

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
PROPOSED
EIGHTH AMENDMENT TO 11 NYCRR 60-2
(INSURANCE REGULATION 35-D)**

SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS INSURANCE

I, Maria T. Vullo, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301 and 3420(f)(2-a) of the Insurance Law, do hereby promulgate the Eighth Amendment to Subpart 60-2 of Title 11 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (Insurance Regulation 35-D), to take effect upon publication of the Notice to Adoption in the State Register, to read as follows:

(Matter in brackets is deleted; new matter is underlined)

Section 60-2.0 is amended as follows:

§ 60-2.0 Preamble, definitions, and applicability.

(a) [This] (1) Except as provided in paragraph (2) of this subdivision, this Subpart implements: (i) Insurance Law section 3420(f)(2), which requires a motor vehicle liability [insurers] insurer to provide, at the option of the insured, supplementary uninsured/underinsured motorists (SUM) insurance coverage to all policyholders in New York State; and (ii) Vehicle and Traffic Law section 1693(3), which requires minimum SUM coverage on all policies satisfying the financial responsibility requirements of that subsection.

(2) This Subpart also implements Insurance Law section 3420(f)(2-a), which requires an insurer that issues a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, to provide SUM insurance for bodily injury, in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability insurance policy, unless the first named insured declines the SUM insurance or selects a lower amount of coverage through a written, signed waiver; provided, however, the insurer may require that the insured's SUM coverage limit equal the insured's bodily injury liability insurance limit under the policy.

(b) This Subpart interprets Insurance Law sections 3420(f)(2), (2-a), and (5), and establishes a standard form for SUM coverage, in order to eliminate ambiguity, minimize confusion and maximize its utility.

(c) The prescribed standard form for SUM coverage shall be exempt from compliance with Insurance Law section 3102(c)(1)(D) pursuant to Insurance Law section 3102(c)(2)(F)(ii).

(d) As used in this Subpart[,];

(1) the terms *digital network, transportation network company driver, TNC driver, transportation network company, TNC prearranged trip, and TNC* shall have the meanings set forth in Vehicle and Traffic Law section 1691[.];

(2) commercial risk insurance means insurance against losses or liabilities arising out of the ownership, operation, or use of a motor vehicle, other than a motor vehicle predominantly used for non-business purposes when a natural person is the named insured under the policy, provided, however, that the use or operation of the motor vehicle by a transportation network company driver in accordance with Vehicle and Traffic Law Article 44-B shall not be included in determining whether the motor vehicle is being used predominantly for non-business purposes; and

(3) first named insured means the individual specified first on the declarations page of a motor vehicle liability insurance policy, and the individual's spouse, if the spouse is a resident of the same household and specified on the declarations page.

(e) This Subpart applies to every insurance policy: (i) insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any natural person arising out of the ownership, maintenance and use of a motor vehicle, by the insured; and (ii) issued or delivered by any insurer upon any motor vehicle then principally garaged or principally used in this state.

Section 60-2.1(e) is amended, section 60-2.1(f) is relettered as (g), and new sections 60-2.1(f) and (h) are added as follows:

(e) Except as provided in subdivision (f) of this section:

(1) An insurer shall offer:

(i) SUM limits, in a motor vehicle liability insurance policy with split limits, up to \$250,000 per person per accident and, subject to such limit for one person, \$500,000 per accident; or

(ii) a SUM limit, in a motor vehicle liability insurance policy with a combined single limit, up to \$500,000 per accident.

(2) An insurer is not required to offer SUM limits in the motor vehicle liability insurance policy in the amounts specified in paragraph (1) of this subdivision, if, in lieu thereof:

(i) the insurer offers motor vehicle liability limits in amounts:

(a) greater than \$100,000 because of bodily injury to or death of one person in any one accident, and, subject to such limit for one person, \$300,000 because of bodily injury to or death of two or more persons in any one accident; or

(b) greater than a combined single limit of \$300,000 because of bodily injury to or death of one or more persons in any one accident; and

(ii) the insurer offers, in the motor vehicle liability policy:

(a) SUM coverage with split limits of \$100,000 per person per accident and, subject to such limit for one person, \$300,000 per accident; or

(b) SUM coverage with a combined single limit of \$300,000 per accident; and

(iii) the insurer also makes available a personal umbrella liability policy with limits up to at least \$500,000, and the insurer provides SUM coverage in the umbrella policy so that the total SUM coverage in the motor vehicle liability insurance policy and the personal umbrella liability policy shall be up to at least \$500,000.

(3) An insurer may offer SUM limits that exceed the amounts specified in paragraph (1) or (2) of this subdivision.

(4) [Nothing in this section shall be construed to require an insurer to offer any particular minimum or maximum amount of third-party bodily injury liability limits.

(5) Notwithstanding any other provision of this subdivision, an insurer shall not provide SUM limits in an amount that exceeds the third-party bodily injury liability limits offered by the insurer and purchased by the policyholder.

(f)(1) With regard to a motor vehicle liability insurance policy originally entered into on or after June 16, 2018 other than a commercial risk insurance policy, an insurer shall provide SUM limits in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability insurance policy unless a first named insured declines the SUM coverage or selects a lower amount of coverage through a written waiver signed by the first named insured, subject to the requirements of Insurance Law section 3420(f)(2-a)(B); provided however, the insurer may require that the insured's SUM coverage limit be equal to the insured's bodily injury liability insurance limit under the policy.

(2) A first named insured's signed written waiver declining SUM coverage or selecting a lower amount of SUM coverage shall apply to all subsequent renewals of coverage and to all policies or endorsements that extend, change, supersede, or replace an existing policy issued to the first named insured, unless changed in writing by a first named insured.

