SENATE COMMITTEE ON INSURANCE
Senator Susan Rubio, Chair
2021 - 2022 Regular

Bill No:	SB 1107	**Hearing Date:**	April 20, 2022
Author:	Dodd		
Version:	February 16, 2022		
Urgency:	No	**Fiscal:**	Yes
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SUBJECT: Vehicles: insurance

DIGEST: Would increase the requirements of the Financial Responsibility Law (FRL), which requires most drivers purchase auto insurance with certain minimum limits of coverage, to $30,000 for liability resulting in bodily injury or death of one person, $60,000 for liability resulting in bodily injury or death of more than one person, and $25,000 for liability resulting from property damage ($30,000/$60,000/$25,000), up from the current requirements which requires coverages of $15,000/$30,000/$5,000; starting January 1, 2028 and every five years thereafter, would further adjust the FRL requirements upward for inflation at a rate of 4%; and reforms the uninsured and underinsured motorist coverage (UM/UIM) to significantly expand the amount of recovery that may be available under a typical UM/UIM policy by (1) changing the definition of what an "underinsured motor vehicle" is to make the determination based on the amount of damages an injured party receives, from current law where the definition is based on the relative insurance limits of the drivers involved in an accident, (2) eliminating the statutory "offset" that accounts for the liability coverage of the at fault driver's insurer, and (3) eliminating the so called "anti-stacking" provision which prevents the UM/UIM limits of multiple cars on one policy, or multiple cars involved in an accident, from being added together to provide an inflated amount of UM/UIM coverage.

ANALYSIS:

Existing law:

1) Generally regulates classes of insurance, including automobile insurance.

2) Requires, by way of the Financial Responsibility Law, drivers and owners of motor vehicles to establish financial responsibility for the vehicle and carry in the vehicle at all times evidence of financial responsibility, which for most drivers may be met by:

   a) A form from a charitable risk pool or insurer, or a covering note or binder from an insurer (V.C. § 16020, I.C. §§ 382, 382.5);

   b) Evidence of surety bond, as specified (VC §§ 16020, 16028);

   c) A certificate of self-insurance, authorized only for registered owners of 25 or more vehicles, issued by the Department of Motor Vehicles (DMV); or

   d) A showing the vehicle is owned or leased by the United States or a public entity.

3) Generally requires drivers maintain financial responsibility in at least the amount of $35,000, which may be met by insurance policy, self-insurance, surety bond, or deposit with DMV.

4) Requires an automobile insurance policy meeting minimum financial responsibility requirements to have minimum limits of at least $15,000 for bodily injury or death to one person, and $30,000 for injury or death to more than one person, and $5,000 liability coverage for damage to property.

5) Requires coverages for uninsured motorist coverage (UM) and underinsured motorist coverage (UIM) to be sold as one bundled coverage (known as UM/UIM).

6) Requires that UM/UIM coverage be sold to any purchaser of an automobile insurance policy in the form of a $30,000/$60,000 bodily injury limits policy, but this policy may be amended by the insurer and consumer before final sale to exclude certain named persons from the coverage, to reduce the amount of UM/UIM coverage to as low as the minimum financial responsibility limits ($15,000/$30,000), or to eliminate the coverage completely. This requires the policyholder to waive the right to buy this coverage in writing.

7) Defines "underinsured motor vehicle" as a vehicle that is insured for an amount that is less than the underinsured motorist limits carried on the vehicle of the injured party (I.C. § 11580.2(p)(2)).

8) Requires underinsured motorist coverage to be offered with limits at least equal to the limits of liability for the insured's uninsured motorist limits in the underlying policy, except that insurers are not required to offer UM/UIM policies larger than $30,000/$60,000.

9) Prohibits, if bodily injury is caused by an insured, uninsured, or underinsured motor vehicle, the maximum liability of the insurer providing the underinsured motorist coverage from exceeding the underinsured motorist coverage limits, less the amount paid to the insured by or for a person or organization liable for the injury.

10) Entitles an insurer paying a claim caused by an underinsured vehicle to reimbursement or credit in the amount received by the insured from the owner or operator of the underinsured motor vehicle or the insurer of the owner or operator (known as the "offset" provision).

