

Independent Insurance Agents of Wisconsin



Analysis of major provisions contained in the Consumer Choice in Auto Insurance Act

Assembly Bill (AB 4) was enacted with two amendments, Assembly amendments 1 and 7. The analysis below is based on AB 4 as amended. Generally, however, AB 4 returns Wisconsin auto law to the status quo prior to the 2009-10 budget bill (the Budget Bill) with the exception of uninsured motorist (UM) coverage where it provides for additional coverage (coverage for injuries caused by phantom vehicles – see number 9 below).

1. **Minimum Coverage amounts for Liability insurance.** AB 4 returns the required liability limits to the limits required prior to the Budget Bill and results in a decrease in limits from \$50,000/\$100,000/\$25,000 back to \$25,000/\$50,000/\$10,000.
2. **Definition of UIM coverage.** AB 4 simply repeals Wis. Stat. § 632.32(2)(e)3 which was enacted in the Budget Bill and which compared the at-fault driver's liability coverage to the insured's damages to determine whether the at-fault driver's auto was an underinsured motor vehicle. AB 4 returns the law to its status prior to the Budget Bill and leaves the definition of an underinsured motor vehicle to be determined by policy language.
3. **Reducing Clause.** Underinsured motorist (UIM) coverage is intended to permit the insured to choose the limit of total coverage (the aggregate of monies received from persons who have caused the insured's injuries and the insured's own UIM coverage) at which the insured believes he/she is fully covered. The amount is the insured's choice – he/she can choose a UIM limit of \$100,000 or \$500,000 or \$1,000,000. Section 26 of AB 4 permits insurers to include a reducing clause in their policy forms that will reduce the UIM limit on the insured's policy by the amount paid by the at-fault driver or another person who is legally responsible for the damages. For example, if the insured believes he/she is to be fully covered at \$100,000, then the insured purchases \$100,000 of UIM coverage. If the insured is injured and the at-fault driver has \$100,000 of liability coverage and the insured has a \$100,000 UIM, no payment is due from the insured's UIM coverage because the insured has been covered up to the limit chosen by the insured. If the insured chooses a \$500,000 UIM limit and is injured by an at-fault driver with a \$100,000 of liability insurance that is paid to the insured, then the insured's UIM coverage will provide coverage for the insured's damages in excess of \$100,000 up to a total limit of \$500,000 (\$100,000 in at-fault driver's liability coverage plus \$400,000 of UIM coverage). Again, the insured has chosen the total limit of coverage that he/she believes will fully compensate the insured for damages. The total amount of coverage is the insured's choice.
4. **Non-mandatory Underinsured Motorist coverage.** AB 4 returns the UIM requirements to pre-Budget Bill status. Insureds and applicants will not be forced to purchase UIM coverage but insurers **must** offer the coverage and **must** provide the coverage if insureds/applicants choose to buy it. Once again, insureds/applicants have a choice when putting together an auto insurance program that meets their comfort level and their budgetary requirements. They are not forced to buy UIM coverage if they cannot afford it or do not believe they need it, but insurers must offer it and make it available to them in limits of at least \$50,000/\$100,000. Most insurers for most insureds offer limits much higher than the \$50,000/\$100,000 minimum – as always agents are free to suggest higher limits and applicants and insureds are free to purchase higher limits.

AB 4 **does not** exempt government-owned motor vehicles from UIM coverage requirements.

5. **Uninsured Motorist (UM) Coverage.** AB 4 lowers the UM limit that insureds/applicants are required to purchase to pre-Budget Bill status. Instead of requiring insureds/applicants to purchase \$100,000/\$300,000 of

UM coverage, now the insured is required to purchase \$25,000/\$50,000 of UM coverage but can choose a higher limit of UM coverage to meet his/her comfort level and auto insurance budget. Most insurers for most insureds offer limits much higher than the \$25,000/\$50,000 required UM limit – as always agents are free to suggest higher limits and insureds/applicants are free to purchase higher limits.

AB 4 does exclude government-owned vehicles from the definition of uninsured motor vehicle in recognition that a government-owned vehicle can never really be uninsured since governmental entities are responsible for the damage done by vehicles they own.

6. **No Stacking.** AB 4 permits insurers to include anti-stacking provisions in their policies which returns the law to its pre-Budget Bill status. Premiums are determined on a per vehicle basis. If Vehicles A, B and C are insured under one policy and Vehicle A is involved in an accident, insureds understand that the policy limit applicable to Vehicle A is the one that applies to the accident. Insureds/applicants do not understand that they have triple the coverage on Vehicle A simply because they are fortunate enough to own two additional vehicles. If an insured/applicant would like to increase the amount of UM or UIM on any one of his/her vehicles, he/she is free to do that until he/she reaches a limit with which he/she is comfortable.
7. **Written notification of UM/UIM.** AB 4 requires insurers to provide to current auto insureds who do not have UIM coverage and to all applicants for auto coverage a “written notice of the availability of underinsured motorist coverage.” If the insured/applicant accepts the offer, then the insurer must provide UIM coverage at limits of at least \$50,000/\$100,000, although the insured can choose to purchase additional UIM coverage to meet his/her comfort level and budget. This provision returns Wisconsin’s UIM auto offer requirements to pre-Budget Bill status.
8. **Commercial policies.** Commercial auto policies are not excluded from UM/UIM requirements by AB 4. AB 4 does exclude commercial liability policies, as defined in Section 13 of AB 4, from the UM/UIM requirements. Commercial auto policies, which cover fleets of vehicles such as buses, are still subject to the UM/UIM requirements in § 632.32(4). The exclusion of commercial liability policies is not a change from current law but is merely a codification of Wis. Adm. Code § 6.77, which already excluded commercial liability policies from UM/UIM requirements.
9. **Phantom vehicle language.** Prior to the Budget Bill, Wisconsin law did not provide UM coverage in phantom vehicle situations. AB 4 actually retains UM coverage for injuries caused by phantom vehicles, but because of the potential for fraud and collusion, AB 4 requires that the facts of the accident be given in a statement to the insurer under oath. However, AB 4 also permits the statement to be given either by the insured or by someone on behalf of the insured. AB 4 assumes that there may be cases in which the insured is injured and cannot file the statement and it accommodates that possibility by permitting another to do so on behalf of the insured. The provision is new to Wisconsin law because the coverage is new to Wisconsin law.
10. **Medical Payment Coverage.** AB 4 returns medical payments coverage to its pre-Budget Bill status. Medical payments coverage is not a required coverage. That is, while insurers must offer it, the insured/applicant can choose to buy it or not. If the insured can choose not to buy med pay coverage, it is ludicrous to set a minimum limit so high that it may actually discourage the insured from buying any med pay coverage. Rather, AB 4 sets the minimum limit at \$1,000, and if an insured/applicant would like to increase the amount of med pay, he/she is free to do so. Independent agents especially may have a broad range of insurer options to offer insureds.
11. **Effective date.** The Act was published on April 26, 2011, making its changes to existing law effective on November 1, 2011.