IN THE SUPREME COURT OF OHIO

WESTERN ROGERS	:	CASE NO.: 2007-0549
	:	2007-0684
Plaintiff - Appellee	:	
	:	On Appeal from the
	:	Montgomery County
v.	:	Court of Appeals,
	:	Second Appellate District
	:	
CITY OF DAYTON, OHIO, et al.	:	Court of Appeals
	:	Case No. 21593
Defendants-Appellees	:	
	:	

BRIEF OF AMICUS CURIAE THE OHIO MUNICIPAL LEAGUE URGING AFFIRMANCE ON BEHALF OF APPELLEE THE CITY OF DAYTON, OHIO

STEPHEN L. BYRON #0055657 (COUNSEL OF RECORD)
Interstate Square Bldg. I, Suite 240
4230 State Route 306
Willoughby, Ohio 44094
(440) 951-2303
Fax: (440) 953-1427
sbyronlaw@aol.com

JOHN GOTHERMAN #0000504
Ohio Municipal League
175 S. Third Street, #510
Columbus, Ohio 43215-7100
(614) 221-4349
Fax: (614) 221-4390
jgotherman@columbus.rr.com

FILED
AUG 22 2007
CLERK OF COURT
SUPREME COURT OF OHIO

FRANK MANNING #0047242
Manning & Manning Co. L.P.A.
7556 Mentor Avenue
Mentor, Ohio 44060
(440) 269-8823
Fax No. (440) 269-8819
Frank@Manning-law.com

COUNSEL FOR AMICUS CURIAE
THE OHIO MUNICIPAL LEAGUE

PATRICK J. BONFIELD #0015796
Director of Law
JOHN J. DANISH #0046639
Chief Trial Counsel
JOHN C. MUSTO #0071512
Assistant City Attorney
101 West Third Street
Dayton, Ohio 45402
(937) 333-4116
Fax: (937) 333-3628

ATTORNEYS FOR APPELLEE
THE CITY OF DAYTON

MARK H. GAMS #0025362 (COUNSEL OF RECORD)
Gallagher, Gams, Pryor, Tallan & Littrell L.L.P.
471 East Broad Street, 19th Floor
Columbus, Ohio 43215-3872
(614) 228-5151
Fax No. (614) 228-0032

COUNSEL FOR APPELLANT
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

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INTRODUCTION

Amicus curiae, the Ohio Municipal League, respectfully requests this court to affirm the judgment of the Second District Court of Appeals in *Western Rogers v. City of Dayton*, 2007 Ohio 673, ("Appendix i"), and answer the certified question in the negative: a political subdivision is not "self-insured within the meaning of the financial responsibility law of Ohio" for the purpose of R.C. 3937.18(K)(3)[1], when it is not a self-insurer under R.C. Chapter 4509, which is Ohio's financial responsibility law.

As a policy matter, the General Assembly has determined that a privately owned uninsured motorist insurance policy should respond and compensate the victim of an automobile accident before the tax dollars of a political subdivision are expended for that purpose, when such coverage is available and the municipality has not purchased liability insurance for its motor vehicles. Appellant's remedy for this policy choice lies not with this court in this case, but with the legislative branch of the State of Ohio.[2]

---

[1] The parties agree that the version of R.C. 3937.18 which is applicable to this case is the S.B. 267 version, effective September 21, 2000. See "Appendix ii."

[2] The Ohio General Assembly has changed R.C.3937.18 since the time of the accident which precipitated this case. 2001 S.B. 97 ("Appendix iii"), effective October 31, 2001. The new law affirmatively describes what an "uninsured motorist" is, but still excludes "the owner or operator of a motor vehicle that is self-insured within the meaning of the financial responsibility law of the state in which the motor vehicle is registered." Id., at R.C. 3937.18(B). Thus, a decision in this case may still have precedential value under the newer version of the statute.

STATEMENT OF AMICUS INTEREST

The Ohio Municipal League (the "League") is an Ohio non-profit corporation composed of a membership of more than 750 Ohio cities and villages. The League was formed in 1952 by city and village officials who saw the need for a statewide association to serve the interests of Ohio municipal government. The purpose of this organization is to improve municipal government and administration, and to promote the general welfare of the residents of Ohio.

Ohio municipalities, and the taxpayers which fund them, have an interest in the uninsured motorist laws of the state of Ohio, as established by the state legislature, being applied as they are written.

STATEMENT OF THE FACTS AND THE CASE

The Ohio Municipal League hereby adopts the statement of the facts presented by the City of Dayton.

LAW AND ARGUMENT

Certified Conflict Question "Under R.C. 3937.18(K)(3)(2000), is a political subdivision self-insured within the meaning of the financial responsibility law of Ohio if the political subdivision has not qualified as a self-insurer under R.C. Chapter 4509?"

Answer and Proposition of Law No. 1: A political subdivision is not "self-insured within the meaning of the financial responsibility law" of Ohio, for the purpose of R.C. 3937.18(K)(3), when it is not a self-insurer under R.C. Chapter 4509.

The question presented by this case is whether Dayton was "uninsured," as that term is defined by Ohio's uninsured motorist insurance statute.

The version of §3937.18(K) of Ohio's Uninsured Motorist Statute applicable in this case, which was enacted by 147 S.B. 267, (effective 9/21/2000), states:

> (K) As used in this section, 'uninsured motor vehicle' and 'underinsured motor vehicle' do not include any of the following motor vehicles:
>
> (1) ***
>
> (2) ***
>
> (3) A motor vehicle self-insured within the meaning of the financial responsibility law of the state in which the motor vehicle is registered.

Pursuant to R.C. 3937.18(K)(3), the City of Dayton does not qualify as a self-insurer under Ohio's "financial responsibility law," specifically R.C. §4509.72. R.C. 4509.72(A) provides:

> Any person in whose name more than twenty-five motor vehicles are registered in this state *may qualify as a self-insurer by obtaining a certificate of self-insurance* issued by the registrar of motor vehicles as provided in division (B) of this section.

(emphasis added).

R.C. Chapter 4509 is entitled "Financial Responsibility." The body of law contained in that chapter is Ohio's "financial responsibility law."

The parties agree: City of Dayton did not obtain a certificate of self-insurance, and it was not required to do so under R.C. 4509.71. Therefore, pursuant to R.C. 4509.72(A), Dayton does not qualify as "self-insured" under the "financial responsibility" law of Ohio. The city is, consequently, "uninsured" for purposes of R.C. 3739.18(K)(3). That is what the statutes say, and that is what this court should hold.

While political subdivisions may purchase automobile liability insurance, or may self-insure, pursuant to R.C. 9.83 or R.C. 2744.08, they are not required to do so. In no sense is a political subdivision required to "prove" it is financially responsible, in the sense that a financial responsibility law requires. See, e.g. 4509.01(K).

The legislated result in this case is not without a rational basis. Insurance companies, as State Farm did in this case, receive premiums for uninsured motorist coverage. The Ohio General Assembly could reasonably conclude that insurance companies, not municipalities, are in a better position to identify, quantify and bear the financial risks resulting from a motor vehicle tort caused by a political subdivision which did not carry liability insurance for its vehicles than the political subdivision's taxpayers. As the appellate court noted, the other options to bear the risk are "(1) the tort victim; (2) the municipal employee who was acting within the scope of duties for which immunity is provided under R.C. 2744.02; or (3) the municipality that employed the tortfeasor." *Rogers v. City of Dayton*, 2nd Dist. No. 21593, 2007 Ohio 673 at ¶25.

Specifically, the appellate court found:

> The General Assembly appears to have adopted a schedule of preference for who should bear the harm of a tort caused by a municipal employee acting within the scope of his immunity as follows: (1) an insurance carrier providing uninsured

> motorist coverage to the victim, if there is one; (2) the municipality; and (3) the tort victim. The General Assembly has obviously found public policy in favor of immunity for the municipal employee, and has decided that of the three other potential bearers of the loss, the tort victim is the least able to sustain the loss, the municipality is the next least able to sustain the loss, and the insurance carrier is in the best position to sustain the loss.

Id. at ¶25.

This interpretation of legislative intent is supported by R.C. 2744.05(B)(1), which codifies the "collateral benefit rule," as it is applied to political subdivisions:

> (B)(1) If a claimant receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of insurance or any other source, the benefits shall be disclosed to the court, and the amount of the benefits shall be deducted from any award against a political subdivision recovered by that claimant. No insurer or other person is entitled to bring an action under a subrogation provision in an insurance or other contract against a political subdivision with respect to those benefits.
>
> The amount of the benefits shall be deducted from an award against a political subdivision under division (B)(1) of this section regardless of whether the claimant may be under an obligation to pay back the benefits upon recovery, in whole or in part, for the claim. A claimant whose benefits have been deducted from an award under division (B)(1) of this section is not considered fully compensated and shall not be required to reimburse a subrogated claim for benefits deducted from an award pursuant to division (B)(1) of this section.

The legislature has concluded that private insurers, rather than a political subdivision which caused the harm, should bear the risk of loss in subrogation cases. The constitutionality of the collateral benefit rule has been upheld as rationally related to preserving the fiscal health of Ohio's political subdivisions. *Menefee v. Queen City Metro*, (1990) 49 Ohio St. 3d 27, 550 N.E.2d 181.

As in the case of the collateral benefit rule, the General Assembly has made a policy decision, in former R.C. 3937.18(K)(3), to protect the taxpayers of Ohio's political subdivisions,

and this court should honor that policy choice.

