

INSURANCE CODE
TITLE 10. PROPERTY AND CASUALTY INSURANCE
SUBTITLE C. AUTOMOBILE INSURANCE
CHAPTER 1952. POLICY PROVISIONS AND FORMS FOR AUTOMOBILE
INSURANCE (SELECTED SECTIONS)

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SUBCHAPTER C.
UNINSURED OR UNDERINSURED MOTORIST COVERAGE

Section 1952.101. Uninsured or Underinsured Motorist Coverage Required

(a) In this section, "uninsured or underinsured motorist coverage" means the provisions of an automobile liability insurance policy that provide for coverage in at least the limits prescribed by Chapter 601, Transportation Code, that protects insureds who are legally entitled to recover from owners or operators of uninsured or underinsured motor vehicles damages for bodily injury, sickness, disease, or death, or property damage resulting from the ownership, maintenance, or use of any motor vehicle.

(b) An insurer may not deliver or issue for delivery in this state an automobile liability insurance policy, including a policy provided through the Texas Automobile Insurance Plan Association under Chapter 2151, that covers liability arising out of the ownership, maintenance, or use of any motor vehicle unless the insurer provides uninsured or underinsured motorist coverage in the policy or supplemental to the policy.

(c) The coverage required by this subchapter does not apply if any insured named in the insurance policy rejects the coverage in writing. Unless the named insured requests in writing the coverage required by this subchapter, the insurer is not required to provide that coverage in or supplemental to a reinstated insurance policy or renewal insurance policy if the named insured rejected the coverage in connection with that insurance policy or an insurance policy previously issued to the insured by the same insurer or by an affiliated insurer.

Section 1952.102. Uninsured Motor Vehicle

(a) For purposes of the coverage required by this subchapter, "uninsured motor vehicle," subject to the terms of the coverage, is considered to include an insured motor vehicle as to which the insurer providing liability insurance is unable because of insolvency to make payment with respect to the legal liability of the insured within the limits specified in the insurance.

(b) The commissioner may, in the policy forms filed under Subchapter B, Chapter 2301, allow "uninsured motor vehicle" to be defined or, in policy forms adopted under Article 5.06, define "uninsured motor vehicle," to exclude certain motor vehicles whose operators are in fact uninsured.

Section 1952.103. Underinsured Motor Vehicle

For purposes of the coverage required by this subchapter, "underinsured motor vehicle" means an insured motor vehicle on which there is collectible liability insurance coverage with limits of liability for the owner or operator that were originally lower than, or have been reduced by payment of claims arising from the same accident to, an amount less than the limit of liability stated in the underinsured coverage of the insured's policy.

Section 1952.104. Required Provisions Relating to Uninsured or Underinsured Motorist Coverage

The portion of a policy form adopted under Article 5.06 or filed as provided by Subchapter B, Chapter 2301, to provide coverage under this subchapter must:

- (1) provide that, regardless of the number of persons insured, policies or bonds applicable, vehicles involved, or claims made, the total aggregate limit of liability to any one person who sustains bodily injury or property damage as the result of a single occurrence may not exceed the limit of liability for those coverages as stated in the insurance policy and that the total aggregate limit of liability to all claimants, if more than one, may not exceed the total limit of liability per occurrence as stated in the policy;
- (2) provide for the exclusion of the recovery of damages for bodily injury or property damage, or both, resulting from the intentional acts of the insured; and
- (3) require that, for the insured to recover under the uninsured motorist coverage if the owner or operator of any motor vehicle that causes bodily injury or property damage to the insured is unknown, actual physical contact must have occurred between the motor vehicle owned or operated by the unknown person and the person or property of the insured.

Section 1952.105. Liability Limits

(a) The limits of liability for bodily injury, sickness, disease, or death must be offered to an insured in the amounts desired by the insured, but not in amounts greater than the limits of liability specified in the bodily injury liability provisions of the insured's policy.

(b) Subject to a deductible amount of \$ 250, coverage for property damage must be offered to an insured in the amounts desired by the insured, but not in amounts greater than the limits of liability specified in the property damage liability provisions of the insured's policy.

(c) Notwithstanding Subsections (a) and (b), amounts of liability limits for bodily injury, sickness, disease, or death and amounts for coverage for property damage may not be offered in amounts less than those prescribed by Chapter 601, Transportation Code.

Section 1952.106. Recovery Under Underinsured Motorist Coverage

Underinsured motorist coverage must provide for payment to the insured of all amounts that the insured is legally entitled to recover as damages from owners or operators of underinsured motor vehicles because of bodily injury or property damage, not to exceed the limit specified in the insurance policy, and reduced by the amount recovered or recoverable from the insurer of the underinsured motor vehicle.

Section 1952.107. Recovery Under Collision or Combined Coverage

(a) An insured who has collision coverage and uninsured or underinsured property damage liability coverage may recover under the coverage the insured chooses.

(b) If neither the collision coverage or the uninsured or underinsured property damage liability coverage is sufficient alone to cover all damage resulting from a single occurrence, the insured may recover under both coverages. If recovering under both coverages, the insured shall designate one coverage as the primary coverage and pay the deductible applicable to that coverage. The primary coverage must be exhausted before any recovery is made under the secondary coverage.

