

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 808*

Short Title: Uninsured/Underinsured Motorist Coverage.

(Public)

Sponsors: Senator Soles.

Referred to: Insurance.

April 6, 1989

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS ON UNINSURED MOTORIST AND UNDERINSURED MOTORIST INSURANCE COVERAGE IN LIGHT OF RECENT APPELLATE COURT DECISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-279.21(b)(3) reads as rewritten:

"(3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in subsection (c) of G.S. 20-279.5, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided, an insured is entitled to secure additional coverage up to the limits of bodily injury liability in the owner's policy of liability insurance that he carries for the protection of third persons. Such provisions shall include coverage for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such insured, with a limit in the

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1 aggregate for all insureds in any one accident of up to the limits of
2 property damage liability in the owner's policy of liability insurance,
3 and subject, for each insured, to an exclusion of the first one hundred
4 dollars (\$100.00) of such damages. Such provision shall further
5 provide that a written statement by the liability insurer, whose name
6 appears on the certification of financial responsibility made by the
7 owner of any vehicle involved in an accident with the insured, that
8 such other motor vehicle was not covered by insurance at the time of
9 the accident with the insured shall operate as a **prima facie**
10 presumption that the operator of such other motor vehicle was
11 uninsured at the time of the accident with the insured for the purposes
12 of recovery under this provision of the insured's liability insurance
13 policy. The coverage required under this subdivision shall not be
14 applicable where any insured named in the policy shall reject the
15 coverage. If the named insured rejects the coverage required under this
16 subdivision, the insurer shall not be required to offer the coverage in
17 any renewal, reinstatement, substitute, amended, altered, modified,
18 transfer or replacement policy unless the named insured makes a
19 written request for the coverage. Rejection of this coverage for policies
20 issued after October 1, 1986, shall be made in writing by the named
21 insured on a form promulgated by the North Carolina Rate Bureau and
22 approved by the Commissioner of Insurance.

23 In addition to the above requirements relating to uninsured motorist
24 insurance, every policy of bodily injury liability insurance covering
25 liability arising out of the ownership, maintenance or use of any motor
26 vehicle, which policy is delivered or issued for delivery in this State,
27 shall be subject to the following provisions which need not be
28 contained therein.

- 29 a. A provision that the insurer shall be bound by a final judgment
30 taken by the insured against an uninsured motorist if the insurer
31 has been served with copy of summons, complaint or other
32 process in the action against the uninsured motorist by
33 registered or certified mail, return receipt requested, or in any
34 manner provided by law; provided however, that the
35 determination of whether a motorist is uninsured may be
36 decided only by an action against the insurer alone. The insurer,
37 upon being served as herein provided, shall be a party to the
38 action between the insured and the uninsured motorist though
39 not named in the caption of the pleadings and may defend the
40 suit in the name of the uninsured motorist or in its own name.
41 The insurer, upon being served with copy of summons,
42 complaint or other pleading, shall have the time allowed by
43 statute in which to answer, demur or otherwise plead (whether
44 such pleading is verified or not) to the summons, complaint or

1 other process served upon it. The consent of the insurer shall
2 not be required for the initiation of suit by the insured against
3 the uninsured motorist: Provided, however, no action shall be
4 initiated by the insured until 60 days following the posting of
5 notice to the insurer at the address shown on the policy or after
6 personal delivery of such notice to the insurer or its agent
7 setting forth the belief of the insured that the prospective
8 defendant or defendants are uninsured motorists. No default
9 judgment shall be entered when the insurer has timely filed an
10 answer or other pleading as required by law. The failure to post
11 notice to the insurer 60 days in advance of the initiation of suit
12 shall not be grounds for dismissal of the action, but shall
13 automatically extend the time for the filing of an answer or
14 other pleadings to 60 days after the time of service of the
15 summons, complaint, or other process on the insurer.