CONCLUSION

This case comes down to who should absorb the loss: an insurance company, which has received premiums to provide coverage against this type of loss and is therefore in a better position to absorb the loss, or the taxpayers of a municipality. The Ohio General Assembly has already decided this question: the insurance company should absorb this loss. The City of Dayton is not self-insured within the meaning of R.C. Chapter 4509, which is the financial responsibility law of Ohio. Although the City of Dayton has maintained a self-insurance program, it is not required to do so by the financial responsibility laws of Ohio. The Ohio General Assembly permits municipalities to either maintain a self-insurance program or obtain liability insurance, but mandates neither. R.C. 2744.08, R.C. 9.83. The Ohio General Assembly has expressly exempted Ohio municipalities from the financial responsibility law of Ohio, allowing them to operate their motor vehicles without proof of "financial responsibility." R.C. 4509.71, R.C. 4509.101.

The City of Dayton is "uninsured," under former R.C. 3937.18(K)(3) and, therefore, State Farm should honor it uninsured motorist policy, as required by Ohio law.

Respectfully submitted,

STEPHEN L. BYRON (0055657)
Counsel for Amicus Curiae
Ohio Municipal League

CERTIFICATE OF SERVICE

A copy of the within *Brief of Amicus Curiae the Ohio Municipal League Urging Affirmance on Behalf of Appellee the City of Dayton, Ohio* has been mailed regular U.S. mail on the 21st day of August, 2007 to:

Patrick J. Bonfield, Director of Law
John J. Danish, Chief Trial Counsel
John C. Musto, Assistant City Attorney
101 West Third Street
Dayton, Ohio 45402

Mark H. Gams
Gallagher, Gams, Pryor, Tallan & Littrell L.L.P.
471 East Broad Street, 19th Floor
Columbus, Ohio 43215-3872

_____
STEPHEN L. BYRON (0055657)
Counsel for Amicus Curiae
Ohio Municipal League

1 of 1 DOCUMENT

WESTERN ROGERS, Plaintiff-Appellant v. CITY OF DAYTON, et al., Defendants-Appellees

C.A. CASE NO. 21593

COURT OF APPEALS OF OHIO, SECOND APPELLATE DISTRICT, MONTGOMERY COUNTY

2007 Ohio 673; 2007 Ohio App. LEXIS 600

February 16, 2007, Rendered

SUBSEQUENT HISTORY: Certification granted by Rogers v. Dayton, 114 Ohio St. 3d 1408, 2007 Ohio 2632, 867 N.E.2d 843, 2007 Ohio LEXIS 1433 (Ohio, June 6, 2007)
Discretionary appeal allowed by Rogers v. Dayton, 114 Ohio St. 3d 1410, 2007 Ohio 2632, 867 N.E.2d 844, 2007 Ohio LEXIS 1410 (Ohio, June 6, 2007)

COUNSEL: PATRICK J. BONFIELD, and JOHN J. DANISH, and JOHN C. MUSTO, Dayton, Ohio, Attorneys for Defendants-Appellees City of Dayton and Earl Moreo.

MARK H. GAMS, and M. JASON FOUNDS, Columbus, Ohio, Attorneys for Defendant-Appellant State Farm Mutual Automobile Insurance Company.

JUDGES: FAIN, J. WOLFF, P.J., concurs. DONOVAN, J., dissenting.

OPINION BY: FAIN

OPINION

FAIN, J.

[*P1] This is a dispute over who is primarily liable for injuries incurred by Western Rogers as a result of a motor vehicle collision caused by the negligence of an employee of the City of Dayton. State Farm Mutual Automobile Insurance Company, the underwriter of a policy of uninsured/underinsured motorist insurance issued to Rogers, contends that because the City of Dayton is self-insured, in a "practical sense," its liability is excluded from the scope of the uninsured/underinsured motorist coverage. This would leave the City of Dayton responsible for damages. The City of Dayton contends that it is not self-insured, so that its liability is not excluded from the scope of the uninsured/underinsured motorist coverage, with the result that State Farm is responsible, [**2] and subrogation is not permitted against a municipality.

[*P2] The City of Dayton obtained summary judgment in its favor, from which State Farm appeals. We agree with the trial court that the City of Dayton is not, as a matter of law, self-insured. Therefore, the judgment of the trial court is Affirmed.

I

[*P3] In April, 2002, Earl Moreo, III, a traffic signal electrician employed by the City of Dayton, was dispatched to the intersection of Emerson and Salem Avenues in Dayton. After checking the operation of a traffic signal, he began to execute a U-turn and struck an automobile owned and operated by Western Rogers. Rogers had an automobile insurance policy issued by State Farm. The insurance policy provided for uninsured motorist coverage.

[*P4] Rogers brought this action against the City of Dayton and Moreo. Rogers alleges that the City of Dayton and Moreo are liable for his injuries, and that State Farm is also monetarily responsible to pay for his injuries within the limits of his uninsured/underinsured motorist ("UM/UIM") policy provisions. All four of the parties filed motions for summary judgment. State Farm moved for summary judgment on the ground that Rogers [**3] was not entitled to uninsured motorist benefits under his State Farm policy, because the City of Dayton is a self-insured entity, not an uninsured entity. Moreo and the City moved for partial summary judgment on the grounds that they are immune from liability, the City is uninsured for purposes of determining Rogers's entitlement to UM/UIM benefits under R.C. 3937.18, and they are entitled to an offset for any UM/UIM benefits Rogers was entitled to receive from State Farm.

[*P5] The trial court granted Rogers's motions for summary judgment, holding that State Farm would be held financially responsible to the limits of its uninsured motorist coverage if the City of Dayton and/or Moreo

were found legally responsible for Rogers's injuries. The trial court granted Moreo's motion for summary judgment, holding that Moreo is immune from liability under Chapter 2744 of the Revised Code. The trial court granted the City of Dayton's motion for summary judgment, holding that the City is "uninsured" for purposes of the uninsured motorist policy. The trial court denied State Farm's motion for summary judgment.

[*P6] State Farm moved for reconsideration of the [**4] trial court decision relating to the motions for summary judgment. The trial court denied State Farm's motion for reconsideration. Thereafter, the trial court entered an order finding no just reason for delay. State Farm appeals from the summary judgment rendered against it.

II

[*P7] State Farm asserts four assignments of error, as follows:

[*P8] "THE TRIAL COURT ERRED IN DENYING APPELLANT STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT AND GRANTING APPELLEE CITY OF DAYTON'S MOTION FOR SUMMARY JUDGMENT.

[*P9] "THE TRIAL COURT ERRED IN HOLDING THAT THE CITY OF DAYTON WAS NOT A SELF-INSURED ENTITY UNDER OHIO LAW, AND, CONSEQUENTLY, THAT THE PLAINTIFF WAS ENTITLED TO UM/UIM COVERAGE UNDER HIS STATE FARM POLICY OF INSURANCE.

[*P10] "THE TRIAL COURT ERRED BY CONSIDERING ONLY WHETHER THE CITY OF DAYTON WAS SELF-INSURED UNDER THE OHIO FINANCIAL RESPONSIBILITY ACT AND NOT CONSIDERING WHETHER THE CITY WAS SELF-INSURED UNDER OTHER OHIO STATUTES AND OHIO COMMON LAW GOVERNING FINANCIAL RESPONSIBILITY.

[*P11] "THE TRIAL COURT ERRED IN HOLDING THAT THE CITY OF DAYTON IS NOT SELF-INSURED UNDER THE LANGUAGE OF THE STATE FARM POLICY."

[*P12] [**5] We will address State Farm's four assignments of error together because they all turn upon whether the City of Dayton is self-insured for purposes of the insurance policy and R.C. 3937.18. "Appellate review of a decision by a trial court granting summary judgment is de novo." *Cox v. Kettering Medical Center*, Montgomery App. No. 20614, 2005 Ohio 5003, P 35.

[*P13] This appeal relates to an action commenced by a plaintiff, Rogers, seeking to recover damages flowing from an automobile accident allegedly caused by the negligence of an employee of the City of Dayton, Moreo. "[P]olitical subdivisions are liable for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by their employees when the employees are engaged within the scope of their employment and authority." R.C. 2744.02(B)(1). It is undisputed that Moreo was engaged within the scope of his employment and authority. Pursuant to R.C. 2744.03(A), an employee of the City of Dayton has immunity from liability in a civil action brought to recover damages for injury to persons allegedly [**6] caused by any act or omission in connection with a governmental function. Therefore, Moreo arguably is immune from liability to Rogers. Unlike its employee, however, the City of Dayton does not have immunity from Rogers's action. See R.C. 2744.02(B)(1), 2744.03(A). Thus, the question becomes who should pay for damages resulting from Moreo's alleged negligence arising in the course of his employment with the City.

