

**Senate Banking & Insurance Committee
Hearing on Auto Insurance Stacking
Monday June 21st, 2021
Written Remarks**

These written remarks are being provided on behalf of the Pennsylvania Association for Justice (“PAJ”); a non-profit organization comprised of approximately 2,000 members of the trial bar of the Commonwealth of Pennsylvania. For over 50 years, PAJ has promoted the rights of Pennsylvanians by advocating for the unfettered right of access to justice, consumer protections, and maintenance of a free and independent judiciary.

Chairman DiSanto and the esteemed members of the committee, we’d like to thank you for the opportunity to testify today about legislation that would eliminate a consumer’s ability to stack auto insurance coverage.

Stacking is an accepted common law right that provides increased financial protection for your constituents when they are in an accident with an uninsured motorist (UM) or underinsured motorist (UIM) by allowing them to use the UI and UIM coverages from multiple vehicles on a single policy or multiple vehicles on multiple policies. The ability to stack coverages is a well-established benefit to the consumer, as it offers financial security and better protection to insureds and their families. SB 676 would eliminate these long-established protections and require constituents to purchase additional UM and UIM coverage (whether consumers would purchase this additional coverage, and how much it would cost remains to be seen).

The Pennsylvania Association for Justice is strenuously opposed to any attempt that would eliminate stacking. Our opposition is based on the fact that it would be even more confusing for consumers and they would be left with inadequate protections. We could never advocate for a legislative change that would create more confusion in the insurance marketplace and make securing insurance coverage more perplexing for consumers who will have a more difficult time understanding what they are purchasing. HB676 would make underwriting insurance policies impossible and problematic, while theoretically allowing for an infinite combination of coverage that will leave consumers unsure if they are buying the right policy. Consumers have benefitted from stacking and it should remain a right of all of us because it is so important and simple.

To understand this issue, it’s important to outline the history. Stacking has always been available to Pennsylvania insureds and was mandatory until 1990. Then in 1990, it was codified and made optional for the first time under the Act 6 amendments to the Motor Vehicle Financial Responsibility Law (“MVFRL”). The amendments to the MVFRL allowed consumers the choice to waive their right to stacking, but only for a direct reduction in premiums. The General Assembly

and ultimately the Governor recognized the value and importance of the common law right of stacking by only allowing it to be waived knowing and voluntarily through a document signed and dated by the named insured. The MVFRL was drafted to give the consumer an understanding of the significance of the relinquishment of this important right. SB 676 would discard these protections and completely eliminate the ability of consumers to use stacking to protect themselves and their families when they are injured or killed in a car accident.

Insurance companies have never had a problem with stacking and for over thirty years, insurance companies even supported stacking and have benefited by charging additional premiums for the right to stack. However, we now see insurance companies voicing opposition to stacking. The only legitimate explanation for this recent change of heart is due to the recent invalidation of automobile coverage exclusions – exclusions that have unfairly enriched insurance companies at the expense of policyholders for the last three decades.

For example, in the *Gallagher v. GEICO*¹ decision, Mr. Gallagher’s insurer included an exclusion of insurance coverage in his auto policy which was deemed a violation of the Motor Vehicle Financial Responsibility Law. Mr. Gallagher owned two automobiles covered under one policy and two motorcycles covered under another policy. Both policies in this case were issued through GEICO and provided for stacked UIM coverage. Importantly GEICO unilaterally split the policies into two. The automobile policy contained a household vehicle exclusion.² Mr. Gallagher was injured in an accident with an underinsured motorist while riding his motorcycle. He made UIM claims under his GEICO policies. GEICO paid UIM benefits under his motorcycle policy, but denied coverage under his automobile policy because of the household vehicle exclusion. However, Mr. Gallagher had paid an additional premium for stacked coverage under his automobile policy, allowing him to recover UIM benefits under multiple policies in the household. Said differently, GEICO sold a stacking coverage that they had no intention of providing. The court found that the household vehicle exclusion was a hidden waiver of stacking, depriving Mr. Gallagher of the stacking benefits for which he had paid a premium. GEICO eliminated the stacking benefit without affording Mr. Gallagher the protections enacted by the Legislature with respect to the waiver of stacking. The court recognized that insurers had been unfairly charging premiums for illusory stacked coverage in conjunction with a household vehicle exclusion inserted in the policy.³

¹ 201 A.3d 131 (Pa. 2019).