11) Prohibits, regardless of the number of vehicles involved in an accident whether insured or not, regardless of the number of persons covered, the number of premiums or premiums paid, the limit of liability for two or more motor vehicles from being combined, added together, or stacked to determine the limit of insurance coverage available to injured persons (known as the "anti-stacking" provision).

This bill:

1) Would increase the minimum amount of liability insurance coverage an owner or operator of a motor vehicle is required to maintain to $30,000 for bodily injury or death

of one person, $60,000 for bodily injury or death of all persons, and $25,000 for damage to the property of others as a result of any one accident.

2) Would, effective January 1, 2028 and every 5 years thereafter, require the minimum limits be increased for inflation at a rate of 4% .

3) Would redefine "underinsured motor vehicle" as a vehicle that is insured that has liability coverage less than the total damages suffered by the injured person or persons. The bill would revise the maximum liability of the insurer providing the underinsured motorist coverage to the underinsured motorist coverage limits available to the injured person, if bodily injury is caused by an insured, uninsured, or underinsured motor vehicle.

4) Would prohibit the reduction of an injured person's coverage pursuant to underinsured motorist coverage by the tortfeasor's insurance coverage, except when the injured person would receive compensation in excess of their total damages.

5) Would delete the "anti-stacking" provision.

Background

Driver Demographics.

According to the Federal Highway Administration as of 2015 California had 25.5 million drivers, out of a total estimated population of 39.1 million Californians. Given the Department of Finance projected California's 2021 population to be 39.4 million residents, the 2015 figure of licensed drivers is likely still reasonably accurate.

This bill proposes changes to the minimum limits, and most drivers now purchase more insurance than just minimum limits, and would be unaffected by this bill.

According to the insurance information institute (iii) which makes an estimate of the average number of uninsured drivers nationwide by measuring the ratio of uninsured motorists (UM) claims to bodily injury (BI) claim frequencies, the percentage of uninsured motorists nationally has slightly fallen from 16% in 1993 to 12.6% in 2019.

Best available data on the uninsured vehicle rate from CDI's website is also from the 90's, where a 1996 research study determined with 95% confidence the uninsured driver rate was between 25.5% and 30.9%. California ranks 10th in most uninsured drivers as a percentage of drivers according to iii estimates; iii estimates California's percentage of uninsured motorists in 2019 is 16.6%, meaning potentially 4.2 million of California's 25.5 million drivers are uninsured motorists. This may be a likely reason why Californians overwhelmingly opt to buy UM/UIM coverage. The Department notes 87% of drivers keep the coverage on their policy, up from 84% in 2009.

The CDI estimates that approximately 26% of drivers purchase a $15,000/$30,000 bodily injury liability policy with either $5,000 or $10,000 of property damage (not all insurers sell $5,000), and 60% of drivers purchase insurance with limits greater than $30,000/$60,000/$25,000. CDI also provided a preliminary estimate for drivers who are now purchasing the 15/30/5 FR limits, premiums will increase approximately 19%, or

$60 per year (or the equivalent of $5 per month). Of course, the amount of the premium increase will vary considerably, depending on the insurer and the driver's rating attributes (e.g. driving record, annual miles driven, years of driving experience, etc.) and the garaging location of the vehicle.

Benefits of Raising FRL Requirements.

This bill would increase the amount of liability insurance coverage an owner or operator of a motor vehicle is required to maintain to $30,000 for bodily injury or death of one person, $60,000 for bodily injury or death of all persons, and $25,000 for damage to the property of others as a result of any one accident. Proponents point out this would be the first raise since the financial responsibility law was introduced in 1967.

Minimum financial responsibility requirements vary nationwide from a low of $10k/$20k/$10k in Florida to $50/$100k/$25k in Maine and Alaska. Higher limits will provide more resources for victims to recover after an accident, but will also lead to increased costs to "grow" the market. California's limits are lower than that of 46 states and the District of Columbia. However, premium price isn't determined by limits alone. California's higher accident incidence and property crime rate mean that despite having much higher limits, Alaska's (50/100/25) minimum limit policies are on average much cheaper than California's (15/30/5) minimum policies.