- 16 b. Where the insured, under the uninsured motorist coverage,
17 claims that he has sustained bodily injury as the result of
18 collision between motor vehicles and asserts that the identity of
19 the operator or owner of a vehicle (other than a vehicle in which
20 the insured is a passenger) cannot be ascertained, the insured
21 may institute an action directly against the insurer: Provided, in
22 such event, the insured, or someone in his behalf, shall report
23 the accident within 24 hours or as soon thereafter as may be
24 practicable, to a police officer, peace officer, other judicial
25 officer, or to the Commissioner of Motor Vehicles. The insured
26 shall also within a reasonable time give notice to the insurer of
27 his injury, the extent thereof, and shall set forth in such notice
28 the time, date and place of such injury. Thereafter, on forms to
29 be mailed by the insurer within 15 days following receipt of the
30 notice of the accident to the insurer, the insured shall furnish to
31 insurer such further reasonable information concerning the
32 accident and the injury as the insurer shall request. If such
33 forms are not so furnished within 15 days, the insured shall be
34 deemed to have complied with the requirements for furnishing
35 information to the insurer. Suit may not be instituted against the
36 insurer in less than 60 days from the posting of the first notice
37 of such injury or accident to the insurer at the address shown on
38 the policy or after personal delivery of such notice to the insurer
39 or its agent.

40 The failure to post notice to the insurer 60 days in advance
41 of the initiation of the suit shall not be grounds for dismissal of
42 the action, but shall automatically extend the time for filing of
43 an answer or other pleadings to 60 days after the time of service
44 of the summons, complaint, or other process on the insurer.

1 Provided under this section the term 'uninsured motor vehicle' shall
2 include, but not be limited to, an insured motor vehicle where the
3 liability insurer thereof is unable to make payment with respect to the
4 legal liability within the limits specified therein because of insolvency.

5 An insurer's insolvency protection shall be applicable only to
6 accidents occurring during a policy period in which its insured's
7 uninsured motorist coverage is in effect where the liability insurer of
8 the tort-feasor becomes insolvent within three years after such an
9 accident. Nothing herein shall be construed to prevent any insurer from
10 affording insolvency protection under terms and conditions more
11 favorable to the insured than is provided herein.

12 In the event of payment to any person under the coverage required
13 by this section ~~and subject to the terms and conditions of such~~
14 ~~coverage, the insurer making such payment shall, to the extent thereof,~~
15 ~~be entitled to the proceeds of any settlement for judgment resulting~~
16 ~~from the exercise of any limits of recovery of such person against any~~
17 ~~person or organization legally responsible for the bodily injury for~~
18 ~~which such payment is made, including the proceeds recoverable from~~
19 ~~the assets of the insolvent insurer~~subdivision, the insurer making the
20 payment has the right of subrogation.

21 For the purpose of this section, an 'uninsured motor vehicle' shall
22 be a motor vehicle as to which there is no bodily injury liability
23 insurance and property damage liability insurance in at least the
24 amounts specified in subsection (c) of G.S. 20-279.5, or there is such
25 insurance but the insurance company writing the same denies coverage
26 thereunder, or has become bankrupt, or there is no bond or deposit of
27 money or securities as provided in G.S. 20-279.24 or 20-279.25 in lieu
28 of such bodily injury and property damage liability insurance, or the
29 owner of such motor vehicle has not qualified as a self-insurer under
30 the provisions of G.S. 20-279.33, or a vehicle that is not subject to the
31 provisions of the Motor Vehicle Safety and Financial Responsibility
32 Act; but the term 'uninsured motor vehicle' shall not include:

- 33 a. A motor vehicle owned by the named insured;
- 34 b. A motor vehicle which is owned or operated by a self-insurer
35 within the meaning of any motor vehicle financial responsibility
36 law, motor carrier law or any similar law;
- 37 c. A motor vehicle which is owned by the United States of
38 America, Canada, a state, or any agency of any of the foregoing
39 (excluding, however, political subdivisions thereof);
- 40 d. A land motor vehicle or trailer, if operated on rails or crawler-
41 treads or while located for use as a residence or premises and
42 not as a vehicle; or
- 43 e. A farm-type tractor or equipment designed for use principally
44 off public roads, except while actually upon public roads.

