

Insurance Federation of Pennsylvania
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June 14, 2021

To: The Honorable Members of the Senate Banking and Insurance Committee

From: Samuel R. Marshall, Jonathan C. Greer and Noah K. Karn

Re: Senate Bill 676 – the repeal and reform of “stacking” in auto insurance

We ask for your support of this bill, which simplifies how consumers buy uninsured and underinsured coverage in their auto policies. It does this by allowing consumers to affirmatively buy the amount of uninsured and underinsured coverage they want, rather than the current law’s convoluted process of stacking and waivers, with amounts tied to the number of cars at any given moment.

- A quick primer: Uninsured and underinsured (commonly known as “UM/UIM”) coverage is to protect a motorist if hit by another motorist who either doesn’t have insurance or doesn’t have enough of it to cover all the damages. It is distinct from bodily injury (commonly known as “BI”) coverage, which every motorist has to buy to protect those he may hit. UM/UIM protects yourself; BI protects others – and insurers offer both.

Under current law:

Pennsylvania’s auto law (commonly known as the “MVFRL”) allows a consumer to reject any UM/UIM coverage. It also allows a consumer to have less UM/UIM coverage than he has BI.

The MVFRL then says a consumer can’t have more UM/UIM than he has BI – unless (here’s where it gets confusing) he declines to waive the stacking of any UM/UIM coverage he has purchased; absent that waiver, he gets the UM/UIM coverage he has selected multiplied (or “stacked”) by the number of cars for which he is an insured.

So we have a system that allows a consumer to buy no UM/UIM coverage, as much UM/UIM coverage as he has BI, or more UM/UIM coverage than he has BI. That's great.

Here's the problem: The way the system lets a consumer buy (or decide not to buy) more UM/UIM than BI – “stacking” and its waiver - has shown itself to be confusing, cumbersome and conflicted.

- First, “stacking” is confusing in itself. We're usually not believers in unscientific polling, but ask around: How many of us know whether we have stacked coverage and what it means? How many of us could (or did) read the waiver form and say they understand stacking or its waiver that much better?
- Second, the amount of coverage one gets from “stacking” is arbitrary, since it depends on how many cars the consumer has as an insured at a given moment. That number changes within any family – kids coming home or leaving with cars, adding a second or third car, or going with only one car for a spell are all routine events in people's lives, and they will determine the amount of possible “stacked” UM/UIM coverage on any given day.

The oddity is that our law allows a consumer to specify the amount of UM/UIM coverage he has if lower than his BI coverage. But if he wants more UM/UIM coverage, the amount has to be as a multiple of however many cars for which he is an insured.

- Third, this confusion has only been amplified, not clarified, by court rulings. The waiver process has been a particular source of litigation: The statutorily-prescribed language in the waiver form is being challenged, which may upend all waivers. How long a waiver remains valid has been questioned – as with what happens with new cars, changed limits or new drivers. And how stacking co-exists with the household vehicle and regular use exclusions that are in veritably every auto policy has been the fodder of some very nuanced rulings.

We look to the courts to provide clarity in the laws you enact and how our regulator implements them. That hasn't been the case with stacking. The only clarity from the courts has been a repeated call for legislative and regulatory action to address the stacking quagmire.

There's the challenge: How can we keep what we all like in the current system – allowing consumers to buy as much or as little UM/UIM coverage as they want, regardless of the amount of BI they buy – but without the confusing artifice of stacking to allow them to buy more UM/UIM than they buy BI?

Fixing the problem:

Senate Bill 676 addresses this by simplifying how a consumer buys UM/UIM coverage. It doesn't restrict the purchase of UM/UIM coverage; it clarifies it and makes it truly the consumer's decision.

- First, it amends Section 1734 to allow a consumer to buy UM/UIM coverage in an amount different, not just less, than the amount of BI he buys. It also amends that section to say that unless a consumer affirmatively buys a different amount (or has decided not to buy any UM/UIM coverage), his UM/UIM will equal his BI coverage.

- Second, consistent with that, it amends Section 1736 to allow a consumer to buy more UM/UIM than BI coverage.

- Third, it amends Section 1738 to get rid of stacking as the means to do that. It replaces that with a roadmap of the amount of UM/UIM coverage a consumer gets when injured in a vehicle where he isn't an insured, in a vehicle where he is an insured, or as a pedestrian. Roadmaps are where lawyers come in – we are sometimes better at creating problems than identifying and solving them. In the interest of a roadmap even more precise and concise than in the bill, we recommend that attached version of Section 1738: It means the same, but with less verbiage.

- Fourth, it amends Sections 1791 and 1792 to require that insurers offer UM/UIM coverage in amounts greater than what they have to offer in BI.

This will be clearer, cleaner way for consumers to understand and control the amount of UM/UIM coverage they buy for each car they own. It isn't upending the current system

or the options and rights of consumers; it is clarifying those options and rights so consumers can more knowledgeably and directly buy as much UM/UIM coverage as they want.

- It does away with the current law's presumption that the consumer wants stacked coverage (more UM/UIM than he has BI) unless he has waived it.
 - o Instead, the consumer gets the coverage he affirmatively chooses to buy. That shouldn't be considered a novel concept or radical reform – it should be a common-sense rule readily embraced by all.

- It does away with the current law's arbitrariness, where the amount of UM/UIM depends on how many cars a person might have at a given moment to act as multiples.

There will be critics – there always are.

Everyone should first answer the threshold question of whether stacking (and its waiver) is a consumer-friendly and consumer-controlled process for buying (or not buying) more UM/UIM coverage than BI. If someone thinks that's the case, we'd love to hear the explanation. If someone thinks stacking isn't a consumer-friendly process, but has objections to the reforms in SB 676, then offer an alternative.

- Pennsylvania's auto law has worked remarkably well since it was reformed in 1990. We have a competitive market, with many options for consumers, and affordable and understandable coverage that meets their needs. Stacking as the sole means of buying more UM/UIM than BI is the glaring exception. This bill, and our suggested (even further) simplification of Section 1738, address that.

We look forward to working with any and all parties interested in getting this important reform done.