A clear benefit of raising the limits is the larger influx of cash that would be available for victims of accidents to recover. Costs for vehicle repairs, medical services, and emergency services have all steadily risen over time, and according to supporters, CDI data suggests that 32% of accidents in 2022 will have bodily injury claims exceeding the minimum limits.

According to the U.S. Bureau of Labor Statistics' Consumer Price Index Inflation Calculator comparing March 1967 with March 2022, $5,000 would have the buying power of $43,561.21, $15,000 would have the same buying power as $130,683.64, and $30,000 would have the buying power of $261,367.27.

These figures support the main argument made by sponsors and supporters of this bill: That because of the effects of 55 years of inflation, the strength of California public policy requiring drivers to be financially responsible for their actions on the road has slowly but significantly eroded. Sponsors point to the cost of a new 1967 mustang being $2,200. At that time, minimum limits could purchase two new mustangs, *if* there were property damages of that level to recover. The author of this analysis actually owns a 1967 mustang. It only has lap seat belts, did not come with air conditioning, airbags or anti-lock brakes, has poor driver visibility, did not come with a mirror on the passenger door, and it has no cameras, sensors, warning features, or significant electronics at all beyond light bulbs. The point being that while minimum property coverage limits would not buy a 2022 mustang with a starting price of $27,205 ($43,895 for the electric variety), vehicles today also have many more features that make non-total-losses more difficult and expensive to repair, and accidents more avoidable and survivable.

Estimating the Cost Impact of Changing FRL Requirements.

The Committee notes that determining an accurate estimate of cost impact to consumers for raising minimum financial responsibility limits is more ascertainable than for the proposed changes to UM/UIM. This is because many companies today now offer policies either at or near the proposed FRL level, and provide consumers online tools to estimate their premium at different coverage levels. However, this does not mean that the cost impacts will be the same on all drivers or all insurers. Insurers also note that costs are likely to be slightly higher than what the online tools say because drivers who purchase the minimum limits policies typically have a higher incidence of accidents than those who purchase a $30,000/$60,000 policy now. The Committee may be concerned both support and opposition to this measure can cherry pick data to make their case.

According to the sponsors, publicly available data on the CDI website suggests the proposed increase to the FRL would only cost consumers $5 a month, or $60 a year.

Insurance trade organizations generally give higher estimates of cost. One trade organization submitted to the committee its estimate of the average impact the FRL increase would have on a variety of its companies. Interesting to this comparison, some companies specialize in selling the minimum limits policies and for those companies where more than 40% of their customers are minimum limits drivers, the estimate was that annual premium cost may rise as much as $160-$370. However for the companies with a smaller portion of their customers at current minimum level limits (around 10% of their customers), the average annual premium increase was estimated to be in the $80-$150 range.

Property Damage Coverage.

This bill seeks to double the existing bodily injury liability limits but quintuple the existing property damage limits, from $5,000 to $25,000. Statements by insurance trade organizations in meetings on this legislation suggest that the liability and property coverages are about equal price drivers of end user premium cost. Anecdotally, most stakeholders admit that the cost of repairs for many typical accidents can shoot past $5,000 relatively quickly these days, making it likely the full increased level of coverage proposed will still be recovered frequently. Therefore, it is likely that a significant increase in premium cost results from the proposed property coverage increase.

UM/UIM Coverage Limits.

The mandate to sell these coverages, subject to the policyholder’s written waiver, requires limits be at least the same as the bodily injury liability limits in the policy, except that insurers’ coverage level mandate is capped at $30,000 per person, and $60,000 total per accident. Insurers typically sell UM/UIM in higher amounts if the policyholder is purchasing higher bodily injury liability coverage limit, but insurers almost universally refuse to sell a policyholder UM/UIM coverage in amounts greater than a policyholder’s bodily injury liability coverage limits.

This bill would make several changes to UM/UIM, but does not seek to increase this coverage mandate. Given that this bill would increase FRL limits to be the same as UM/UIM and starting in 2028 would begin exceeding these coverage mandates, this seems a more immediate issue the committee may want to track and ask the

Department to look into if this bill is enacted. It may also be a more appropriate way to effectuate proponent's goals. By increasing the level of coverage mandated to be offered to a consumer, the Legislature and/or the Insurance Commissioner could study the issue, and keep better command and control of UM/UIM benefits and consumer cost pressures, rather than allowing the courts to decide how UM/UIM will work.