[*P14] State Farm makes the straightforward argument that the City should pay the damages, because the alleged negligence of the City's employee caused Rogers's injuries, the City has not articulated any basis on which the City should be granted immunity, and the City has not shown that it is unable to pay damages to Rogers. This approach was eloquently endorsed by Judge Painter in *Safe Auto Ins. Co. v. Corson*, 155 Ohio App. 3d 736, 2004 Ohio 249, 803 N.E.2d 863, P 5-13: "Corson owned an insurance policy with Safe Auto. The policy included uninsured-motorist and underinsured-motorist ('UM/UIM') coverage. Responsible people buy UM/UIM coverage to protect themselves against irresponsible drivers who do not have any insurance [**7] or enough insurance. . . . But the city did not buy insurance to cover these damages. Neither did it comply with the rules to be a 'self-insurer' under the UM/UIM statutes. It simply chose to pay damages or judgments out of the city coffers, which is perfectly proper. The city somehow concocted the theory that someone else should pay. That someone else was Safe Auto. This was evidently because Safe Auto was the only insurance company involved. But why should Sate Auto-the insurance company for the *innocent* driver-pay damages the city of Cincinnati owes? . . . [T]he city of Cincinnati was not required to follow the self-insurance certification methods prescribed by the financial responsibility law. Because it was presumed to be responsible, it did not have to file papers with the state guaranteeing that it was able to pay damages. The city was allowed to pay out of city coffers. Somehow, the city interpreted this to mean that it was uninsured, unself-insured, and unliable. The city's argument is that, by not complying with a law it does not have to comply with, it can escape paying what it owes."

[*P15] In our view, the General Assembly has clearly commanded a different [**8] result. R.C.

4509.72(A) provides as follows:

[*P16] "Any person in whose name more than twenty-five motor vehicles are registered in this state may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the registrar of motor vehicles as provided in division (B) of this section."

[*P17] Because the City of Dayton owns more than 25 motor vehicles, it could obtain a certificate of self-insurance, and thereby qualify as a self-insurer under Ohio Revised Code Chapter 4509, entitled "Financial Responsibility." It did not do so.

[*P18] At the relevant time, which the parties recognize is the most recent renewal of State Farm's UM/UIM policy preceding the accident, R.C. 3937.18(K)(3) defined "uninsured motor vehicle" as follows:

[*P19] "(K) As used in this section, 'uninsured motor vehicle' and 'underinsured motor vehicle' do not include any of the following motor vehicles:

[*P20] " ***

[*P21] "(3) A motor vehicle self-insured within the meaning of the financial responsibility law of the state in which the motor vehicle is registered."

[*P22] Because the motor vehicle the [**9] operation of which caused Rogers's injuries was not self-insured within the meaning of the financial responsibility law of Ohio, R.C. Chapter 4509, it was not excluded from the definition of an uninsured motor vehicle, within the plain meaning of R.C. 3937.18(K)(3). Consequently, as the trial court held, Rogers's injury was within the scope of State Farm's uninsured motor vehicle coverage.

[*P23] R.C. 2744.05(B) provides as follows:

[*P24] "If a claimant receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of insurance or any other source, the benefits shall be disclosed to the Court, and the amount of benefits shall be deducted from any award against a political subdivision recovered by the claimant. No insurer or other person is entitled to bring an action under a subrogation provision in an insurance or other contract against a political subdivision with respect to such benefits."

[*P25] It is the collateral source rule clearly set forth in R.C. 2744.05(B) that establishes the result to which Judge Painter took offense in *Safe Auto Ins. Co. v. Corson*, supra, [**10] because it shifts the financial responsibility from a municipality that has employed an immune tortfeasor to the insurance carrier that has provided uninsured motorist coverage to the tort victim, while charging the tort victim a premium for that coverage. Without endorsing the reasoning, we can imagine the Ohio General Assembly having decided, as a matter of policy, that it is preferable to impose the financial harm resulting from a motor vehicle tort upon a commercial insurance carrier, who has received a premium for uninsured motorist coverage, as opposed to either: (1) the tort victim; (2) the municipal employee who was acting within the scope of duties for which immunity is provided under R.C. 2744.02; or (3) the municipality that employed the tortfeasor. In short, the General Assembly appears to have adopted a schedule of preference for who should bear the harm of a tort caused by a municipal employee acting within the scope of his immunity as follows: (1) an insurance carrier providing uninsured motorist coverage to the victim, if there is one; (2) the municipality; and (3) the tort victim. The General Assembly has obviously found public policy in favor [**11] of immunity for the municipal employee, and has decided that of the three other potential bearers of the loss, the tort victim is the least able to sustain the loss, the municipality is the next least able to sustain the loss, and the insurance carrier is in the best position to sustain the loss. While we might not agree with this schedule of preference, we do not find it to be irrational.

[*P26] State Farm's assignments of error are overruled.

III

[*P27] All of State Farm's assignments of error having been overruled, the judgment of the trial court is Affirmed.

WOLFF, P.J., concurs.

DISSENT BY: DONOVAN

DISSENT

DONOVAN, J., dissenting:

[*P28] I disagree.

[*P29] Judge Painter's approach is consistent with the purpose behind UM/UIM coverage. "The purpose of UM/UIM coverage is to protect persons from losses which, because of the tortfeasor's lack of liability coverage, would otherwise go uncompensated." 58 Ohio Jurisprudence 3d (2005) 435-36, Insurance, Section 999. It is undisputed that, despite Moreo's immunity from liability, the City is liable for damages arising from Moreo's negligent acts within the course of his employment with the City. Also, there has [**12] been no argument that the City is unable to pay such damages. Thus, it appears that the City of Dayton is able to compensate Plaintiff for his damages and there does not appear to be any risk of Plaintiff going uncompensated due to a lack of liability coverage on the part of the City of Dayton. Therefore, forcing State Farm to pay damages to Plaintiff does not appear to fit within the purpose of

UM/UIM coverage.

[*P30] The trial court and majority reject Judge Painter's common sense approach and find that the City was uninsured within the meaning of the uninsured motorist statute and State Farm's insurance policy with Mr. Rogers. Pursuant to the version of R.C. 3937.18(K) applicable to the present dispute, a motor vehicle is excluded from the definition of "uninsured motor vehicle" where the motor vehicle is *self-insured within the meaning of the financial responsibility law* of the state in which the motor vehicle is registered. The insurance policy between Plaintiff and State Farm provides a similar exclusion from the definition of uninsured motor vehicle. State Farm argues that the City of Dayton's motor vehicle is excluded from the definition [**13] of uninsured motor vehicle because the City of Dayton is self-insured. On the other hand, the City of Dayton argues that it is not self-insured within the meaning of the financial responsibility law of Ohio.

[*P31] "'Self-insurance' is the retention of the risk of loss by the one bearing the original risk under the law or contract. It is the practice of setting aside a fund to meet losses instead of insuring against such through insurance, self-insurance being the antithesis of insurance, for while insurance shifts the risk of loss from the insured to the insurer, the self-insurer retains the risk of loss imposed by law or contract." 57 Ohio Jurisprudence 3d (2005) 317, Insurance, Section 247. The City concedes that it is self-insured in the sense that it does not purchase automobile insurance and it does set aside certain monetary amounts each year in its budget for the payment of claims against the City.

[*P32] The City's decision not to purchase insurance is perfectly acceptable. R.C. 2744.08(A)(2)(a) provides that a "political subdivision may establish and maintain a self-insurance program relative to its and its employees' potential liability [**14] in damages in civil actions for injury, death, or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees in connection with a governmental or proprietary function. The political subdivision may reserve such funds as it deems appropriate in a special fund that may be established pursuant to an ordinance or resolution of the political subdivision . . . ."

[*P33] The City of Dayton's self-insurance program is provided for in its Municipal Code. Pursuant to Sec. 36.203 of the Dayton Municipal Code, judgments on personal injury claims are limited to funds that have been "specifically appropriated on an annual basis for payment of claims and judgments." Further, Sec. 36.204 requires the City Manager to submit annually to the City Commission a recommended appropriation for payment of claims and judgments. In determining the amount of funds to be appropriated, the City Manager and Commission may consider the list of non-exclusive information set forth in Sec. 36.204(A)-(I).

[*P34] The trial court held and the majority concurs that being self-insured in this "practical sense" does not necessarily mean that the City [**15] is self-insured in the relevant, legal sense. State Farm disagrees, arguing that the Supreme Court's holding in *Grange Mut. Cas. Co. v. Refiners Transport & Terminal Corp.* (1986), 21 Ohio St.3d 47, 21 Ohio B. 331, 487 N.E.2d 310, supports a finding that the City is self-insured rather than uninsured for purposes of R.C. 3937.18(K) and the insurance policy. The City responds that whether it is self-insured in the practical sense is irrelevant, because the inquiry necessitated by R.C. 3937.18(K) and the insurance policy is whether the City is self-insured *within the meaning of the financial responsibility law.* The City contends that the motor vehicle driven by Moreo cannot be considered self-insured within the meaning of the financial responsibility law of Ohio, because the City does not have a certificate of self-insurance under Ohio's Financial Responsibility Act ("FRA"), Chapter 4509.01, et seq.

[*P35] Under the FRA, "[a]ny person in whose name more than twenty-five vehicles are registered in this state may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the registrar of motor vehicles . . . ." R.C. 4509.72(A) [**16] . "The registrar shall issue a certificate of self-insurance upon the application of any such person who is of sufficient financial ability to pay judgments against him." R.C. 4509.72(B). In sum, the registrar is required to issue a certificate of self-insurance to any person who has more than twenty-five vehicles registered in Ohio, is financially able to pay judgments against him, and requests the certificate. It is undisputed that the City of Dayton is exempt from the FRA. R.C. 4509.71. It is similarly undisputed that the City of Dayton does not have a certificate of self-insurance issued by the registrar. The City argues that these two uncontested facts are sufficient to resolve this appeal in its favor because the lack of a certificate of self-insurance prevents State Farm from establishing that the City is *self-insured within the meaning of the financial responsibility law.* I disagree.

