

service in superior court, a court of limited jurisdiction or in the United States District Court.

Passed the House April 22, 1983.

Passed the Senate April 15, 1983.

Approved by the Governor May 16, 1983.

Filed in Office of Secretary of State May 16, 1983.

## CHAPTER 182

[Engrossed House Bill No. 203]

### PHANTOM VEHICLES—AUTOMOBILE INSURANCE

AN ACT Relating to casualty insurance; amending section 27, chapter 150, Laws of 1967 as last amended by section 1, chapter 150, Laws of 1981 and RCW 48.22.030; and amending section 3, chapter 95, Laws of 1967 ex. sess. as amended by section 2, chapter 117, Laws of 1980 and RCW 48.22.040.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 27, chapter 150, Laws of 1967 as last amended by section 1, chapter 150, Laws of 1981 and RCW 48.22.030 are each amended to read as follows:

(1) "Underinsured motor vehicle" means a motor vehicle with respect to the ownership, maintenance, or use of which either no bodily injury or property damage liability bond or insurance policy applies at the time of an accident, or with respect to which the sum of the limits of liability under all bodily injury or property damage liability bonds and insurance policies applicable to a covered person after an accident is less than the applicable damages which the covered person is legally entitled to recover.

(2) No new policy or renewal of an existing policy insuring against loss resulting from liability imposed by law for bodily injury ((or)),<sub>2</sub> death,<sub>2</sub> or property damage,<sub>2</sub> suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be issued with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of underinsured motor vehicles ((and)),<sub>2</sub> hit-and-run motor vehicles, and phantom vehicles because of bodily injury ((or)),<sub>2</sub> death,<sub>2</sub> or property damage, resulting therefrom, except while operating or occupying a motorcycle or motor-driven cycle, and except while operating or occupying a motor vehicle owned or available for the regular use by the named insured or any family member, and which is not insured under the liability coverage of the policy(~~(- PROVIDED, HOWEVER, That the coverage for property damage need only be offered as an optional supplemental coverage with the issuance of the coverage for bodily injury or death))~~).

(3) Coverage required under subsection (2) of this section shall be in the same amount as the insured's third party liability coverage unless the insured rejects all or part of the coverage as provided in subsection (4) of this section. Coverage for property damage need only be issued in conjunction with coverage for bodily injury or death. Property damage coverage required under subsection (2) of this section shall mean physical damage to the insured motor vehicle unless the policy specifically provides coverage for the contents thereof or other forms of property damage.

(4) The named insured may reject, in writing, underinsured coverage for ~~((either))~~ bodily injury or death, or property damage, and the requirements of subsections (2) and (3) of this section shall not apply. If the named insured has rejected underinsured coverage, such coverage shall not be included in any supplemental or renewal policy unless the named insured subsequently requests such coverage in writing. The requirement of a written rejection under this subsection shall apply only to the original issuance of policies issued after the effective date of this act and not to any renewal or replacement policy.

(5) The limit of liability under the policy coverage may be defined as the maximum limits of liability for all damages resulting from any one accident regardless of the number of covered persons, claims made, or vehicles or premiums shown on the policy, or premiums paid, or vehicles involved in an accident.

(6) The policy may provide that if an injured person has other similar insurance available to him under other policies, the total limits of liability of all coverages shall not exceed the higher of the applicable limits of the respective coverages.

(7) (a) The policy may provide for a deductible of not more than three hundred dollars for payment for property damage when the damage is caused by a hit-and-run driver or a phantom vehicle.

(b) In all other cases of underinsured property damage coverage, the policy may provide for a deductible of not more than one hundred dollars.

(8) For the purposes of this chapter, a "phantom vehicle" shall mean a motor vehicle which causes bodily injury, death, or property damage to an insured ~~((arising out of a motor vehicle accident which is caused by an automobile which))~~ and has no physical contact with the insured or the vehicle which the insured is occupying at the time of the accident((;)) if:

(a) The facts of ~~((which))~~ the accident can be corroborated by competent evidence other than the testimony of the insured or any person having an ~~((uninsured))~~ underinsured motorist claim resulting from the accident((;)); and

(b) ~~((The insured or someone on his behalf shall have reported))~~ The accident has been reported to the appropriate law enforcement agency within seventy-two hours of the accident.

Sec. 2. Section 3, chapter 95, Laws of 1967 ex. sess. as amended by section 2, chapter 117, Laws of 1980 and RCW 48.22.040 are each amended to read as follows:

(1) The term "underinsured motor vehicles" with reference to coverage offered under any insurance policy regulated under this chapter shall, subject to the terms and conditions of such coverage, be deemed to 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.

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

(3) In the event of payment to an insured under the coverage required by this chapter 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 insured against any person or organization legally responsible for the bodily injury, death, or property damage for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer. Whenever an insurer shall make payment under the coverage required by this section and which payment is occasioned by an insolvency, such insurer's right of recovery or reimbursement shall not include any rights against the insured of said insolvent insurer(~~;~~ ~~but~~) for any amounts which would have been paid by the insolvent insurer. Such paying insurer shall have the right to proceed directly against the insolvent insurer or its receiver, and in pursuance of such right such paying insurer shall possess any rights which the insured of the insolvent company might otherwise have had, if the insured of the insolvent insurer had personally made the payment.

NEW SECTION. Sec. 3. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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