Uninsured Motorist coverage. by indicating below what~~
14 ~~Uninsured Motorist coverage you want:~~

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

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

19 _____ I want Uninsured Motorist coverage in the following amount:

20 \$_____ per person/\$_____ per occurrence.

21 _____ I want to reject Uninsured Motorist coverage.

22

1 Proposed Insured

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

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

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

12 ~~N.~~ M. On the first renewal on or after April 1, 2005, the insurer shall change the
13 Uninsured Motorist coverage limits to \$25,000.00 per person/\$50,000.00 per occurrence
14 and charge the corresponding premium for existing policyholders who have selected
15 Uninsured Motorist coverage limits less than \$25,000.00 per person/\$50,000.00 per
16 occurrence. At the first renewal on or after April 1, 2005, the insurer shall provide
17 existing policyholders who have selected Uninsured Motorist coverage limits less than
18 \$25,000.00 per person/\$50,000.00 per occurrence a notice of the change of their
19 Uninsured Motorist coverage limits and that notice shall state how such policyholders
20 may reject Uninsured Motorist coverage limits or select Uninsured Motorist coverage
21 with limits higher than \$25,000.00 per person/\$50,000.00 per occurrence. No notice shall
22 be required to existing policyholders who have rejected Uninsured Motorist coverage or

1 have selected Uninsured Motorist coverage limits equal to or greater than \$25,000.00 per
2 person/\$50,000.00 per occurrence. For purposes of this subsection an existing
3 policyholder is a policyholder who purchased a policy from the insurer before April 1,
4 2005, and such policy renews on or after April 1, 2005.

5 SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma
6 Statutes as Section 7-611 of Title 47, unless there is created a duplication in numbering,
7 reads as follows:

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

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

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

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

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

2 4. To wrongful death claims; or

3 5. If the motorist who caused the accident:

4 a. intentionally causes the accident,

5 b. leaves the scene of the accident, or

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

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

13 SECTION 3. REPEALER 47 O.S. 2001, Section 7-608, as amended by Section
14 7, Chapter 322, O.S.L. 2006 (47 O.S. Supp. 2006, Section 7-608), is hereby repealed.

15 SECTION 4. This act shall become effective November 1, 2007.

16 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND
17 FINANCIAL SERVICES, dated 2-26-07 - DO PASS, As Coauthored.