[*P36] The relevant inquiry under R.C. 3937.18(K)(3) is not whether the City of Dayton has a certificate of self-insurance and is in fact self-insured under the FRA. Indeed, the City would have no reason to request [**17] a certificate of self-insurance where the City is exempt from the very law that requires a person to obtain the certificate of self-insurance. Rather, the relevant question is whether the City is self-insured *within the meaning of* the FRA. Thus, the key inquiry is whether the City meets the requirements for a certificate of self-insurance. A review of the statutory requirements reveals that the City does meet the relevant requirements.

[*P37] Pursuant to R.C. 4509.72(B), the registrar *must* issue a certificate of self-insurance to any person who has more than twenty-five vehicles registered in Ohio, requests the certificate, and is financially able to pay judgments against him. It is undisputed that the City has more than twenty-five vehicles registered in Ohio. Moreover, it is undisputed that the City is financially able to pay judgments against it. Indeed, the City concedes that it sets aside certain funds each year to pay judgments against it. Moreover, the City's exemption from the FRA is based on the presumption given to a political subdivision of the state that the subdivision is financially responsible. Thus, I would conclude that the City [**18] is financially responsible and qualified to receive a certificate of self-insurance.

[*P38] The presumption in R.C. 4509.71 that the City of Dayton is financially responsible is supported by the City's Municipal Code. "Proof of financial responsibility" is defined by statute as "proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of such proof, arising out of the ownership, maintenance, or use of a motor vehicle in the amount of twelve thousand five hundred dollars because of bodily injury to or death of one person in any one accident, ..." R.C. 4509.01(K). The City of Dayton has created a limitation of its liability relating to damages recoverable in an action against the city for personal injury or property damage arising out of a single occurrence, or sequence of occurrences, in a tort action. The limitation is a sum not in excess of $250,000 per person and $500,000 per occurrence. Dayton Municipal Code, Sec. 36.205(B)(2). The City of Dayton, through its Municipal Code, clearly contemplated paying judgments in amounts equal to or exceeding the $12,500 [**19] that is required under the FRA to show proof of financial responsibility. In short, the City of Dayton is financially responsible *within the meaning* and purpose of the FRA.

[*P39] The only thing preventing the City of Dayton from having a certificate of self-insurance under the FRA is that the City has not requested such a certificate. Once again, it is understandable why the City has not requested a certificate-it is unnecessary because the City is exempt from the FRA. However, the fact that the City did not request a certificate that it was not legally obligated to request does not mean that the City is not self-insured *within the meaning* and spirit of the financial responsibility law. On the contrary, I would find that the City's practice of annually setting aside funds to pay tort judgments constitutes being self-insured and financially responsible within the meaning and purpose of the financial responsibility law. To hold otherwise would allow the City of Dayton to use the fact that it is presumed financially responsible under the FRA to act financially irresponsible in situations where its employees are involved in automobile accidents.

[*P40] The City of [**20] Dayton argues that our prior decisions in *Jennings v. City of Dayton* (1996), 114 Ohio App.3d 144, 682 N.E.2d 1070, and *Anderson v. Nationwide Ins. Co.* (Sept. 19, 1997), Montgomery App. No. 16309, 1997 Ohio App. LEXIS 4199, require us to find that the City of Dayton is uninsured. I disagree. In *Jennings*, the plaintiff was injured in an accident with a motor vehicle owned by the City of Dayton and driven by a city employee. At the time of the accident, the City of Dayton was not covered by a motor vehicle liability insurance policy. Rather, the City was self-insured under the provisions of R.C. 2744.08(A)(2)(a). Based on a review of the caselaw, we found that "the trend in the Supreme Court and in this court is to define self-insurers as uninsured and to maximize the uninsured motorist protection afforded to insured persons." *Jennings*, 114 Ohio App.3d at 148. Consequently, we held that "'self-insurance' is the legal equivalent of no insurance for purposes of the distribution of uninsured motorist benefits in accordance with R.C. 3937.18." Id. at 150. Our holding was based on a reading of the 1996 version of R.C. 3937.18 [**21] , which did not include an exclusion for "self-insurers." Subsequent to our decisions in *Jennings* and *Anderson*, however, the General Assembly revised R.C. 3937.18, providing for an exclusion of self-insurers from the definition of uninsured motor vehicle. Therefore, *Jennings* and *Anderson* are inapposite.

[*P41] Finally, the City of Dayton argues that the public policy behind R.C. 2744.05(B) supports a finding that the City of Dayton is uninsured. R.C. 2744.05(B) provides that "If a claimant receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of insurance or any other source, the benefits shall be disclosed to the court, and the amount of the benefits shall be deducted from any award against a political subdivision recovered by that claimant. No insurer or other person is entitled to bring an action under a subrogation provision in an insurance or other contract against a political subdivision with respect to such benefits." According to the City of Dayton, R.C. 2744.05(B) serves two purposes: "1. To 'conserve [**22] the fiscal resources of political subdivisions by limiting their tort liability'; and 2. To 'permit injured persons who have no resource of reimbursement for their damages, to recover for a tort committed by [a] political subdivision.'" Appellee's Brief, p. 13 (quoting *Menefee v. Queen City Metro* (1990), 49 Ohio St.3d 27, 29, 550 N.E.2d 181). The City of Dayton's reliance on R.C. 2744.05(B) is misplaced. R.C. 2744.05(B), by its own terms, is confined to situations where the claimant is entitled to benefits under his or her insurance policy. In the present case, Plaintiff is not entitled to uninsured motorist benefits under his insurance policy with State Farm, because the City of

Dayton is self-insured. Therefore, the provisions of R.C. 2744.05(B) are inapplicable.

[*P42] I would conclude that the trial court erred in holding that the motor vehicle driven by Moreo was uninsured. In choosing to be self-insured for the purposes of the FRA, the City obligated itself to pay. I would sustain State Farm's assignments of error and would reverse the judgment [**23] of the trial court.

LEXSEE 1999 OHIO SB 267

OHIO ADVANCE LEGISLATIVE SERVICE

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OHIO 123RD GENERAL ASSEMBLY -- 1999-00 REGULAR SESSION

SENATE BILL NO. 267

1999 Ohio SB 267

BILL TRACKING SUMMARY FOR THIS DOCUMENT

SYNOPSIS: AN ACT To amend sections 3937.18 and 3937.31 of the Revised Code relative to an insured's recovery under uninsured and underinsured motorist coverage regarding wrongful death and other actions, coverages under renewal, new, or replacement policies, modification of the terms of a policy at the beginning of a policy period, and exclusions from the definitions of "uninsured motor vehicle" and "underinsured motor vehicle. "

NOTICE: **[A>** UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED **<A]**
[D> Text within these symbols is deleted **<D]**

To view the next section, type .np* TRANSMIT.
To view a specific section, transmit p* and the section number. e.g. p*1

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

[*1] Section 1. That sections 3937.18 and 3937.31 of the Revised Code be amended to read as follows:

Sec. 3937.18. (A) No automobile liability or motor vehicle liability policy of insurance 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 delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless both of the following coverages are offered to persons insured under the policy **[D>** for loss **<D]** due to bodily injury or death suffered by such insureds:

(1) Uninsured motorist coverage, which shall be in an amount of coverage equivalent to the automobile liability or motor vehicle liability coverage and shall provide protection for bodily injury, sickness, or disease, including death under provisions approved by the superintendent of insurance, for the protection of insureds thereunder who are legally entitled to recover **[D>** damages **<D]** from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, suffered by any person insured under the policy.

For purposes of division (A)(1) of this section, an insured is legally entitled to recover **[D>** damages **<D]** if the insured is able to prove the elements of the insured's claim that are necessary to recover **[D>** damages **<D]** from the owner or operator of the uninsured motor vehicle. The fact that the owner or operator of the uninsured motor vehicle has an immunity under Chapter 2744. of the Revised Code or a diplomatic immunity that could be raised as a defense in an action brought against the owner or operator by the insured does not affect the insured's right to recover under uninsured motorist coverage. However, any other type of statutory or common law immunity that may be a defense for the owner or operator of an uninsured motor vehicle shall also be a defense to an action brought by the insured to recover under uninsured motorist coverage.

APPENDIX ii

(2) Underinsured motorist coverage, which shall be in an amount of coverage equivalent to the automobile liability or motor vehicle liability coverage and shall provide protection for insureds thereunder [D> against loss <D] for bodily injury, sickness, or disease, including death, suffered by any person insured under the policy, where the limits of coverage available for payment to the insured under all bodily injury liability bonds and insurance policies covering persons liable to the insured are less than the limits for the insured's uninsured motorist coverage. Underinsured motorist coverage is not and shall not be excess insurance to other applicable liability coverages, and shall be provided only to afford the insured an amount of protection not greater than that which would be available under the insured's uninsured motorist coverage if the person or persons liable were uninsured at the time of the accident. The policy limits of the underinsured motorist coverage shall be reduced by those amounts available for payment under all applicable bodily injury liability bonds and insurance policies covering persons liable to the insured.

(B) Coverages offered under division (A) of this section shall be written for the same limits of liability. No change shall be made in the limits of one of these coverages without an equivalent change in the limits of the other coverage.

