



# OFFICE OF INSURANCE AND SAFETY FIRE COMMISSIONER

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## **DIRECTIVE**

### **08-P&C-1**

**TO:** ALL PROPERTY & CASUALTY COMPANIES LICENSED TO CONDUCT BUSINESS IN THE STATE OF GEORGIA

**FROM:** JOHN W. OXENDINE  
INSURANCE AND SAFETY FIRE COMMISSIONER

**DATE:** AUGUST 18, 2008

**RE:** SENATE BILL 276

During the 2008 Session of the Georgia General Assembly, Senate Bill 276 (SB 276) was passed, and subsequently, signed into law by the Governor. This legislation contains substantive changes to O.C.G.A. §33-7-11, regarding Uninsured Motorist Coverage, and O.C.G.A. §33-9-21, as it relates to personal private passenger motor vehicle rate filings. You may obtain a copy of SB 276 at [http://www.legis.state.ga.us/legis/2007\\_08/versions/sb276\\_AP\\_13.htm](http://www.legis.state.ga.us/legis/2007_08/versions/sb276_AP_13.htm).

Below is a summary of the legislative changes with comments where appropriate.

### **Uninsured Motorist Coverage**

Effective January 1, 2009, statutory Uninsured Motorist Coverage has been altered by the following:

1. O.C.G.A. §33-7-11(a)(3) removes the mandate as previously interpreted by the courts, that Uninsured Motorist coverage must be available in excess or umbrella liability policies unless rejected by the insured. Uninsured Motorist coverage may be provided if set forth in the policy or by endorsement of excess or umbrella liability policies.
2. O.C.G.A. §33-7-11(b) has been revised to amend the definition of Uninsured Motor Vehicle to effectively create two mandatory Uninsured Motorist Coverage options. The new Uninsured Motorist Coverage option must make the entire limit of Uninsured Motorist Coverage available in excess of any amounts payable under available bodily injury or property damage liability insurance coverage. We will

refer to this coverage as: **Uninsured Motorist Coverage-Added on to At-Fault Liability Limits**. Industry jargon, publications, or case law in various states may also refer to coverage of this type as excess or a damages trigger.

The second option is the coverage currently mandated by Georgia statutes permitting certain offsets, or deductions, from available and payable coverage under other available bodily injury or property damage liability insurance policies. We will refer to this coverage option as: **Uninsured Motorist Coverage-Reduced by At-Fault Liability Limits**. This coverage is also referred to as a limits trigger by others within the industry.

Throughout the remainder of this Directive, we will use the term **Uninsured Motorist** to signify both Uninsured Motorist Coverage options, the term **Added On** to represent **Uninsured Motorist Coverage-Added on to At-Fault Liability Limits**, and the term **Reduced** to distinguish the **Uninsured Motorist Coverage - Reduced by At-Fault Liability Limits**.

For private passenger motor vehicle insurance policies in effect on January 1, 2009, insurers are required to send notice to their insureds who have not previously rejected **Uninsured Motorist** in writing. The intent of this legislation appears to limit the notice mandate to personal private passenger vehicle policies, however, as the legislation is worded, we must advise that the notice be sent, at a minimum, to all insureds with private passenger type vehicles including commercial automobile policies.

3. O.C.G.A. §33-7-11(i) was amended to permit an insurer's endorsements, or policies, to contain exclusions or offsets for amounts the insured has been paid by automobile medical payment coverage as defined by O.C.G.A. §33-34-2(1) or compensated pursuant to workers compensation laws. Deductions are not permissible for other life, health, or disability coverages not specified. Forms effectuating this change cannot have an effective date prior to January 1, 2009.

### **Rating Law**

This legislation also amends Georgia's personal private passenger motor vehicle insurance rating law found in O.C.G.A §33-9-21(b) & (c). Effective October 1, 2008, rates, rating rules, rating factors, underwriting rules, etc., applicable to policies containing only minimum liability coverage are subject to prior approval similar to current law. Rates for policies, containing coverage in addition to or in excess of the statutory minimum limits, are file and use for those rates, rating rules etc. received by the Department on or after October 1, 2008.

