**South Carolina General Assembly**

124th Session, 2021-2022

**H. 4771**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Pendarvis

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Introduced in the House on January 12, 2022

Currently residing in the House Committee on **Labor, Commerce and Industry**

Summary: Underinsured Motorist Coverage

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/12/2022 House Introduced and read first time ([House Journal‑page 32](file:///h:\hj\20220112.docx))

1/12/2022 House Referred to Committee on **Labor, Commerce and Industry** ([House Journal‑page 32](file:///h:\hj\20220112.docx))

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**VERSIONS OF THIS BILL**

[1/12/2022](file:///p:\pprever\2021-22\4771_20220112.docx)

**A** **BILL**

TO AMEND SECTION 38‑77‑30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITION OF AUTOMOBILE INSURANCE, SO AS TO ADD UNDERINSURED MOTORIST COVERAGE; TO AMEND SECTION 38‑77‑150, RELATING TO UNINSURED MOTORIST COVERAGE, SO AS TO REQUIRE UNDERINSURED MOTORIST COVERAGE ON ALL AUTOMOBILE INSURANCE POLICIES ISSUED OR DELIVERED IN THIS STATE; AND TO AMEND SECTION 38‑77‑160, RELATING TO ADDITIONAL UNINSURED MOTORIST COVERAGE, SECTION 38‑77‑200, RELATING TO THE PROHIBITION OF AN ARBITRATION CLAUSE IN UNINSURED MOTORIST PROVISIONS, AND SECTION 38‑77‑210, RELATING TO ADDITIONAL LIABILITY WHICH AN AUTOMOBILE INSURANCE POLICY NEED NOT COVER, ALL SO AS TO MAKE CONFORMING CHANGES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 38‑77‑30(1) of the 1976 Code is amended to read:

“(1) ‘Automobile insurance’ means automobile bodily injury and property damage liability insurance, including medical payments ~~and~~, uninsured motorist coverage, underinsured motorist coverage, and automobile physical damage insurance such as automobile comprehensive physical damage, collision, fire, theft, combined additional coverage, and similar automobile physical damage insurance and economic loss benefits as provided by this chapter written or offered by automobile insurers. An automobile insurance policy includes a motor vehicle liability policy as defined in item (7) of Section 56‑9‑20 and any nonowner automobile insurance policy which covers an individual private passenger automobile not owned by the insured, a family member of the insured, or a resident of the same household as the insured.”

SECTION 2. Section 38‑77‑150 of the 1976 Code is amended to read:

“Section 38‑77‑150. (A) No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision and the underinsured motorist provision, undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured or underinsured motor vehicle, within limits which may be no less than the requirements of Section 38‑77‑140. The uninsured motorist provision and underinsured motorist provision also must provide for no less than twenty‑five thousand dollars’ coverage for injury to or destruction of the property of the insured in any one accident but may provide an exclusion of the first two hundred dollars of the loss or damage. The director or his designee may prescribe the form to be used in providing uninsured motorist coverage and underinsured motorist coverage and when prescribed and promulgated no other form may be used.

(B) No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision. The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear. The evidence of service upon the insurer may not be made a part of the record.

(C) Benefits paid pursuant to this section are subject to subrogation and assignment if an uninsured or underinsured motorist has selected the option to be uninsured by paying the fee pursuant to Section 56‑10‑510.”

SECTION 3. Section 38‑77‑160 of the 1976 Code is amended to read:

“Section 38-77-160. Automobile insurance carriers ~~shall~~ must offer, at the option of the insured, uninsured motorist coverage and underinsured motorist coverage up to the limits of the insured’s liability coverage in addition to the mandatory coverage prescribed by Section 38‑77‑150. ~~Such carriers shall also offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at‑fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute.~~ If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy ~~shall~~ must provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. If none of the insured’s or named insured’s vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with the excess or underinsured coverage. Benefits paid pursuant to this section are not subject to subrogation and assignment.

No action may be brought under the underinsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the underinsured motorist provision. The insurer has the right to appear and defend in the name of the underinsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear. The evidence of service upon the insurer may not be made a part of the record. In the event the automobile insurance insurer for the putative at‑fault insured chooses to settle in part the claims against its insured by payment of its applicable liability limits on behalf of its insured, the underinsured motorist insurer may assume control of the defense of action for its own benefit. No underinsured motorist policy may contain a clause requiring the insurer’s consent to settlement with the at‑fault party.”

SECTION 4. Section 38‑77‑200 of the 1976 Code is amended to read:

“Section 38‑77‑200. The uninsured motorist provision and underinsured motorist provision may not require arbitration of any claim arising under it, nor may anything not otherwise herein provided for or as may be provided in the form prescribed by the director or his designee be required of the insured except the establishment of legal liability of the uninsured or underinsured motorist, nor may the insured be restricted or prevented in any manner from employing legal counsel or instituting legal proceedings.”

SECTION 5. Section 38‑77‑210 of the 1976 Code is amended to read:

“Section 38‑77‑210. The uninsured motorist provision and the underinsured motorist provision need not insure any liability for property damages for which loss a policyholder has been compensated by insurance or otherwise.”

SECTION 6. This act takes effect upon approval by the Governor.

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