(C) A named insured or applicant may reject or accept both coverages as offered under division (A) of this section, or may alternatively select both such coverages in accordance with a schedule of limits approved by the superintendent. The schedule of limits approved by the superintendent may permit a named insured or applicant to select uninsured and underinsured motorists coverages with limits on such coverages that are less than the limit of liability coverage provided by the automobile liability or motor vehicle liability policy of insurance under which the coverages are provided, but the limits shall be no less than the limits set forth in section 4509.20 of the Revised Code for bodily injury or death. A named insured's or applicant's rejection of both coverages as offered under division (A) of this section, or a named insured's or applicant's selection of such coverages in accordance with the schedule of limits approved by the superintendent, shall be in writing and shall be signed by the named insured or applicant. A named insured's or applicant's written, signed rejection of both coverages as offered under division (A) of this section, or a named insured's or applicant's written, signed selection of such coverages in accordance with the schedule of limits approved by the superintendent, shall be effective on the day signed, shall create a presumption of an offer of coverages consistent with division (A) of this section, and shall be binding on all other named insureds, insureds, or applicants.

Unless a named insured or applicant requests such coverages in writing, such coverages need not be provided in or made supplemental to a policy renewal or [A> A NEW OR <A] replacement policy [A> THAT PROVIDES CONTINUING COVERAGE TO THE NAMED INSURED OR APPLICANT <A] where a named insured or applicant has rejected such coverages in connection with a policy previously issued to the named insured or applicant by the same insurer [A> OR AFFILIATE OF THAT INSURER <A] . If a named insured or applicant has selected such coverages in connection with a policy previously issued to the named insured or applicant by the same insurer [A> OR AFFILIATE OF THAT INSURER, <A] with limits in accordance with the schedule of limits approved by the superintendent, such coverages need not be provided with limits in excess of the limits of liability previously issued for such coverages, unless a named insured or applicant requests in writing higher limits of liability for such coverages.

(D) For the purpose of this section, a motor vehicle shall be deemed uninsured in either of the following circumstances:

(1) The liability insurer denies coverage or is or becomes the subject of insolvency proceedings in any jurisdiction;

(2) The identity of the owner and operator of the motor vehicle cannot be determined, but independent corroborative evidence exists to prove that the bodily injury, sickness, disease, or death of the insured was proximately caused by the negligence or intentional actions of the unidentified operator of the motor vehicle. For purposes of this division, the testimony of any insured seeking recovery from the insurer shall not constitute independent corroborative evidence, unless the testimony is supported by additional evidence.

(E) In the event of payment to any person under the coverages offered under this section and subject to the terms and conditions of such coverages, the insurer making such payment to the extent thereof is 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 or death for which such payment is made, including any amount recoverable from an insurer which is or becomes the subject of insolvency proceedings, through such proceedings or in any other lawful manner. No insurer shall attempt to recover any amount against the insured of an insurer which is or becomes the subject of insolvency proceedings, to the extent of those rights against such insurer which such insured assigns to the paying insurer.

(F) The coverages offered under this section shall not be made subject to an exclusion or reduction in amount because of any workers' compensation benefits payable as a result of the same injury or death.

(G) Any automobile liability or motor vehicle liability policy of insurance that includes coverages offered under division (A) of this section or selected in accordance with division (C) of this section may, without regard to any premiums involved, include terms and conditions that preclude any and all stacking of such coverages, including but not limited to:

(1) Interfamily stacking, which is the aggregating of the limits of such coverages by the same person or two or more persons, whether family members or not, who are not members of the same household;

(2) Intrafamily stacking, which is the aggregating of the limits of such coverages purchased by the same person or two or more family members of the same household.

(H) Any automobile liability or motor vehicle liability policy of insurance that includes coverages offered under division (A) of this section or selected in accordance with division (C) of this section and that provides a limit of coverage for payment for damages for bodily injury, including death, sustained by any one person in any one automobile accident, may, notwithstanding Chapter 2125. of the Revised Code, include terms and conditions to the effect that all claims resulting from or arising out of any one person's bodily injury, including death, shall collectively be subject to the limit of the policy applicable to bodily injury, including death, sustained by one person, and, for the purpose of such policy limit shall constitute a single claim. Any such policy limit shall be enforceable regardless of the number of insureds, claims made, vehicles or premiums shown in the declarations or policy, or vehicles involved in the accident.

(I) Nothing in this section shall prohibit the inclusion of underinsured motorist coverage in any uninsured motorist coverage provided in compliance with this section.

(J) The coverages offered under division (A) of this section or selected in accordance with division (C) of this section may include terms and conditions that preclude coverage for bodily injury or death suffered by an insured under any of the following circumstances:

(1) While the insured is operating or occupying a motor vehicle owned by, furnished to, or available for the regular use of a named insured, a spouse, or a resident relative of a named insured, if the motor vehicle is not specifically identified in the policy under which a claim is made, or is not a newly acquired or replacement motor vehicle covered under the terms of the policy under which the uninsured and underinsured motorist coverages are provided;

(2) While the insured is operating or occupying a motor vehicle without a reasonable belief that the insured is entitled to do so, provided that under no circumstances will an insured whose license has been suspended, revoked, or never issued, be held to have a reasonable belief that the insured is entitled to operate a motor vehicle;

(3) When the bodily injury or death is caused by a motor vehicle operated by any person who is specifically excluded from coverage for bodily injury liability in the policy under which the uninsured and underinsured motorist coverages are provided.

(K) As used in this section, "uninsured motor vehicle" and "underinsured motor vehicle" do not include any of the following motor vehicles:

(1) A motor vehicle that has applicable liability coverage in the policy under which the uninsured and underinsured motorist coverages are provided;

(2) **[D>** A motor vehicle owned by, furnished to, or available for the regular use of a named insured, a spouse, or a resident relative of a named insured; **<D]**

[D> (3) **<D]** A motor vehicle owned by a political subdivision, unless the operator of the motor vehicle has an immunity under Chapter 2744. of the Revised Code that could be raised as a defense in an action brought against the operator by the insured;

[D> (4) **<D]** **[A>** (3) **<A]** A motor vehicle self-insured within the meaning of the financial responsibility law of the state in which the motor vehicle is registered.

(L) As used in this section, "automobile liability or motor vehicle liability policy of insurance" means either of the following:

(1) Any policy of insurance that serves as proof of financial responsibility, as proof of financial responsibility is defined by division (K) of section 4509.01 of the Revised Code, for owners or operators of the motor vehicles specifically identified in the policy of insurance;

(2) Any umbrella liability policy of insurance written as excess over one or more policies described in division (L)(1) of this section.

Sec. 3937.31. (A) Every automobile insurance policy shall be issued for a **[D>** policy **<D]** period of not less than two years or guaranteed renewable for successive policy periods totaling not less than two years. Where renewal is mandatory, "cancellation," as used in sections 3937.30 to 3937.39 of the Revised Code, includes refusal to renew a policy with at least the coverages, included insureds, and policy limits provided at the end of the next preceding policy period. No insurer may cancel any such policy except pursuant to the terms of the policy, and in accordance with sections 3937.30 to 3937.39 of the Revised Code, and for one or more of the following reasons:

(1) Misrepresentation by the insured to the insurer of any material fact in the procurement or renewal of the insurance or in the submission of claims thereunder;

(2) Loss of driving privileges through suspension, revocation, or expiration of the driver's or commercial driver's license of the named insured or any member of **[D>** his **<D]** **[A>** THE NAMED INSURED'S **<A]** family covered as a driver; provided that the insurer shall continue the policy in effect but exclude by endorsement all coverage as to the person whose driver's license has been suspended or revoked or has expired, if **[D>** he **<D]** **[A>** THE PERSON **<A]** is other than the named insured or the principal operator;

(3) Nonpayment of premium, which means failure of the named insured to discharge when due any of **[D>** his **<D]** **[A>** THE NAMED INSURED'S **<A]** obligations in connection with the payment of premiums on a policy, or any installment of such premiums, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit;

(4) The place of residence of the insured or the state of registration or license of the insured automobile is changed to a state or country in which the insurer is not authorized to write automobile coverage.

This section does not apply in the case of a cancellation if the insurer has indicated its willingness to issue a new policy within the same insurer or within another insurer under the same ownership or management as that of the insurer **[D>** which **<D]** **[A>** THAT **<A]** has issued the cancellation.

(B) Sections 3937.30 to 3937.39 of the Revised Code do not prohibit:

(1) Changes in coverage or policy limits, cancellation, or nonrenewal for any reason at the request or with the consent of the insured;

(2) Lawful surcharges, adjustments, or other changes in premium;

(3) Policy modification to all policies issued to a classification of risk which do not effect a withdrawal or reduction in the initial coverage or policy limits;

(4) An insurer's refusing for any reason to renew a policy upon its expiration at the end of any mandatory period, provided such nonrenewal complies with the procedure set forth in section 3937.34 of the Revised Code.

(C) Sections 3937.30 to 3937.39 of the Revised Code do not apply to any policy or coverage **[D>** which **<D]** **[A>** THAT **<A]** has been in effect less than ninety days at the time notice of cancellation is mailed by the insurer, unless it is a renewal policy.

(D) Renewal of a policy does not constitute a waiver or estoppel with respect to grounds for cancellation **[D>** which **<D]** **[A>** THAT **<A]** existed before the effective date of such renewal.

[A> (E) NOTHING IN THIS SECTION PROHIBITS AN INSURER FROM INCORPORATING INTO A POLICY ANY CHANGES THAT ARE PERMITTED OR REQUIRED BY THIS SECTION OR OTHER SECTIONS OF THE REVISED CODE AT THE BEGINNING OF ANY POLICY PERIOD WITHIN THE TWO-YEAR PERIOD SET FORTH IN DIVISION (A) OF THIS SECTION. **<A]**

[*2] Section 2. That existing sections 3937.18 and 3937.31 of the Revised Code are hereby repealed.