(3) Whenever SUM coverage is declined, the policy shall provide the mandatory uninsured motorists (UM) coverage required by Insurance Law section 3420(f)(1).

(4) The insurer, on subsequent renewals, shall provide to the insured the applicable notice required by section 60-2.2(a) of this Subpart.

[(f)] (g) Notwithstanding [subdivision] subdivisions (e) and (f) of this section, an insurer providing coverage in satisfaction of the financial responsibility requirements of Vehicle and Traffic Law article 44-B:

(1) shall provide SUM coverage, in the amount of \$1,250,000 because of bodily injury to or death of one or more persons in any one accident, while the TNC driver is engaged in a TNC prearranged trip if the policy provides liability coverage as required by Vehicle and Traffic Law section 1693(3); and

(2) [shall offer SUM coverage] if the policy provides liability coverage as required by Vehicle and Traffic Law section 1693(2), shall:

(i) offer SUM coverage as provided in subdivision [(e)(1) and (2)] (e) of this section, under an insurance policy other than an insurance policy described in subparagraph (ii) of this paragraph, while the driver is logged onto the TNC's digital network but is not engaged in a TNC prearranged trip [if the policy provides liability coverage as required by Vehicle and Traffic Law section 1693(2)]; or

(ii) provide SUM coverage as provided in subdivision (f) of this section, under an insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, while the driver is logged onto the TNC's digital network but is not engaged in a TNC prearranged trip [and

(3) may offer SUM limits that exceed the limits specified in this subdivision but shall not offer SUM limits in an amount that exceeds the liability limits offered by the insurer under the policy. Nothing in this section shall be construed to require an insurer to offer any particular minimum or maximum amount of third-party bodily injury liability limits].

(h) Nothing in this section shall be construed to require an insurer to offer any particular minimum or maximum amount of third-party bodily injury liability limits.

Section 60-2.2(a) is amended as follows:

(a)(1) Every insurer writing motor vehicle liability insurance that satisfies the requirements of article 6 or 8 of the Vehicle and Traffic Law shall, with respect to all new and renewal policies, provide a written notice in concise language that shall include:

(i)(a) except as provided in clause (b) of this subparagraph, a statement that SUM coverage is available, including the SUM limits being offered for purchase; or

(b) for the initial written notice, with regard to a motor vehicle liability insurance policy originally entered into on or after June 16, 2018 other than a commercial risk insurance policy:

(1) a statement that the insurer shall provide SUM limits in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability policy unless a first named insured declines the SUM coverage or selects a lower amount of coverage through a written waiver signed by the first named insured, subject to the requirements of Insurance Law section 3420(f)(2-a)(B), provided, however, if the insurer requires that the SUM coverage limit be equal to the policy's bodily injury liability insurance limit, then the written waiver shall only provide for the first named insured's option to decline SUM coverage under the policy; and

(2) a statement that the first named insured's signed, written waiver declining SUM coverage or selecting a lower amount of SUM coverage shall apply to all subsequent renewals of coverage and to all policies or endorsements that extend, change, supersede, or replace an existing policy issued to the first named insured, unless changed in writing by a first named insured;

(ii) the provisions set forth in section 60-2.1(a), (b) and (c) of this Subpart and an explanation of the difference between [uninsured motorists (UM)] coverage and SUM coverage; and

(iii) the examples about SUM coverage set forth in subdivision (b) of this section.

(2)(i) Every insurer writing motor vehicle liability insurance providing liability insurance coverage in satisfaction of the financial responsibility requirements of Vehicle and Traffic Law article 44-B shall, with respect to all new and renewal policies, or new endorsements providing such coverage added to an existing policy, provide a written notice in concise language that shall include:

(a) if the policy provides liability coverage as required by Vehicle and Traffic Law section 1693(3), a statement that SUM coverage is being provided while the driver provides a prearranged trip;

(b) if the policy provides liability coverage as required by Vehicle and Traffic Law section 1693(2):

(1) except as provided in subclause (2) of this clause, a statement that SUM coverage is available while the driver is logged onto a transportation network company's digital network but is not engaged in a transportation network company prearranged trip, including the SUM limits being offered for purchase; or

(2) with respect to a policy originally entered into on or after June 16, 2018 other than a commercial risk insurance policy:

(i) for the initial written notice, a statement that the insurer shall provide SUM limits in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability policy unless a first named insured declines the SUM coverage or selects a lower amount of coverage through a written waiver signed by the first named insured, subject to the requirements of Insurance Law section 3420(f)(2-a)(B), provided, however, if the insurer requires that the SUM coverage limit be equal to the policy's bodily injury liability insurance limit, then the written waiver shall only provide for the first named insured's option to decline SUM coverage under the policy; and

(ii) a statement that the first named insured's signed, written waiver declining SUM coverage or selecting a lower amount of SUM coverage shall apply to all subsequent renewals of coverage and to all policies or endorsements that extend, change, supersede, or replace an existing policy issued to the first named insured, unless changed in writing by a first named insured;

(c) the provisions set forth in section 60-2.1(a), (b) and (c) of this Subpart and an explanation of the difference between UM coverage and SUM coverage; and

(d) the examples about SUM coverage set forth in subdivision (b) of this section.

(ii) With respect to a group policy issued in satisfaction of the financial responsibility requirements of Vehicle and Traffic Law article 44-B, the insurer shall provide the notice to the transportation network company. If the group policy is issued on an excess line basis, the excess line broker shall provide the notice at time of placement to the transportation network company. If an authorized insurer makes SUM coverage available optionally to the group members, then the insurer also shall provide the notice to the group members.