

EHB 1961

1 THE STATE SENATE
2 Monday, April 2, 2007

3 ENGROSSED

4 House Bill No. 1961

5 As Amended

6 ENGROSSED HOUSE BILL NO. 1961 - By: PETERSON (Ron), COVEY, THOMPSON,
7 TIBBS and ADKINS of the House and BROWN of the Senate.

8 [motor vehicle insurance - uninsured motorist coverage -
9 liability for motor vehicle accidents in certain
10 circumstances - codification - effective date]

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

12 SECTION 1. AMENDATORY 36 O.S. 2001, Section 3636, as
13 amended by Section 25, Chapter 519, O.S.L. 2004 (36 O.S. Supp. 2006,
14 Section 3636), is amended to read as follows:

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

22 B. The policy referred to in subsection A of this section shall
23 provide coverage therein or supplemental thereto for the protection
24 of persons insured thereunder who are legally entitled to recover
25 damages from owners or operators of uninsured motor vehicles and

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

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

1 the amount of coverage of either of the parties in relation to each
2 other.

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

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

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

1 however, with respect to payments made by reason of the coverage
2 described in subsection C of this section, the insurer making such
3 payment shall not be entitled to any right of recovery against such
4 tortfeasor in excess of the proceeds recovered from the assets of
5 the insolvent insurer of said tortfeasor. Provided further, that
6 any payment made by the insured tortfeasor shall not reduce or be a
7 credit against the total liability limits as provided in the
8 insured's own uninsured motorist coverage. Provided further, that
9 if a tentative agreement to settle for liability limits has been
10 reached with an insured tortfeasor, written notice shall be given by
11 certified mail to the uninsured motorist coverage insurer by its
12 insured. Such written notice shall include:

- 13 1. Written documentation of pecuniary losses incurred,
14 including copies of all medical bills; and
- 15 2. Written authorization or a court order to obtain reports
16 from all employers and medical providers. Within sixty (60) days of
17 receipt of this written notice, the uninsured motorist coverage
18 insurer may substitute its payment to the insured for the tentative
19 settlement amount. The uninsured motorist coverage insurer shall
20 then be entitled to the insured's right of recovery to the extent of
21 such payment and any settlement under the uninsured motorist
22 coverage. If the uninsured motorist coverage insurer fails to pay
23 the insured the amount of the tentative tort settlement within sixty

1 (60) days, the uninsured motorist coverage insurer has no right to
2 the proceeds of any settlement or judgment, as provided herein, for
3 any amount paid under the uninsured motorist coverage.

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

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

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

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

20 3. ~~When the amount of bodily injury liability coverage is~~
21 ~~amended. Provided, any change in premium alone shall not require~~
22 ~~the issuance~~ The form signed by the insured or applicant which
23 initially rejects coverage or selects lower limits shall remain

1 valid for the life of the policy and the completion of a new
2 selection form shall not be required when a renewal, reinstatement,
3 substitute, replacement, or amended policy is issued to the same
4 named insured by the same insurer or any of its affiliates. Any
5 changes to an existing policy, regardless of whether these changes
6 create new coverage, do not create a new policy and do not require
7 the completion of a new form.

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

19 ~~F.~~ H. Effective for forms required before April 1, 2005, the
20 offer of the coverage required by subsection B of this section shall
21 be in the following form which shall be filed with and approved by
22 the Insurance Commissioner. The form shall be provided to the

1 proposed insured in writing separately from the application and
2 shall read substantially as follows:

3 OKLAHOMA UNINSURED MOTORIST COVERAGE LAW

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

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

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

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

3 ~~2. You may buy Uninsured Motorist coverage in the amount of~~
4 ~~\$10,000.00 for each person injured, not to exceed \$20,000.00 for two~~
5 ~~or more persons injured in one occurrence (the smallest coverage~~
6 ~~which Oklahoma law allows) for \$_____ for _____ months.~~

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

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

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

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

15 _____ I want minimum Uninsured Motorist coverage (~~\$10,000.00~~
16 \$25,000.00 per person/~~\$20,000.00~~ \$50,000.00 per occurrence).

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

19 _____ I want to reject Uninsured Motorist coverage.

20 _____
21 Proposed Insured

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

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

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

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

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

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

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

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

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

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

1 change of their Uninsured Motorist coverage limits and that notice
2 shall state how such policyholders may reject Uninsured Motorist
3 coverage limits or select Uninsured Motorist coverage with limits
4 higher than \$25,000.00 per person/\$50,000.00 per occurrence. No
5 notice shall be required to existing policyholders who have rejected
6 Uninsured Motorist coverage or have selected Uninsured Motorist
7 coverage limits equal to or greater than \$25,000.00 per
8 person/\$50,000.00 per occurrence. For purposes of this subsection
9 an existing policyholder is a policyholder who purchased a policy
10 from the insurer before April 1, 2005, and such policy renews on or
11 after April 1, 2005.

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

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

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

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

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

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

14 4. To wrongful death claims; or

15 5. If the motorist who caused the accident:

16 a. intentionally causes the accident,

17 b. leaves the scene of the accident, or

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

20 C. Each person who is involved in the accident which is the
21 basis for the action or claim by the plaintiff or claimant and who
22 is found liable for damages to the plaintiff or claimant may assert
23 the limitation of recovery provided for in subsection A of this

1 section, unless any of the provisions of subsection B of this
2 section apply. The person's motor vehicle liability insurer also
3 may assert the limitation.

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

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

8 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT & INSURANCE, dated
9 3-29-07 - DO PASS, As Amended.