### **Implementation**

I offer the following direction to facilitate compliance with this Senate Bill.

Insurers must notify all insureds with private passenger policies in effect on January 1, 2009, who have not previously rejected **Uninsured Motorist** coverage, with a notice at least 45 days prior to the first renewal advising of the coverage options available pursuant to O.C.G.A. §33-7-11. A sample notice, which we find suitable for personal private passenger automobile insurance policies, is attached. In order to minimize confusion we have referred to **Added On** as **New Uninsured Motorist Coverage** and to **Reduced Coverage** as **Traditional Uninsured Motorist Coverage** in

the sample notice to existing policyholders. The attached sample notice does not contain a closing paragraph. Insurers are to include an additional paragraph that informs the policyholder of the person or entity to contact for additional information, the manner in which coverage acceptances or rejections are to be made, and the manner in which pricing information can be obtained if the information is not included at the time of notice. We caution you that this notice may not be suitable for commercial vehicles.

**Uninsured Motorist** disclosures must be revised and at a minimum have a written rejection or acceptance of the following situations:

1. Rejecting **Uninsured Motorist** entirely; or, as the situation dictates,
2. Accepting **Uninsured Motorist** but affirmatively selecting an **Uninsured Motorist** limit less than the Liability limits of the automobile;
3. Rejecting **Added On**, if **Uninsured Motorist** was not rejected in its entirety;
4. Accepting **Reduced**.

The disclosures are not required to be filed with our department.

The Notice required by regulation 120-2-28-.06 is not required to be given to insureds for any new or renewal policy effective on or after January 1, 2009 unless this regulation is revised subsequent to the date of this Directive.

Effective October 1, 2008, personal private passenger motor vehicle insurance filings affecting the price of minimum limit only policyholders continue to be prior approval. All other rate, rating rules, rating factors, etc., that affect policyholders that have coverage in excess of or in addition to the minimum financial responsibility limits are file and use. The law, as written, is mutually exclusive necessitating two (2) separate filings. Personal automobile insurance filings for minimum limit only policyholders and all other policyholders **cannot** be combined into one prior approval filing. Additional information regarding personal automobile file and use rate filing requirements will be included in SERFF prior to the October 1, 2008 effective date.

Any insurer not complying with this Directive will be subject to appropriate disciplinary action.

Any questions concerning this Directive should be addressed to the Property & Casualty Division, 916 West Tower, Floyd Building, #2 Martin Luther King, Jr. Drive, Atlanta, Georgia 30334, (404) 656-4449.



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JOHN W. OXENDINE  
INSURANCE AND SAFETY FIRE COMMISSIONER  
STATE OF GEORGIA

## Sample Notice for Personal Automobile Policyholders

According to our records, your policy contains Uninsured Motorist Coverage. This important coverage provides protection for you, your family, your passengers while occupying your vehicle, or another driver operating this car with your permission, when another at-fault driver is legally responsible for your injuries or property damage but that driver does not have any automobile liability insurance. Coverage may apply if the at-fault driver has liability insurance but the amount of insurance is less than the damages you sustained in the accident. The actual terms of this coverage are governed by Georgia law.

During the 2008 Session of the Georgia General Assembly, a law was passed that requires us to provide revised Uninsured Motorist Coverage unless you reject this coverage in writing. We refer to this new coverage as **Uninsured Motorist Coverage-Added on to At-Fault Liability Limits**, hereinafter referred to as "**New Uninsured Motorist Coverage**". This **New Uninsured Motorist Coverage** provides additional protection at a higher premium than the coverage you currently have. If you or other eligible insureds are injured or have property damage caused by an uninsured or underinsured motorist, the **New Uninsured Motorist Coverage** provides protection that will pay for your damages in addition to the at-fault driver's Liability Coverage limit up to your **New Uninsured Motorist Coverage** limit.