[*3] Section 3. It is the intent of the General Assembly in amending division (A) of section 3937.18 of the Revised Code to supersede the holdings of the Ohio Supreme Court in Sexton v. State Farm Mut. Auto. Ins. Co. (1982), 69 Ohio St.2d 431, and Moore v. State Auto. Mut. Ins. Co. (2000), 88 Ohio St.3d 27, that division (A)(1) of section 3937.18 of the Revised Code does not permit an insurer to limit uninsured or underinsured motorist coverage in such a way that an insured must suffer bodily injury, sickness, death or disease for any other insured to recover from the insurer.

[*4] Section 4. It is the intent of the General Assembly in amending division (C) of section 3937.18 of the Revised Code to make it clear that new rejections of uninsured and underinsured motorist coverages or decisions to accept lower limits of coverages need not be obtained from an insured or applicant at the beginning of each policy period in which the policy provides continuing coverage to the named insured or applicant, regardless of whether a new, replacement, or renewal policy that provides continuing coverage to the named insured or applicant is issued by the insurer or affiliate of that insurer with or without new policy terms or new policy numbers.

[*5] Section 5. It is the intent of the General Assembly in amending section 3937.31 of the Revised Code to make it clear that an insurer may modify the terms and conditions of any automobile insurance policy to incorporate changes that are permitted or required by that section and other sections of the Revised Code at the beginning of any policy period within the two-year period set forth in division (A) of that section.

HISTORY:
Approved by the Governor June 21, 2000

SPONSOR: Ray

LEXSEE 2001 OHIO SB 97

OHIO ADVANCE LEGISLATIVE SERVICE

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OHIO 124TH GENERAL ASSEMBLY -- 2001-02 REGULAR SESSION

SENATE BILL NO. 97

2001 Ohio SB 97

BILL TRACKING SUMMARY FOR THIS DOCUMENT

SYNOPSIS: AN ACT To amend sections 3937.18, 3937.181, and 3937.182 of the Revised Code to revise the Uninsured and Underinsured Motorist Coverages Law.

NOTICE: **[A>** UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED **<A]**
[D> Text within these symbols is deleted **<D]**

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To view a specific section, transmit p* and the section number. e.g. p*1

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

[*1] Section 1. That sections 3937.18, 3937.181, and 3937.182 of the Revised Code be amended to read as follows:

Sec. 3937.18. (A) **[D>** No automobile liability or motor vehicle liability **<D]** **[A>** ANY **<A]** policy of insurance **[D>** insuring **<D]** **[A>** DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE WITH RESPECT TO ANY MOTOR VEHICLE REGISTERED OR PRINCIPALLY GARAGED IN THIS STATE THAT INSURES **<A]** 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 **[D>** shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless both of the following coverages are offered to persons insured under the policy due to bodily injury or death suffered by such insureds: **<D]**

[D> (1) Uninsured motorist coverage, which shall be in an amount of coverage equivalent to the automobile liability or motor vehicle liability coverage and shall provide protection for bodily injury, sickness, or disease, including death under provisions approved by the superintendent of insurance, for the protection of insureds thereunder who are legally entitled to recover from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, suffered by any person insured under the policy. **<D]**

[D> For purposes of division (A)(1) of this section, an insured is legally entitled to recover if the insured is able to prove the elements of the insured's claim that are necessary to recover from the owner or operator of the uninsured motor vehicle. The fact that the owner or operator of the uninsured motor vehicle has an immunity under Chapter 2744. of the Revised Code or a diplomatic immunity that could be raised as a defense in an action brought against the owner or operator by the insured does not affect the insured's right to recover under uninsured motorist coverage. However, any other type of statutory or common law immunity that may be a defense for the owner or operator of an uninsured motor vehicle shall also be a defense to an action brought by the insured to recover under **<D]** **[A>** , MAY, BUT IS

NOT REQUIRED TO, INCLUDE <A] uninsured motorist coverage [A> , UNDERINSURED MOTORIST COVERAGE, OR BOTH UNINSURED AND UNDERINSURED MOTORIST COVERAGES. <A]

[A> UNLESS OTHERWISE DEFINED IN THE POLICY OR ANY ENDORSEMENT TO THE POLICY, "MOTOR VEHICLE, " FOR PURPOSES OF THE UNINSURED MOTORIST COVERAGE, UNDERINSURED MOTORIST COVERAGE, OR BOTH UNINSURED AND UNDERINSURED MOTORIST COVERAGES, MEANS A SELF-PROPELLED VEHICLE DESIGNED FOR USE AND PRINCIPALLY USED ON PUBLIC ROADS, INCLUDING AN AUTOMOBILE, TRUCK, SEMI-TRACTOR, MOTORCYCLE, AND BUS. "MOTOR VEHICLE" ALSO INCLUDES A MOTOR HOME, PROVIDED THE MOTOR HOME IS NOT STATIONARY AND IS NOT BEING USED AS A TEMPORARY OR PERMANENT RESIDENCE OR OFFICE. "MOTOR VEHICLE" DOES NOT INCLUDE A TROLLEY, STREETCAR, TRAILER, RAILROAD ENGINE, RAILROAD CAR, MOTORIZED BICYCLE, GOLF CART, OFF-ROAD RECREATIONAL VEHICLE, SNOWMOBILE, FORK LIFT, AIRCRAFT, WATERCRAFT, CONSTRUCTION EQUIPMENT, FARM TRACTOR OR OTHER VEHICLE DESIGNED AND PRINCIPALLY USED FOR AGRICULTURAL PURPOSES, MOBILE HOME, VEHICLE TRAVELING ON TREADS OR RAILS, OR ANY SIMILAR VEHICLE. <A]

[A> (B) FOR PURPOSES OF ANY UNINSURED MOTORIST COVERAGE INCLUDED IN A POLICY OF INSURANCE, AN "UNINSURED MOTORIST" IS THE OWNER OR OPERATOR OF A MOTOR VEHICLE IF ANY OF THE FOLLOWING CONDITIONS APPLIES: <A]

[A> (1) THERE EXISTS NO BODILY INJURY LIABILITY BOND OR INSURANCE POLICY COVERING THE OWNER'S OR OPERATOR'S LIABILITY TO THE INSURED. <A]

[A> (2) THE LIABILITY INSURER DENIES COVERAGE TO THE OWNER OR OPERATOR, OR IS OR BECOMES THE SUBJECT OF INSOLVENCY PROCEEDINGS IN ANY STATE. <A]

[A> (3) THE IDENTITY OF THE OWNER OR OPERATOR CANNOT BE DETERMINED, BUT INDEPENDENT CORROBORATIVE EVIDENCE EXISTS TO PROVE THAT THE BODILY INJURY, SICKNESS, DISEASE, OR DEATH OF THE INSURED WAS PROXIMATELY CAUSED BY THE NEGLIGENCE OR INTENTIONAL ACTIONS OF THE UNIDENTIFIED OPERATOR OF THE MOTOR VEHICLE. FOR PURPOSES OF DIVISION (B)(3) OF THIS SECTION, THE TESTIMONY OF ANY INSURED SEEKING RECOVERY FROM THE INSURER SHALL NOT CONSTITUTE INDEPENDENT CORROBORATIVE EVIDENCE, UNLESS THE TESTIMONY IS SUPPORTED BY ADDITIONAL EVIDENCE. <A]

[A> (4) THE OWNER OR OPERATOR HAS DIPLOMATIC IMMUNITY. <A]

[A> (5) THE OWNER OR OPERATOR HAS IMMUNITY UNDER CHAPTER 2744. OF THE REVISED CODE. <A]

[A> AN "UNINSURED MOTORIST" DOES NOT INCLUDE THE OWNER OR OPERATOR OF A MOTOR VEHICLE THAT IS SELF-INSURED WITHIN THE MEANING OF THE FINANCIAL RESPONSIBILITY LAW OF THE STATE IN WHICH THE MOTOR VEHICLE IS REGISTERED <A] .

[D> (2) Underinsured <D] [A> (C) IF UNDERINSURED <A] motorist coverage [D> , which shall be in an amount of coverage equivalent to <D] [A> IS INCLUDED IN A POLICY OF INSURANCE, <A] the [D> automobile liability or motor vehicle liability <D] [A> UNDERINSURED MOTORIST <A] coverage [D> and <D] shall provide protection for insureds thereunder for bodily injury, sickness, or disease, including death, suffered by any [D> person <D] insured under the policy, where the limits of coverage available for payment to the insured under all bodily injury liability bonds and insurance policies covering persons liable to the insured are less than the limits for the [D> insured's uninsured <D] [A> UNDERINSURED <A] motorist coverage. Underinsured motorist coverage [A> IN THIS STATE <A] is not and shall not be excess [D> insurance <D] [A> COVERAGE <A] to other applicable liability coverages, and shall [D> be provided <D] only [D> to afford <D] [A> PROVIDE <A] the insured an amount of protection not greater than that which would be available under the insured's uninsured motorist coverage if the person or persons liable [A> TO THE INSURED <A] were uninsured at the time of the accident. The policy limits of the underinsured motorist coverage shall be reduced by those amounts available for payment under all applicable bodily injury liability bonds and insurance policies covering persons liable to the insured.

