



1                   **of insurer.**

2           (a) No policy or contract of bodily injury liability  
3 insurance, or of property damage liability insurance, covering  
4 liability arising from the ownership, maintenance or use of any  
5 motor vehicle, ~~shall~~ may be issued or delivered in this state to  
6 the owner of ~~such~~ the vehicle, or ~~shall~~ may be issued or delivered  
7 by any insurer licensed in this state upon any motor vehicle for  
8 which a certificate of title has been issued by the Division of  
9 Motor Vehicles of this state, unless it ~~shall contain~~ contains a  
10 provision insuring the named insured and any other person, except  
11 a bailee for hire and any persons specifically excluded by any  
12 restrictive endorsement attached to the policy, responsible for the  
13 use of or using the motor vehicle with the consent, expressed or  
14 implied, of the named insured or his or her spouse against  
15 liability for death or bodily injury sustained or loss or damage  
16 occasioned within the coverage of the policy or contract as a  
17 result of negligence in the operation or use of ~~such~~ the vehicle by  
18 the named insured or by ~~such~~ that person: *Provided*, That in any  
19 such automobile liability insurance policy or contract, or  
20 endorsement thereto, if coverage resulting from the use of a  
21 nonowned automobile is conditioned upon the consent of the owner of  
22 ~~such~~ the motor vehicle, the word "owner" shall be construed to  
23 include the custodian of ~~such~~ the nonowned motor vehicles.  
24 Notwithstanding any other provision of this code, if the owner of

1 a policy receives a notice of cancellation pursuant to article six-  
2 a of this chapter and the reason for the cancellation is a  
3 violation of law by a person insured under the policy, ~~said~~ the  
4 owner may by restrictive endorsement specifically exclude the  
5 person who violated the law and the restrictive endorsement shall  
6 be effective in regard to the total liability coverage provided  
7 under the policy, including coverage provided pursuant to the  
8 mandatory liability requirements of section two, article four,  
9 chapter seventeen-d of this code, but nothing in ~~such~~ the  
10 restrictive endorsement shall be construed to abrogate the "family  
11 purpose doctrine".

12 (b) Nor ~~shall~~ may any such policy or contract be so issued or  
13 delivered unless it ~~shall contain~~ contains an endorsement or  
14 provisions undertaking to pay the insured all sums which he or she  
15 shall be legally entitled to recover as damages from the owner or  
16 operator of an uninsured motor vehicle, within limits which shall  
17 be no less than the requirements of section two, article four,  
18 chapter seventeen-d of this code, as amended from time to time:  
19 *Provided*, That ~~such~~ the policy or contract shall provide an option  
20 to the insured with appropriately adjusted premiums to pay the  
21 insured all sums which he or she shall be legally entitled to  
22 recover as damages from the owner or operator of an uninsured motor  
23 vehicle up to an amount of \$100,000 because of bodily injury to or  
24 death of one person in any one accident and, subject to ~~said~~ the

1 limit for one person, in the amount of \$300,000 because of bodily  
2 injury to or death of two or more persons in any one accident and  
3 in the amount of \$50,000 because of injury to or destruction of  
4 property of others in any one accident: *Provided, however,* That  
5 ~~such~~ the endorsement or provisions may exclude the first \$300 of  
6 property damage resulting from the negligence of an uninsured  
7 motorist: *Provided further,* That ~~such~~ the policy or contract shall  
8 provide an option to the insured with appropriately adjusted  
9 premiums to pay the insured all sums which he or she shall legally  
10 be entitled to recover as damages from the owner or operator of an  
11 uninsured or underinsured motor vehicle up to an amount not less  
12 than limits of bodily injury liability insurance and property  
13 damage liability insurance purchased by the insured without setoff  
14 against the insured's policy or any other policy. Regardless of  
15 whether motor vehicle coverage is offered and provided to an  
16 insured through a multiple vehicle insurance policy or contract, or  
17 in separate single vehicle insurance policies or contracts, no  
18 insurer or insurance company providing a bargained for discount for  
19 multiple motor vehicles with respect to underinsured motor vehicle  
20 coverage ~~shall~~ may be treated differently from any other insurer or  
21 insurance company utilizing a single insurance policy or contract  
22 for multiple covered vehicles for purposes of determining the total  
23 amount of coverage available to an insured. "Underinsured motor  
24 vehicle" means a motor vehicle with respect to the ownership,

1 operation or use of which there is liability insurance applicable  
2 at the time of the accident, but the limits of that insurance are  
3 either: (i) Less than limits the insured carried for underinsured  
4 motorists' coverage; or (ii) has been reduced by payments to others  
5 injured in the accident to limits less than limits the insured  
6 carried for underinsured motorists' coverage. No sums payable as  
7 a result of underinsured motorists' coverage ~~shall~~ may be reduced  
8 by payments made under the insured's policy or any other policy.