Underinsured Motor Vehicle: Limit Based Trigger v. Damages Based Trigger

This bill proposes to change how underinsured motorist coverage is triggered. In some other states, uninsured motorist coverage and underinsured motorist coverage are sold separately, but as mentioned UM/UIM is one coverage in California. Essentially it's an uninsured motorist policy that turns into an underinsured motorist policy in certain circumstances. This is important for understanding why the changes this bill proposes is so expansive.

Due to the offset and anti-stacking provisions discussed below, the trigger for when UIM coverage kicks in is specifically designed to be based on the relative policy limits of the insurance coverages of the two (or more) vehicles involved in a crash. Because of the usual industry practice to sell UM/UIM coverage at the same level as the insured's liability coverage, the practical effect of these rules is that UM/UIM coverage provides UM coverage when a driver is hit by someone who has no insurance, or is involved in a hit and run, and provides UIM coverage when a driver is insured but insured for less than the victim is insured for.

This bill would redefine underinsured motor vehicle to mean "an insured motor vehicle that has liability coverage less than the total damages suffered by the injured person or persons." This definitional change would be necessary to effectuate the bill's elimination of the anti-stacking and offset provisions, but by doing so opens up the possibility that more UM/UIM claims will be made, and made for higher amounts than typically seen now, due to the likelihood that a damages based trigger will let more accidents qualify for UM/UIM coverage.

One scenario this definitional change would allow that is not now possible under California Law, is for an at fault insured with policy limits higher than the person they hit to be determined to be an underinsured motorist. For example, if an at fault driver carries $100,000/$200,000 in bodily injury liability insurance, and hits someone who has $50,000/$100,000 coverage resulting in $150,000 in bodily injury damages, that's now an underinsured driver.

Next imagine the injured driver has three cars on the $50,000/$100,000 policy, each with UM/UIM coverage of the same amount. Because the definition has changed to make the at fault driver underinsured, the UIM coverage of $50,000 would now be available to the victim to add to the $100,000 from the at fault driver's insurer, making the victim whole. If her damages had been higher, her three car's limits could also have been stacked together to provide up to $150,000 on top of the at fault driver's $100,000. (More on the effect of removing anti-stacking below.) Suddenly, a $250,000 insurance payout has been realized when under current law she would have only gotten the $100,000 of the other driver's FRL policy.

The Offset Provision

It has been suggested that the offset rule results in consumers not receiving the benefits which they paid premiums to receive, or at the least does not provide as much protection as drivers expect. This is not correct. Under the Proposition 103 rate review and approval process, the Insurance Commissioner makes sure the premium paid for a UM/UIM policy accounts for the fact that insurers get the benefit of the offset. It is clear that this proposal intends higher benefits to be paid out, and that premium for a policy that eliminates the offset would necessarily be higher than under the current framework where the at fault driver's liability insurance offsets the amount the injured party's insurer must pay under the UM/UIM policy.

Under SB 1107 as proposed, an injured driver would be able to collect the at fault driver's liability insurance, and the full dollar figure listed in the UM/UIM policy. Determining the exact price implications of eliminating the offset is difficult, and must also be analyzed in light of the elimination of the "anti-stacking" provisions and the changing of the Underinsured Motor Vehicle definition.

As an illustration, imagine an individual carrying bodily injury liability and UM/UIM coverages both of $30,000/$60,000 is hit by a driver carrying only the minimum limits coverage ($15,000/$30,000), causing bodily injury damages to one person of $60,000. Under existing law, the injured party is able to receive $15,000 from the other driver and $15,000 from their UM/UIM policy so that they reach the $30,000 figure that they are insured to and that the policy premium is designed to reflect. If this bill were enacted, the removal of the offset would allow the injured party to receive the full $30,000 from their UM/UIM in addition to the $15,000 from the other driver, bringing recovery up to $45,000.

The Anti-Stacking Provision

However the illustration cannot end there. Under this bill, the "anti-stacking" provision that prohibits the UM/UIM policy limits from multiple cars from being stacked together is eliminated, meaning that if the injured party had another vehicle on their insurance policy that also contained the $30,000/$60,000 UM/UIM coverage, they would be able to recover $30,000 for each vehicle, and the $15,000 from the at fault party, bringing total possible recovery up to $75,000.