[D> (B) Coverages offered under division (A) of this section shall be written for the same limits of liability. No change shall be made in the limits of one of these coverages without an equivalent change in the limits of the other coverage. <D]

[D> (C) A named insured or applicant may reject or accept both coverages as offered under division (A) of this section, or may alternatively select both such coverages in accordance with a schedule of limits approved by the superintendent. The schedule of limits approved by the superintendent may permit a named insured or applicant to select uninsured and underinsured motorists coverages with limits on such coverages that are less than the limit of liability coverage provided by the automobile liability or motor vehicle liability policy of insurance under which the coverages are provided, but the limits shall be no less than the limits set forth in section 4509.20 of the Revised Code for bodily injury or death. A named insured's or applicant's rejection of both coverages as offered under division (A) of this section, or a named insured's or applicant's selection of such coverages in accordance with the schedule of limits approved by the superintendent, shall be in writing and shall be signed by the named insured or applicant. A named insured's or applicant's written, signed rejection of both coverages as offered under division (A) of this section, or a named insured's or applicant's written, signed selection of such coverages in accordance with the schedule of limits approved by the superintendent, shall be effective on the day signed, shall create a presumption of an offer of coverages consistent with division (A) of this section, and shall be binding on all other named insureds, insureds, or applicants. <D]

[D> Unless a named insured or applicant requests such coverages in writing, such coverages need not be provided in or made supplemental to a policy renewal or a new or replacement policy that provides continuing coverage to the named insured or applicant where a named insured or applicant has rejected such coverages in connection with a policy previously issued to the named insured or applicant by the same insurer or affiliate of that insurer. If a named insured or applicant has selected such coverages in connection with a policy previously issued to the named insured or applicant by the same insurer or affiliate of that insurer, with limits in accordance with the schedule of limits approved by the superintendent, such coverages need not be provided with limits in excess of the limits of liability previously issued for such coverages, unless a named insured or applicant requests in writing higher limits of liability for such coverages <D] [A> FOR PURPOSES OF UNDERINSURED MOTORIST COVERAGE, AN "UNDERINSURED MOTORIST" DOES NOT INCLUDE THE OWNER OR OPERATOR OF A MOTOR VEHICLE THAT HAS APPLICABLE LIABILITY COVERAGE IN THE POLICY UNDER WHICH THE UNDERINSURED MOTORIST COVERAGE IS PROVIDED <A] .

(D) [D> For the purpose of this section, a motor vehicle shall be deemed uninsured in either of the following circumstances: <D]

[D> (1) The liability insurer denies coverage or is or becomes the subject of insolvency proceedings in any jurisdiction; <D]

[D> (2) The identity of the owner and operator of the motor vehicle cannot be determined, but independent corroborative evidence exists to prove that the bodily injury, sickness, disease, or death of the insured was proximately caused by the negligence or intentional actions of the unidentified operator of the motor vehicle. For purposes of this division, the testimony of any insured seeking recovery from the insurer shall not constitute independent corroborative evidence, unless the testimony is supported by additional evidence <D] [A> WITH RESPECT TO THE UNINSURED MOTORIST COVERAGE, UNDERINSURED MOTORIST COVERAGE, OR BOTH UNINSURED AND UNDERINSURED MOTORIST COVERAGES INCLUDED IN A POLICY OF INSURANCE, AN INSURED SHALL BE REQUIRED TO PROVE ALL ELEMENTS OF THE INSURED'S CLAIM THAT ARE NECESSARY TO RECOVER FROM THE OWNER OR OPERATOR OF THE UNINSURED OR UNDERINSURED MOTOR VEHICLE <A] .

(E) [D> In the event of payment to any person under the coverages offered under this section and subject to the terms and conditions of such coverages, the insurer making such payment to the extent thereof is 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 or death for which such payment is made, including any amount recoverable from an insurer which is or becomes the subject of insolvency proceedings, through such proceedings or in any other lawful manner. No insurer shall attempt to recover any amount against the insured of an insurer which is or becomes the subject of insolvency proceedings, to the extent of those rights against such insurer which such insured assigns to the paying insurer. <D]

[D> (F) <D] The [A> UNINSURED MOTORIST COVERAGE, UNDERINSURED MOTORIST COVERAGE, OR BOTH UNINSURED AND UNDERINSURED MOTORIST <A] coverages [D> offered under this section <D] [A> INCLUDED IN A POLICY OF INSURANCE <A] shall not be [D> made <D] subject to an exclusion or reduction in amount because of any workers' compensation benefits payable as a result of the same injury or death.

[D> (G) <D] [A> (F) <A] Any [D> automobile liability or motor vehicle liability <D] policy of insurance that includes [A> UNINSURED MOTORIST COVERAGE, UNDERINSURED MOTORIST COVERAGE, OR BOTH UNINSURED AND UNDERINSURED MOTORIST <A] coverages [D> offered under division (A) of this section or selected in accordance with division (C) of this section <D] may, without regard to any premiums involved, include terms and conditions that preclude any and all stacking of such coverages, including but not limited to:

(1) Interfamily stacking, which is the aggregating of the limits of such coverages by the same person or two or more persons, whether family members or not, who are not members of the same household;

(2) Intrafamily stacking, which is the aggregating of the limits of such coverages purchased by the same person or two or more family members of the same household.

[D> (H) <D] [A> (G) <A] Any [D> automobile liability or motor vehicle liability <D] policy of insurance that includes [A> UNINSURED MOTORIST COVERAGE, UNDERINSURED MOTORIST COVERAGE, OR BOTH UNINSURED AND UNDERINSURED MOTORIST <A] coverages [D> offered under division (A) of this section or selected in accordance with division (C) of this section <D] and that provides a limit of coverage for payment [D> for <D] [A> OF <A] damages for bodily injury, including death, sustained by any one person in any one automobile accident, may, notwithstanding Chapter 2125. of the Revised Code, include terms and conditions to the effect that all claims resulting from or arising out of any one person's bodily injury, including death, shall collectively be subject to the limit of the policy applicable to bodily injury, including death, sustained by one person, and, for the purpose of such policy limit shall constitute a single claim. Any such policy limit shall be enforceable regardless of the number of insureds, claims made, vehicles or premiums shown in the declarations or policy, or vehicles involved in the accident.

[A> (H) ANY POLICY OF INSURANCE THAT INCLUDES UNINSURED MOTORIST COVERAGE, UNDERINSURED MOTORIST COVERAGE, OR BOTH UNINSURED AND UNDERINSURED MOTORIST COVERAGES MAY INCLUDE TERMS AND CONDITIONS REQUIRING THAT, SO LONG AS THE INSURED HAS NOT PREJUDICED THE INSURER'S SUBROGATION RIGHTS, EACH CLAIM OR SUIT FOR UNINSURED MOTORIST COVERAGE, UNDERINSURED MOTORIST COVERAGE, OR BOTH UNINSURED AND UNDERINSURED MOTORIST COVERAGES BE MADE OR BROUGHT WITHIN THREE YEARS AFTER THE DATE OF THE ACCIDENT CAUSING THE BODILY INJURY, SICKNESS, DISEASE, OR DEATH, OR WITHIN ONE YEAR AFTER THE LIABILITY INSURER FOR THE OWNER OR OPERATOR OF THE MOTOR VEHICLE LIABLE TO THE INSURED HAS BECOME THE SUBJECT OF INSOLVENCY PROCEEDINGS IN ANY STATE, WHICHEVER IS LATER. <A]

(I) [D> Nothing in this section shall prohibit the inclusion <D] [A> ANY POLICY <A] of [A> INSURANCE THAT INCLUDES UNINSURED MOTORIST COVERAGE, <A] underinsured motorist coverage [D> in any <D] [A> , OR BOTH <A] uninsured [A> AND UNDERINSURED <A] motorist [D> coverage provided in compliance with this section. <D]

[D> (J) The <D] coverages [D> offered under division (A) of this section or selected in accordance with division (C) of this section <D] may include terms and conditions that preclude coverage for bodily injury or death suffered by an insured under [A> SPECIFIED CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO <A] any of the following circumstances:

(1) While the insured is operating or occupying a motor vehicle owned by, furnished to, or available for the regular use of a named insured, a spouse, or a resident relative of a named insured, if the motor vehicle is not specifically identified in the policy under which a claim is made, or is not a newly acquired or replacement motor vehicle covered under the terms of the policy under which the [A> UNINSURED MOTORIST COVERAGE, UNDERINSURED MOTORIST COVERAGE, OR BOTH <A] uninsured and underinsured motorist coverages are provided;

(2) While the insured is operating or occupying a motor vehicle without a reasonable belief that the insured is entitled to do so, provided that under no circumstances will an insured whose license has been suspended, revoked, or never issued, be held to have a reasonable belief that the insured is entitled to operate a motor vehicle;

(3) When the bodily injury or death is caused by a motor vehicle operated by any person who is specifically excluded from coverage for bodily injury liability in the policy under which the [A> UNINSURED MOTORIST COVERAGE, UNDERINSURED MOTORIST COVERAGE, OR BOTH <A] uninsured and underinsured motorist coverages are provided [A> ; <A]

[A> (4) WHILE ANY EMPLOYEE, OFFICER, DIRECTOR, PARTNER, TRUSTEE, MEMBER, EXECUTOR, ADMINISTRATOR, OR BENEFICIARY OF THE NAMED INSURED, OR ANY RELATIVE OF ANY SUCH

PERSON, IS OPERATING OR OCCUPYING A MOTOR VEHICLE, UNLESS THE EMPLOYEE, OFFICER, DIRECTOR, PARTNER, TRUSTEE, MEMBER, EXECUTOR, ADMINISTRATOR, BENEFICIARY, OR RELATIVE IS OPERATING OR OCCUPYING A MOTOR VEHICLE FOR WHICH UNINSURED MOTORIST COVERAGE, UNDERINSURED MOTORIST COVERAGE, OR BOTH UNINSURED AND UNDERINSURED MOTORIST COVERAGES ARE PROVIDED IN THE POLICY; <A]