9 (c) As used in this section, the term "bodily injury" ~~shall~~  
10 ~~include~~ includes death resulting therefrom and the term "named  
11 insured" ~~shall mean~~ means the person named as such in the  
12 declarations of the policy or contract and ~~shall also include such~~  
13 includes the person's spouse if a resident of the same household  
14 and the term "insured" ~~shall mean~~ means the named insured and,  
15 while resident of the same household, the spouse of any such named  
16 insured and relatives of either, while in a motor vehicle or  
17 otherwise, and any person, except a bailee for hire, who uses, with  
18 the consent, expressed or implied, of the named insured, the motor  
19 vehicle to which the policy applies or the personal representative  
20 of any of the above; and the term "uninsured motor vehicle" ~~shall~~  
21 ~~mean~~ means a motor vehicle as to which there is no: (i) Bodily  
22 injury liability insurance and property damage liability insurance  
23 both in the amounts specified by section two, article four, chapter  
24 seventeen-d of this code, as amended from time to time; or (ii)

1 there is such insurance, but the insurance company writing the same  
2 denies coverage thereunder; or (iii) there is no certificate of  
3 self-insurance issued in accordance with the provisions of ~~said~~  
4 section two. A motor vehicle ~~shall be deemed to be~~ is uninsured if  
5 the owner or operator thereof ~~be~~ is unknown: *Provided*, That  
6 recovery under the endorsement or provisions shall be subject to  
7 the conditions hereinafter set forth.

8 (d) Any insured intending to rely on the coverage required by  
9 subsection (b) of this section shall, if any action ~~be~~ is  
10 instituted against the owner or operator of an uninsured or  
11 underinsured motor vehicle, cause a copy of the summons and a copy  
12 of the complaint to be served upon the insurance company issuing  
13 the policy, in the manner prescribed by law, as though ~~such~~ the  
14 insurance company were a named party defendant; ~~such~~ the company  
15 shall thereafter have the right to file pleadings and to take other  
16 action allowable by law ~~in the name of the owner, or operator, or~~  
17 ~~both, of the uninsured or underinsured motor vehicle or~~ in its own  
18 name.

19 Nothing in this subsection ~~shall~~ may prevent ~~such~~ the owner or  
20 operator from employing counsel of his or her own choice and taking  
21 any action in his or her own interest in connection with ~~such~~ the  
22 proceeding.

23 (e) If the owner or operator of any motor vehicle which causes  
24 bodily injury or property damage to the insured ~~be~~ is unknown, the

1 insured, or someone in his or her behalf, in order for the insured  
2 to recover under the uninsured motorist endorsement or provision,  
3 shall:

4 (i) Within twenty-four hours after the insured discover, and  
5 being physically able to report the occurrence of ~~such~~ the  
6 accident, the insured or someone in his or her behalf, shall report  
7 the accident to a police, peace or to a judicial officer, unless  
8 the accident ~~shall already have~~ already has been investigated by a  
9 police officer;

10 (ii) Notify the insurance company, within sixty days after  
11 ~~such~~ the accident, that the insured or his or her legal  
12 representative has a cause or causes of action arising out of ~~such~~  
13 the accident for damages against a person or persons whose identity  
14 is unknown and setting forth the facts in support thereof; and,  
15 upon written request of the insurance company communicated to the  
16 insured not later than five days after receipt of ~~such~~ that  
17 statement, shall make available for inspection the motor vehicle  
18 which the insured was occupying at the time of the accident; and

19 (iii) Upon trial establish that the motor vehicle, which  
20 caused the bodily injury or property damage, whose operator is  
21 unknown, was a "hit and run" motor vehicle, meaning a motor vehicle  
22 which causes damage to the property of the insured arising out of  
23 physical contact of ~~such~~ the motor vehicle therewith, or which  
24 causes bodily injury to the insured arising out of physical contact

