

FIRST REGULAR SESSION

HOUSE BILL NO. 659

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BURNETT (Sponsor) AND VOGT (Co-sponsor).

Read 1st time February 28, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1708L.011

AN ACT

To repeal section 379.204, RSMo, and to enact in lieu thereof one new section relating to underinsured motor vehicle coverage.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 379.204, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 379.204, to read as follows:

379.204. [Any underinsured motor vehicle coverage with limits of liability less than two times the limits for bodily injury or death pursuant to section 303.020, RSMo, shall be construed to provide coverage in excess of the liability coverage of any underinsured motor vehicle involved in the accident.] **1. As used in this section, "underinsured motorist" means a party with motor vehicle liability insurance coverage in an amount less than a judgment recovered against such party for damages resulting from injury due to a motor vehicle accident.**

2. Every insurer shall make available upon request to its insureds underinsured motorist coverage whereby, subject to the terms and conditions of such coverage not inconsistent with this section, the insurer agrees to pay its own insured for such uncompensated damages as he or she may recover as a result of injury due to a motor vehicle accident because the judgment recovered against the owner of the other vehicle exceeds the liability policy limits thereon, to the extent of the underinsurance policy limits on the vehicle of the party recovering.

3. If an injured person or, in the case of death, the personal representative agrees to settle a claim with a liability insurer and its insured, and the settlement would not fully

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 satisfy the claim for personal injuries or wrongful death so as to create an underinsured
18 motorist claim, then written notice of the proposed settlement shall be submitted by
19 certified or registered mail to all underinsured motorist insurers that provide coverage.
20 The underinsured motorist insurers then have a period of thirty days to consent to the
21 settlement or retention of subrogation rights. An injured person, or in the case of death,
22 the personal representative may agree to settle a claim with a liability insurer and its
23 insured for less than the underinsured motorist's full liability policy limits. If an
24 underinsured motorist insurer consents to settlement or fails to respond as required in
25 subsection 5 of this section to the settlement request within the thirty-day period, the
26 injured party may proceed to execute a full release in favor of the underinsured motorist's
27 liability insurer and its insured and finalize the proposed settlement without prejudice to
28 any underinsured motorist claim.

29 **4. If an underinsured motorist insurer chooses to preserve its subrogation rights**
30 **by refusing to consent to settle, the underinsured motorist insurer shall within thirty days**
31 **after receipt of the notice of the proposed settlement pay to the injured party the amount**
32 **of the written offer from the underinsured motorist's liability insurer. Thereafter, upon**
33 **final resolution of the underinsured motorist claim, the underinsured motorist insurer is**
34 **entitled to seek subrogation against the liability insurer to the extent of its limits of liability**
35 **insurance, and the underinsured motorist for the amounts paid to the injured party.**

36 **5. The underinsured motorist insurer is entitled to a credit against total damages**
37 **in the amount of the limits of the underinsured motorist's liability policies in all cases to**
38 **which this section applies, even if the settlement with the underinsured motorist under**
39 **subsection 3 of this section or the payment by the underinsured motorist insurer under**
40 **subsection 4 of this section is for less than the underinsured motorist's full liability policy**
41 **limits. The term "total damages" as used in this section means the full amount of damages**
42 **determined to have been sustained by the injured party, regardless of the amount of**
43 **underinsured motorist coverage. Nothing in this section, including any payment or credit**
44 **under this subsection, reduces or affects the total amount of underinsured motorist**
45 **coverage available to the injured party.**