If you reject the **New Uninsured Motorist Coverage**, you may select **Uninsured Motorist Coverage-Reduced by At-Fault Liability Limits** hereinafter referred to as "**Traditional Uninsured Motorist Coverage**". This coverage is comparable to the coverage you currently have. **Traditional Uninsured Motorist Coverage** provides less protection than the **New Uninsured Motorist Coverage**, but the **Traditional Uninsured Motorist Coverage** is available at a lower premium. Unlike the **New Uninsured Motorist Coverage** that provides up to a full limit of protection over and above the at fault drivers liability coverage, **Traditional Uninsured Motorist Coverage** will only pay up to the difference between the at-fault driver's Liability Coverage and your **Traditional Uninsured Motorist Coverage**. This means **Traditional Uninsured Motorist Coverage** will allow you to collect from the at-fault driver and your **Traditional Uninsured Motorist Coverage**, combined, up to the same limit of **Traditional Uninsured Motorist Coverage** you have purchased.

The two uninsured motorist coverage choices do not differ if the at-fault driver responsible for your injuries or property damage does not have any Liability Coverage. In such cases, both **New Uninsured Motorist Coverage** and **Traditional Uninsured Motorist Coverage** will pay up to the amount of Uninsured Motorist Coverage purchased.

We understand that these coverage choices can be confusing and hopefully the attached examples will assist you in making an educated decision regarding the Uninsured Motorist Coverage that best suits your needs.

**NOTE: THE CLOSING PARAGRAPH TO BE DRAFTED BY INSURERS.** Include contact information, method to accept or reject coverages, and pricing information or the manner in which this information may be obtained.

# Example of New Uninsured Motorist Coverage and Traditional Uninsured Motorist Coverage Claim Payment Calculation

An underinsured driver fails to stop at a red light, hits your car and causes you to have \$175,000 in damages. The at-fault underinsured driver (At-Fault's) has \$50,000 of Liability Coverage. Your policy contains \$100,000 of Uninsured Motorist Coverage.

## NEW UNINSURED MOTORIST COVERAGE

(This coverage is also referred to as Uninsured Motorists-Added on to At-Fault Liability Limits)

At-Fault's Liability Coverage Limit \$50,000

Your New Uninsured Motorist Coverage Limit \$100,000

Total Amount of Your Damages \$175,000

### Payment Break Out:

At-Fault's Liability Coverage =	\$ 50,000
Your <b>New Uninsured Motorists Coverage</b> =	<u>\$100,000</u>
Total Payment =	\$150,000
Amount Not Covered =	\$ 25,000 <sup>(a)</sup>

The maximum available coverage in this example was \$150,000 (At-Fault's Liability Coverage Limit + Your New Uninsured Motorist Coverage Limit).

<sup>(a)</sup> Please notice that \$25,000 of the loss was not covered.

## Traditional Uninsured Motorist Coverage

(This coverage is comparable to your current coverage. The coverage is also referred to as Uninsured Motorist Coverage-Reduced by At-Fault Liability Limits)

At-Fault's Liability Coverage Limit \$50,000

Your **Traditional Uninsured Motorist** Limit \$100,000

Total Amount of Your Damages \$175,000

### Payment Break Out:

At-Fault's Liability Coverage =	\$ 50,000
Your Available <b>Traditional Uninsured Motorist Coverage</b> =	<u>\$ 50,000</u> <sup>(a)</sup>
Total Payment =	\$100,000
<b>Amount Not Covered =</b>	<b>\$ 75,000</b> <sup>(b)</sup>

<sup>(a)</sup> The \$50,000 amount shown here is determined by subtracting the At-Fault's Liability Coverage Limit from Your Traditional Uninsured Motorist Coverage Limit. The total available Traditional Uninsured Motorist Coverage you have in this example is \$50,000.

<sup>(b)</sup> Please notice that \$75,000 of the loss is not covered.