[A> (5) WHEN THE PERSON ACTUALLY SUFFERING THE BODILY INJURY, SICKNESS, DISEASE, OR DEATH IS NOT AN INSURED UNDER THE POLICY. <A]

[A> (J) IN THE EVENT OF PAYMENT TO ANY PERSON UNDER THE UNINSURED MOTORIST COVERAGE, UNDERINSURED MOTORIST COVERAGE, OR BOTH UNINSURED AND UNDERINSURED MOTORIST COVERAGES, AND SUBJECT TO THE TERMS AND CONDITIONS OF THAT COVERAGE, THE INSURER MAKING SUCH PAYMENT IS ENTITLED, TO THE EXTENT OF THE PAYMENT, TO THE PROCEEDS OF ANY SETTLEMENT OR JUDGMENT RESULTING FROM THE EXERCISE OF ANY RIGHTS OF RECOVERY OF THAT PERSON AGAINST ANY PERSON OR ORGANIZATION LEGALLY RESPONSIBLE FOR THE BODILY INJURY OR DEATH FOR WHICH THE PAYMENT IS MADE, INCLUDING ANY AMOUNT RECOVERABLE FROM AN INSURER THAT IS OR BECOMES THE SUBJECT OF INSOLVENCY PROCEEDINGS, THROUGH SUCH PROCEEDINGS OR IN ANY OTHER LAWFUL MANNER. NO INSURER SHALL ATTEMPT TO RECOVER ANY AMOUNT AGAINST THE INSURED OF AN INSURER THAT IS OR BECOMES THE SUBJECT OF INSOLVENCY PROCEEDINGS, TO THE EXTENT OF THOSE RIGHTS AGAINST THE INSURER THAT THE INSURED ASSIGNS TO THE PAYING INSURER <A] .

(K) [D> As used <D] [A> NOTHING <A] in this section [D> , "uninsured motor vehicle" and "underinsured motor vehicle" do not include any of the following motor vehicles: <D]

[D> (1) A motor vehicle that has applicable liability coverage in the policy under which <D] [A> SHALL PROHIBIT <A] the [D> uninsured and <D] [A> INCLUSION OF <A] underinsured motorist [D> coverages are provided; <D]

[D> (2) A motor vehicle owned by a political subdivision, unless the operator of the motor vehicle has an immunity under Chapter 2744. of the Revised Code that could be raised as a defense in an action brought against the operator by the insured; <D]

[D> (3) A motor vehicle self-insured within the meaning of the financial responsibility law of the state in which the motor vehicle is registered <D] [A> COVERAGE IN ANY UNINSURED MOTORIST COVERAGE INCLUDED IN A POLICY OF INSURANCE <A] .

(L) [D> As used in this section, "automobile liability or motor vehicle liability policy of insurance" means either of the following: <D]

[D> (1) Any policy of insurance that serves as proof of financial responsibility, as proof of financial responsibility is defined by division (K) of section 4509.01 of the Revised Code, for owners or operators of the motor vehicles specifically identified in the policy of insurance; <D]

[D> (2) Any umbrella liability policy of insurance written as excess over one or more policies described in division (L)(1) of this section <D] [A> THE SUPERINTENDENT OF INSURANCE SHALL STUDY THE MARKET AVAILABILITY OF, AND COMPETITION FOR, UNINSURED AND UNDERINSURED MOTORIST COVERAGES IN THIS STATE AND SHALL, FROM TIME TO TIME, PREPARE STATUS REPORTS CONTAINING THE SUPERINTENDENT'S FINDINGS AND ANY RECOMMENDATIONS. THE FIRST STATUS REPORT SHALL BE PREPARED NOT LATER THAN TWO YEARS AFTER THE EFFECTIVE DATE OF THIS AMENDMENT. TO ASSIST IN PREPARING THESE STATUS REPORTS, THE SUPERINTENDENT MAY REQUIRE INSURERS AND RATING ORGANIZATIONS OPERATING IN THIS STATE TO COLLECT PERTINENT DATA AND TO SUBMIT THAT DATA TO THE SUPERINTENDENT. <A]

[A> THE SUPERINTENDENT SHALL SUBMIT A COPY OF EACH STATUS REPORT TO THE GOVERNOR, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE PRESIDENT OF THE SENATE, AND THE CHAIRPERSONS OF THE COMMITTEES OF THE GENERAL ASSEMBLY HAVING PRIMARY JURISDICTION OVER ISSUES RELATING TO AUTOMOBILE INSURANCE <A] .

Sec. 3937.181. (A) No [D> automobile liability or motor vehicle liability <D] policy of insurance [D> offering uninsured and underinsured motorist coverages under <D] [A> DESCRIBED IN <A] division (A) of section 3937.18 of the Revised Code [A> THAT INCLUDES UNINSURED MOTORIST COVERAGE, UNDERINSURED MOTORIST

COVERAGE, OR BOTH UNINSURED AND UNDERINSURED MOTORIST COVERAGES <A] shall be delivered or issued for delivery unless coverage is also made available for damage to, or the destruction of, any [D> automobile or <D] motor vehicle specifically identified in the policy, for the protection of those persons insured under the policy who are legally entitled to recover for the damage to or destruction of any [D> automobile or <D] motor vehicle specifically identified in the policy from the owner or operator of an uninsured motor vehicle.

(B) The coverage made available under this section need not exceed the lesser of seventy-five hundred dollars or the amount otherwise available from the policy for damages to, or the destruction of, the [D> automobile or <D] motor vehicle. The coverage shall be subject to a maximum two-hundred-fifty-dollar deductible. The losses recoverable under this section shall be limited to recovery for that destruction of or damage to the [D> automobile or <D] motor vehicle specifically identified in the policy directly caused by an uninsured [D> automobile or <D] motor vehicle whose owner or operator has been identified.

(C) If an insured has a policy containing collision coverage covering damages caused by an uninsured [D> automobile or <D] motor vehicle, the insured's insurer need not make coverage available under this section.

(D) An insurer making payments to an insured under the coverage offered under division (A) of this section shall be entitled, to the extent of those payments and subject to the terms and conditions of the coverage, to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery by the insured against the person or organization legally responsible for the injury or destruction of the property, including any amounts recoverable from an insurer that is or becomes the subject of insolvency proceedings, through such proceedings or in any other lawful manner. No insurer shall attempt to recover any amount [D> against <D] [A> FROM <A] the insured of an insurer that is or becomes the subject of insolvency proceedings, to the extent of [D> his <D] [A> THOSE <A] rights against [D> such <D] [A> THE <A] insurer [D> which such <D] [A> THAT THE <A] insured assigns to the paying insurer.

Sec. 3937.182. (A) As used in this section, "policy" includes an endorsement.

(B) No policy of automobile or motor vehicle insurance that is covered by sections 3937.01 to 3937.17 of the Revised Code, including, but not limited to, the [A> UNINSURED MOTORIST COVERAGE, UNDERINSURED MOTORIST COVERAGE, OR BOTH <A] uninsured and underinsured [D> motorists <D] [A> MOTORIST <A] coverages [A> INCLUDED <A] in such a policy as [D> required <D] [A> AUTHORIZED <A] by section 3937.18 of the Revised Code, and that is issued by an insurance company licensed to do business in this state, and no other policy of casualty or liability insurance that is covered by sections 3937.01 to 3937.17 of the Revised Code and that is so issued, shall provide coverage for judgments or claims against an insured for punitive or exemplary damages.

(C) This section applies only to policies of automobile, motor vehicle, or other casualty or liability insurance as described in division (B) of this section that are issued or renewed on or after the effective date of this section.

[*2] Section 2. That existing sections 3937.18, 3937.181, and 3937.182 of the Revised Code are hereby repealed.

[*3] Section 3. In enacting this act, it is the intent of the General Assembly to do all of the following:

(A) Protect and preserve stable markets and reasonable rates for automobile insurance for Ohio consumers;

(B) Express the public policy of the state to:

(1) Eliminate any requirement of the mandatory offer of uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages;

(2) Eliminate the possibility of uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages being implied as a matter of law in any insurance policy;

(3) Provide statutory authority for the inclusion of exclusionary or limiting provisions in uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages;

(4) Eliminate any requirement of a written offer, selection, or rejection form for uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages from any transaction for an insurance policy;

(5) Ensure that a mandatory offer of uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages not be construed to be required by the provisions of section 3937.181 of the Revised Code, as amended by this act, that make uninsured motorist property damage coverage available under limited conditions.

(C) Provide statutory authority for provisions limiting the time period within which an insured may make a claim under uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages to three years after the date of the accident causing the injury;

(D) To supersede the holdings of the Ohio Supreme Court in those cases previously superseded by Am. Sub. S. B. 20 of the 120th General Assembly, Am. Sub. H. B. 261 of the 122nd General Assembly, S. B. 57 of the 123rd General Assembly, and Sub. S. B. 267 of the 123rd General Assembly;

(E) To supersede the holdings of the Ohio Supreme Court in (2000), 90 Ohio St. 3d 445, (1999), 85 Ohio St. 3d 660, (2000), 88 Ohio St. 3d 358, (1982), 69 Ohio St. 2d 431, (1996), 76 Ohio St. 3d 565, and their progeny.

HISTORY:
Approved by the Governor on July 31, 2001

SPONSOR: Nein