(c) If both the primary and secondary coverages are used to pay damages from a single occurrence, the insured may not be required to pay the deductible applicable to the secondary coverage when the amount of the deductible otherwise applicable to the secondary coverage is the same as or less than the amount of the deductible applicable to the primary coverage. If both coverages are used to pay damages from a single occurrence and the amount of the deductible otherwise applicable to the secondary coverage is greater than the amount of the deductible applicable to the primary coverage, the insured shall pay the difference between the amount of the two deductibles with respect to the secondary coverage.

(d) The insured may not recover under both the primary and secondary coverages more than the actual damages suffered.

Section 1952.108. Insurer's Right of Recovery

(a) An insurer that makes a payment to any person under any coverage required by this subchapter is subject to the terms of that coverage and, to the extent of the payment, is entitled to the proceeds of any settlement or judgment resulting from the exercise of any right of recovery of the person to whom the payment is made against any person or organization legally responsible for the bodily injury, sickness, disease, or death for

which the payment is made, including the proceeds recoverable from the assets of an insolvent insurer.

(b) If, under an insurance policy issued under this subchapter, an insurer makes a payment as a result of the insolvency of another insurer:

(1) the insolvent insurer's insured shall be given credit to the extent of the paying insurer's payment in any judgment obtained against the insured with respect to the insured's legal liability for damages described by Subsection (a); and

(2) subject to Subchapter F, Chapter 462, the paying insurer has the right to proceed directly against the insolvent insurer or that insurer's receiver, and in pursuing that right the paying insurer has any rights that the insolvent insurer's insured might otherwise have had if the insured had made the payment.

Section 1952.109. Burden of Proof in Dispute

The insurer has the burden of proof in a dispute as to whether a motor vehicle is uninsured.

Section 1952.110. Venue

Notwithstanding Section 15.032, Civil Practice and Remedies Code, an action against an insurer in relation to the coverage provided under this subchapter, including an action to enforce that coverage, may be brought only in the county in which:

(1) the policyholder or beneficiary instituting the action resided at the time of the accident involving the uninsured or underinsured motor vehicle; or

(2) the accident occurred.

SUBCHAPTER G. REPAIR OF MOTOR VEHICLES

Section 1952.301. Limitation on Parts, Products, or Repair Persons or Facilities Prohibited

(a) Except as provided by rules adopted by the commissioner, under an automobile insurance policy that is delivered, issued for delivery, or renewed in this state, an insurer may not directly or indirectly limit the insurer's coverage under a policy covering damage to a motor vehicle by:

(1) specifying the brand, type, kind, age, vendor, supplier, or condition of parts or products that may be used to repair the vehicle; or

(2) limiting the beneficiary of the policy from selecting a repair person or facility to repair damage to the vehicle.

(b) In settling a liability claim by a third party against an insured for property damage claimed by the third party, an insurer may not require the third-party claimant to have repairs made by a particular repair person or facility or to use a particular brand, type, kind, age, vendor, supplier, or condition of parts or products.

Section 1952.302. Prohibited Acts in Connection with Repair of Motor Vehicle

In connection with the repair of damage to a motor vehicle covered under an automobile insurance policy, an insurer, an employee or agent of an insurer, an insurance adjuster, or an entity that employs an insurance adjuster may not:

- (1) solicit or accept a referral fee or gratuity in exchange for referring a beneficiary or third-party claimant to a repair person or facility to repair the damage;
- (2) state or suggest, either orally or in writing, to a beneficiary that the beneficiary must use a specific repair person or facility or a repair person or facility identified on a preferred list compiled by an insurer for the damage repair or parts replacement to be covered by the policy; or
- (3) restrict the right of a beneficiary or third-party claimant to choose a repair person or facility by requiring the beneficiary or third-party claimant to travel an unreasonable distance to repair the damage.

Section 1952.303. Contracts Between Insurer and Repair Person or Facility

(a) A contract between an insurer and a repair person or facility, including an agreement under which the repair person or facility agrees to extend discounts for parts or labor to the insurer in exchange for referrals by the insurer, may not result in a reduction of coverage under an insured's automobile insurance policy.

(b) The commissioner may adopt rules under Chapter 542 with respect to any fraudulent activity of any party to an agreement described by Subsection (a).

Section 1952.304. Provision of Information Regarding Repairs

An insurer may not prohibit a repair person or facility from providing a beneficiary or third-party claimant with information that states:

- (1) the description, manufacturer, or source of the parts used; and
- (2) the amounts charged to the insurer for the parts and related labor.

Section 1952.305. Notice of Rights Regarding Repair of Motor Vehicle

(a) At the time a motor vehicle is presented to an insurer, an insurance adjuster, or other person in connection with a claim for damage repair, the insurer, insurance adjuster, or other person shall provide to the beneficiary or third-party claimant notice of the provisions of this subchapter.

(b) The commissioner shall adopt a rule establishing the method or methods insurers must use to comply with the notice provisions of this section.

Section 1952.306. Complaints

A beneficiary, third-party claimant, or repair person or facility may submit a written, documented complaint to the department with respect to an alleged violation of this subchapter.

Section 1952.307. Rules

Rules adopted by the commissioner to implement this subchapter must include requirements that:

- (1) any limitation described by Section 1952.301(a) be clearly and prominently displayed on the face of the insurance policy or certificate in lieu of an insurance policy; and
- (2) the insured give written consent to a limitation described by Section 1952.301(a) after the insured is notified orally and in writing of the limitation at the time the insurance policy is purchased.