Similarly, if a driver has 5 cars on one policy, each with the $30,000/$60,000 UM/UIM limit, then the available UM/UIM coverage could be added up to provide for $150,000 coverage for injuries to one person and $300,000 for injuries to multiple people, on top of a $30,000/$60,000 policy. This level of uncertainty in how claims will ultimately be settled under the proposed changes to the UM/UIM coverage makes estimating the end cost to policyholders difficult, but one insurer estimated a UM/UIM policy cost increase of 70-90% without even accounting for the effect of eliminating the anti-stacking provision.

Suggested Amendments

In order to lessen the impact of cost increase on low-income consumers, the Committee may wish to slightly decrease the property coverage to $15,000 to decrease premium inflation, while still providing consumers with a better level of property coverage given the rising price of used cars.

For ease of rate filing administration, the Committee may wish to suggest amendments to delay implementation until January 1, 2025. The Committee may wish to have CDI send insurers a bulletin soliciting rate applications in preparation for the minimum financial responsibility changes, so the transition to the higher limits is smooth for insurance companies and consumers.

The Committee may also wish to consider amending the 4% inflation adjustment so as not to be vague, replace it with set additional increases, or remove it altogether.

The Committee may wish to consider the relative financial pressures facing drivers at this moment of economic instability, the possibility of protracted economic conflict with Russia, and the uncertainties this could create for global energy, food, and other markets, prices, and ultimately consumer pressures that disproportionately hurt the lowest income Californians. The cost increases this bill proposes are immediately mandatory on the approximate quarter of consumers who purchase the lowest limits of coverage, and unless those cost increases pay for an equal increase in benefits for that same population, it is regressive due to this population's higher likelihood of being low income, of with a higher loss history. Therefore, the Committee suggests bifurcating the Financial Responsibility Law from the UM/UIM portion of this bill.

While the measurable benefit of extra coverage for all consumers can be weighed against the measurable cost increase of expanding FRL coverage, the Committee may wish to consider the impact raising costs too quickly could have on the uninsured driver rate, as well as the impact on the rate of insured drivers who carry UM/UIM coverage. While there is evidence to suggest that other states have raised FRL limits without severe impact to the uninsured motorist rate, and this bill proposes a relatively knowable cost increase in the FRL limits, it also proposes a completely unknowable second cost increase in the UM/UIM proposal. Insurers argue the definitional change alone could double the cost of the UM/UIM policy, further complicated by guaranteed additional small % increase from the offset elimination, and then multiplied by an unknown claims increase frequency due to the anti-stacking elimination.

It should be noted the Committee has received arguments for and against this proposal, where support and opposition are mainly trade organizations for insurers and injury attorneys that both stand to financially benefit from this proposal, and the Committee may therefore wish to take the cost estimations of both with a grain of salt and submit the UM/UIM provision to the department for further study.

The Committee notes the cost of the changes this bill proposes would ultimately be decided through the courts as each accident potentially offers a new way to stack policy limits to recover more on UM/UIM claims, leading to the potential for lawsuits. The Committee wishes to avoid a situation where policy prices rise to the point consumers start foregoing UM/UIM in larger numbers in order to save money, as an 87% take up rate indicates the policy is well-priced to be affordable for most customers. On the contrary, good public policy would be finding ways to lower UM/UIM costs or otherwise increase take up rate given the large number of uninsured drivers in California. The

Committee may therefore wish to have the Commissioner instead study in depth the potential impacts of the proposed UM/UIM changes.

The Committee additionally suggests necessary amendments that would align the bonding and deposit requirements for establishing financial responsibility with these changes to auto insurance requirements.

Related/Prior Legislation

AB 3311 (Grayson, 2020) was substantially similar to the FRL components of this bill, would have increased the amount of liability insurance coverage an owner or operator of a motor vehicle is required to maintain to $30,000 for bodily injury or death of one person, $60,000 for bodily injury or death of all persons, and $25,000 for damage to the property of others as a result of any one accident. Would have beginning on January 1, 2026, and every 5 years thereafter, adjust the amount of required liability insurance coverage by any increase in the California Consumer Price Index, as specified. The bill died without hearing in the Assembly Insurance Committee.