1 of such motor vehicle with the insured or with a motor vehicle  
2 which the insured was occupying at the time of the accident. If  
3 the owner or operator of any motor vehicle causing bodily injury or  
4 property damage ~~be~~ is unknown, an action may be instituted against  
5 the unknown defendant as "John Doe", in the county in which the  
6 accident took place or in any other county in which ~~such~~ the action  
7 would be proper under the provisions of article one, chapter  
8 fifty-six of this code; service of process may be made by delivery  
9 of a copy of the complaint and summons or other pleadings to the  
10 clerk of the court in which the action is brought, and service upon  
11 the insurance company issuing the policy shall be made as  
12 prescribed by law as though ~~such~~ the insurance company were a party  
13 defendant. The insurance company ~~shall have the right to~~ may file  
14 pleadings and take other action allowable by law in the name of  
15 John Doe and in its own name.

16 (f) An insurer paying a claim under the endorsement or  
17 provisions required by subsection (b) of this section shall be  
18 subrogated to the rights of the insured to whom ~~such~~ the claim was  
19 paid against the person causing ~~such~~ the injury, death or damage to  
20 the extent that payment was made. The bringing of an action  
21 against the unknown owner or operator as John Doe or the conclusion  
22 of such an action ~~shall~~ may not constitute a bar to the insured, if  
23 the identity of the owner or operator who caused the injury or  
24 damages complained of, becomes known, from bringing an action



1 against the owner or operator theretofore proceeded against as John  
2 Doe. Any recovery against ~~such~~ the owner or operator shall be paid  
3 to the insurance company to the extent that ~~such~~ the insurance  
4 company ~~shall have~~ has paid the insured in the action brought  
5 against ~~such~~ the owner or operator as John Doe, except that ~~such~~  
6 the insurance company shall pay its proportionate part of any  
7 reasonable costs and expenses incurred in connection therewith,  
8 including reasonable attorney's fees. Nothing in an endorsement or  
9 provision made under this subsection, nor any other provision of  
10 law, ~~shall~~ may operate to prevent the joining, in an action against  
11 John Doe, of the owner or operator of the motor vehicle causing  
12 injury as a party defendant, and ~~such~~ the joinder is hereby  
13 specifically authorized.

14 (g) No such endorsement or provisions ~~shall~~ may contain any  
15 provision requiring arbitration of any claim arising under any such  
16 endorsement or provision, nor may anything be required of the  
17 insured except the establishment of legal liability, nor ~~shall~~ may  
18 the insured be restricted or prevented in any manner from employing  
19 legal counsel or instituting legal proceedings.

20 (h) The provisions of subsections (a) and (b) of this section  
21 ~~shall~~ may not apply to any policy of insurance to the extent that  
22 it covers the liability of an employer to his or her employees  
23 under any workers' compensation law.

24 (i) The commissioner of insurance shall formulate and require

1 the use of standard policy provisions for the insurance required by  
2 this section, but use of such standard policy provisions may be  
3 waived by the commissioner in the circumstances set forth in  
4 section ten of this article.

5 (j) A motor vehicle ~~shall be deemed to be~~ is uninsured within  
6 the meaning of this section, if there has been a valid bodily  
7 injury or property damage liability policy issued upon ~~such~~ the  
8 vehicle, but which policy is uncollectible, in whole or in part, by  
9 reason of the insurance company issuing ~~such~~ the policy upon ~~such~~  
10 the vehicle being insolvent or having been placed in receivership.  
11 The right of subrogation granted insurers under the provisions of  
12 subsection (f) of this section ~~shall~~ may not apply as against any  
13 person or persons who is or becomes an uninsured motorist for the  
14 reasons set forth in this subsection.

15 (k) Nothing contained herein ~~shall~~ may prevent any insurer  
16 from also offering benefits and limits other than those prescribed  
17 herein, nor ~~shall~~ may this section be construed as preventing any  
18 insurer from incorporating in such terms, conditions and exclusions  
19 as may be consistent with the premium charged.

20 (l) The Insurance Commissioner shall review on an annual basis  
21 the rate structure for uninsured and underinsured motorists'  
22 coverage as set forth in subsection (b) of this section and shall  
23 report to the Legislature on said rate structure on or before  
24 January 15, 1983, and on or before January 15, of each of the next

1 two succeeding years.

NOTE: The purpose of this bill is to remove the fictional defendant from civil litigation involving first-party claims for uninsured and underinsured motorist benefits and identify the real party in interest.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.