SUBJECT: Revising underinsured motorist coverage

COMMITTEE: Insurance — favorable, without amendment

VOTE: 9 ayes — Smithee, Duncan, Averitt, Counts, De La Garza, Driver, Dutton, G. Lewis, Shields

0 nays

0 absent

WITNESSES: For — Richard S. Geiger, AFACT; Denise Ruggeriero, State Farm Insurance Companies

Against — Bill Whitehurst, Texas Trial Lawyers Association

BACKGROUND: Art. 5.06-1 of the Insurance Code provides for uninsured and underinsured motorist insurance that compensates injured policyholders for damages they do not receive from an underinsured motorist.

Before 1989 courts interpreted art. 5.06-1(5) to hold that an underinsured motorist's insurance applied against the limit of the underinsured-motorist policy held by the injured party. This interpretation was explained in *Montanye v. Transamerica Ins. Co*, 638 S.W.2d 518, 519-20 (Tex. App.—Houston [1st Dist.] 1982, no writ), which stated that language regarding the offset under art. 5.06(5) applied to the word "limit" not the word "damage."

The Texas Supreme Court, in *Stracener v. United Services Automobile Association (USAA)*, 77 S.W.2d 378 (Tex. 1989), expressly overruled the interpretation of the *Montanye* court and held that the underinsured motorist's insurance should offset the actual damage award, not the amount of underinsured motorist insurance the victim carried. The court found that this interpretation was required by the intention of the statute to protect insured motorists from the financial irresponsibility of other motorists.

DIGEST:

HB 1511 would amend Insurance Code art. 5.06-1(5) to provide that when an underinsured motorist has some insurance, that coverage should reduce the amount of the limit of the injured party's underinsured-motorist insurance. The provision would apply to policies delivered or renewed on or after January 1, 1996.

SUPPORTERS SAY:

The current interpretation of art.5.06-1(5) by the Texas Supreme Court does not express the intent of the statute, but actually controverts that intent. Art. 5.06-1, as adopted in 1967, only allowed for uninsured motorist coverage, when the driver causing the injuries had no insurance. In 1977 this law was amended to allow for *under*insured motorist insurance as well. There was never any interpretation that underinsured motorist coverage would work differently than uninsured motorist coverage. If a person purchased $20,000 of uninsured or underinsured motorist coverage, that guaranteed that person would receive $20,000, but no more. The premiums set by the then Board of Insurance reflected this policy.

When the Texas Supreme Court changed its interpretation in the *Stracener* decision, it went back to the purposes of the uninsured motorist law, not the underinsured motorist law, and ignored the policies established in the previous 12 years by the Board regarding uninsured and underinsured motorist insurance. After the *Stracener* decisions was handed down, the Board of Insurance raised premium rates for uninsured and underinsured motorist insurance by nearly 25 percent to reflect the greater liability that the *Stracener* decision allowed. If this decision could be reversed, and the law returned to what it had been prior to 1989, insurance rates would fall to reflect the decrease in liability.

Having underinsured motorist coverage under *Stracener* means that insured persons can never really know how much insurance coverage they have because it depends entirely on how much the other person has. If the insured driver takes out a $50,000 underinsured motorist policy and is hit by a driver with no insurance, the insured driver has $50,000 worth of coverage. However, if the insured driver is hit by someone who has $50,000 of liability insurance, the first driver now has $100,000 worth of coverage, even though he pays the same premiums as the person who received only $50,000 worth of coverage.

OPPONENTS SAY:

This legislation represents an attempt by the insurance industry to limit coverage under underinsured motorist policies. The interpretation of the Texas Supreme Court in the *Stracener* decision, a unanimous decision, is the only way to interpret the policy of underinsured motorist insurance so that it retains any value for the injured party. For example, say a person is insured, under an underinsured motorist policy, for $20,000 and sustains injuries of $40,000, and the other motorist is insured for $20,000 ($20,000 is the minimum limit of auto liability insurance). It would make sense that the injured party has been paying the premiums on the underinsured motorist coverage for just such an event.

Now, injured parties can receive full compensation for their injuries. It would be ridiculous to assert that the $20,000 of underinsured motorist insurance that the injured party had only counts against the amount that the other motorist has, not against the total amount of the damages. If this legislation is approved, every insured driver would have to purchase enough insurance to cover the entire damage award, not merely the gap between the underinsured motorist's insurance and the total award.

Insurance companies are charging their customers premiums for the extra coverage that they are receiving under the *Stracener* decision, so the insurance companies are not losing any money because of this. They say, however, that if the *Stracener* decision were reversed, it would serve to lower rates. There is nothing in this legislation that would require an insurance company to lower its rates.