AB 862 (Wieckowski, 2013) would have authorized an insurer to offer a separately rated underinsured motorist policy where the maximum liability to the insurer is the underinsured motorist coverage limit. The bill died without hearing in the Assembly Insurance Committee.

AB 1063 (Bradford, 2011) would have eliminated the authority of the insurer to deduct the amount paid to the insured by or for any person or organization that may be held legally liable for the injury from its maximum liability in those circumstances (the offset provision) The bill was held in the Assembly Insurance Committee and its subject matter referred to Rules Committee for assignment and study.

SB 81, Speier, (Chapter 95, Statutes of 2001) required that uninsured motorist coverage include coverage for bodily injury to an insured that is caused by a person operating the injured insured's vehicle without the consent of the injured insured in connection with criminal activity that has been documented in a police report and that the injured insured is not a party to.

SB 333, Romero (Chapter 56, Statutes of 2003) extended the statute of limitations for suing an uninsured motorist from 1 year to 2 years from the date of the accident.

ARGUMENTS IN SUPPORT:

Sponsors of the measure, the Consumer Attorneys of California argue, “Costs of vehicle repairs, medical services, and emergency services have increased considerably over the last fifty-five years while minimum required insurance limits haven't been touched. Minimum auto limits should ensure that an injured party is made whole against after a car crash, but with California's current minimum coverage levels, this is not possible.”

CDI Writes, “California's current minimum financial responsibility limits only further exacerbate consumers' reliance on additional optional UM/UIM coverage which is meant to help consumers cover their damages if they are injured by an uninsured or underinsured driver. According to my Department staff, about 87% of insured motorists opt to carry this particular coverage today. However, under current California law, UM/UIM coverage under a driver's own policy is only provided if that driver carries a UM/UIM limit greater than the liability limit of the at-fault driver and the losses that the driver incurs exceed the liability coverage of the at-fault driver. Further, current California law also requires the driver's UM/UIM coverage limit under their own policy to be reduced by the amount of liability payments made under the at-fault driver's policy, thereby providing less coverage payout than a motorist may otherwise believe that they carry. Victims depend on this coverage to help compensate for their loss. My Department has heard devastating stories of accident victims seeking payment from an at-fault underinsured motorist only to learn that the amount offered is woefully low.

ARGUMENTS IN OPPOSITION:

The American Property Casualty Insurance Association (APCIA), Personal Insurance Federation of California (PIFC), Pacific Association of Domestic Insurance Companies (PADIC), and National Association of Mutual Insurance Companies (NAMIC) argue, "Senate Bill 1107 is premised on helping lower income drivers in California obtain more insurance coverage. However, this coverage is already available to any driver that wishes to purchase it. Rather, SB 1107 will force California drivers to purchase higher coverage, whether they want to or not. This bill does two things. First, the bill increases the minimum financial responsibility (FR) limits in California from $15,000 for a single injury, $30,000 for multiple injuries, and $5,000 for property damage to $30,000/ $60,000/ $25,000, respectively. Secondly, the bill redefines the benefits of uninsured (UM) and underinsured motorist (UIM) policies, eliminating a lower cost customer option for UM/UIM policies and only permitting the sale of a higher cost policy that will certainly drive price-sensitive consumers out of the market."

SUPPORT:

Consumer Attorneys of California (Sponsor)
Bienestar Human Services
California Alliance for Retired Americans
California Autobody Association
California Bicycle Coalition
California Conference of Machinists
California Department of Insurance
California Teamsters Public Affairs Council
Coalition for Humane Immigrant Rights
Consumer Federation of California
Consumers for Auto Reliability & Safety
East Side Riders Bike Club
Inner City Struggle
Latino Equality Alliance
Latino Heritage LA
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United Policyholders
We Save Lives
Women in Non Traditional Employment Roles

OPPOSITION:

American Property Casualty Insurance Association
Civil Justice Association of California
Government Employees Insurance Company
National Association of Mutual Insurance Companies
Pacific Association of Domestic Insurance Companies
Personal Insurance Federation of California

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