² The exclusion says that the insured, Mr. Gallagher, cannot obtain coverage on the household vehicles because he was injured while operating the motorcycle, even though he paid to stack.

³ Importantly, in the 1990 the insurance companies represented that they considered these household vehicles in charging stacking premiums. Thus, the companies received a windfall for over 20 years. *In re: Insurance Stacking Litigation*, 754 A.2d 702 (Pa. Super. 2000).

Interestingly, the court invalidated insurer's attempts to insert exclusions that prevent inter-policy stacking. There have never been any concerns with intra-policy stacking. The introduction of SB 676 is a direct response to the court's invalidation of a policy exclusion that directly hurt consumers and they are using their dislike of inter-policy stacking to deprive Pennsylvanians of their right to protect themselves with intra-policy stacking as well.

Our objection to SB 676 is also based on making sure that Pennsylvanians have the insurance protection previously recognized by the Legislature and to which consumers are entitled. Legislative efforts that eliminate the right to stack would statutorily-reverse major court decisions that provide protections to consumers that they can choose to pay for. Rather than eliminating stacking and leaving drivers with less protection and more confusion, we'd urge this committee and the Legislature to focus on preserving this important protection for consumers. It also will help protect health insurers and other health plan's rights to reimbursement that they recover from subrogation claims.

Prior to 1990, all policies provided stacked coverage. The Legislature allowed stacking to be waived in order to permit consumers the opportunity to reduce the cost of their policy, but upon a waiver that directly explained what was being lost. This is the simplest and most effective way to guarantee consumers are adequately covered without the complexities of fine print and exclusions that could make people financially vulnerable. We believe that all legislative efforts should focus on the preservation of stacking and permitting the consumer to elect/waive this additional coverage. People expect insurance policies to cover them when they are involved in a life-changing accident. All of us pay premiums and expect the process to be as simple as possible. If stacking were to go away, we fear this will further complicate premiums, coverage, and trust in insurance coverage. Additionally, no other state does what SB 676 proposes to do, which would allow people to purchase more UM and UIM coverage than bodily injury coverage. Proponents of the bill repeatedly advocate for "predictability in the insurance market" – which cannot be accomplished by unraveling decades of practice for a process not practiced in any other state.

If SB 676 were signed into law, we would inevitably see a substantial reduction in payments to injured victims and a dramatic increase in profits for insurance companies. We will inevitably see insurers inserting exclusions into automobile policies, and the negative impacts would be thrust onto consumers. Eliminating stacking would also increase the likelihood that people will not be fully compensated for their injuries and this could lead to an increase in health insurance and medical assistance premiums because people will not be able to financially recover from their medical bills that are now paid back through subrogation.

Accidents happen every day and they could easily happen to any of us, at any time. It's important to know that consumers are adequately covered and not forced to dip into life savings to make themselves whole. Changing the law as advanced by this legislation would put too many Pennsylvanians at risk by not having the coverage they need. There are simply too many questions and the stakes are too high.

After extensive review of the legislation from last session and now the current version, the following are some important questions that need answered before an issue of this magnitude can be considered.

1. What states have legislation (and what are the statutes cites) where stacking is prohibited and the insurance company must offer and write UM and UIM at 300/900, even if this is higher than the BI coverage?
2. What will be the impact of premiums with the legislation where stacking is prohibited and the insurance company must offer and write UM and UIM at 300/900, even if this is higher than the BI coverage?
3. Since stacking was mandatory prior to 1990 can that be agreed to by all parties?
4. How many companies (and which ones) currently write UM and UIM at 300/900 and what are the premiums?
5. How would this apply to insurance policies covering UBER, Lyft, Doordash, P2P, and taxis?
6. What percentage of Pennsylvanians sign down for UM/UIM?

It is estimated that 58% of households own two or more vehicles. If you consider there are 5 million households in Pennsylvania, 2.9 million of them own two or more vehicles.

Legislation to eliminate the stacking of auto policies would directly impact each of these households resulting in confusion, less coverage, and reduced financial protection for families.

We appreciate the opportunity to testify today and would welcome any questions on this very important matter.