1 For purposes of this section 'persons insured' means the named
2 insured and, while resident of the same household, the spouse of any
3 such named insured and relatives of either, while in a motor vehicle or
4 otherwise, and any person who uses with the consent, expressed or
5 implied, of the named insured, the motor vehicle to which the policy
6 applies and a guest in such motor vehicle to which the policy applies
7 or the personal representative of any of the above or any other person
8 or persons in lawful possession of such motor vehicle.

9 The fact that a 'person insured' did not personally pay all or part of
10 a premium on a policy under which that person makes a claim or did
11 not purchase similar coverage, which is the basis of a present claim,
12 for another vehicle under his ownership, does not bar his right to
13 insurance coverage if a policy provides for the same to him as a
14 'person insured'.

15 In the event there are multiple claimants, after a judgment or
16 settlement, seeking payment under the coverage provided by this
17 subdivision, and the claimants are unable to agree upon their
18 respective shares of the payments, the insurer providing the coverage
19 shall apportion payment to those claimants according to the proportion
20 their damages bear to the total amount of coverage available to those
21 claimants."

22 Sec. 2. G.S. 20-279.21(b)(4) reads as rewritten:

23 "(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3)
24 of this subsection, provide underinsured motorist coverage, to be used
25 only with policies that are written at limits that exceed those prescribed
26 by subdivision (2) of this section and that afford uninsured motorist
27 coverage as provided by subdivision (3) of this subsection, in an
28 amount equal to the policy limits for automobile bodily injury liability
29 as specified in ~~the each~~ owner's policy under which a claimant claims
30 underinsured motorist coverage. An 'uninsured motor vehicle,' as
31 described in subdivision (3) of this subsection, includes an
32 'underinsured highway vehicle,' which means a highway vehicle with
33 respect to the ownership, maintenance, or use of which, the sum of the
34 limits of liability under all bodily injury liability bonds and insurance
35 policies applicable at the time of the accident is less than the
36 applicable limits of liability under the owner's policy. For the purposes
37 of this subdivision, the term 'highway vehicle' means a land motor
38 vehicle or trailer other than (i) a farm-type tractor or other vehicle
39 designed for use principally off public roads and while not upon public
40 roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a
41 vehicle while located for use as a residence or premises. The
42 provisions of subdivision (3) of this subsection shall apply to the
43 coverage required by this subdivision. Underinsured motorist coverage
44 shall be deemed to apply when, by reason of payment of judgment or

1 settlement, all liability bonds or insurance policies providing coverage
2 for bodily injury caused by the ownership, maintenance, or use of the
3 underinsured highway vehicle have been exhausted. Exhaustion of
4 such liability coverage for purpose of any single liability claim
5 presented for underinsured motorist coverage shall be deemed to occur
6 when either (a) the limits of liability per claim have been paid upon
7 such claim, or (b) by reason of multiple claims, the aggregate per
8 occurrence limit of liability has been paid. Underinsured motorist
9 coverage shall be deemed to apply to the first dollar of an underinsured
10 motorist coverage claim beyond amounts paid to the claimant pursuant
11 to the exhausted liability policy.

12 In any event, the limit of underinsured motorist coverage
13 applicable to any claim is determined to be the difference between the
14 total amount paid to the claimant pursuant to the exhausted liability
15 policy or policies and the total limits of the owner's underinsured
16 motorist coverages provided in the owner's policies of insurance under
17 which the claimant is claiming underinsured motorist coverage; it
18 being the intent of this paragraph to provide to the ~~owner~~ claimant, in
19 instances where more than one policy may apply, the benefit of all
20 limits of liability of underinsured motorist coverage under all such
21 policies: Provided that this paragraph shall apply only to nonfleet
22 private passenger motor vehicle insurance as defined in G.S. 58-
23 131.36(9) and (10). If more than one underinsured motorist coverage
24 is liable to make payments to a claimant, only the underinsured
25 motorist coverage, which by contractual language in the policy has the
26 primary duty to make payment to a claimant prior to other
27 underinsured motorist coverages that may apply, has the right to
28 deduct from its policy limits and subsequent payment the total amount
29 paid to a claimant by liability policies involving the accident and claim
30 in question. Other underinsured motorist coverages that may apply
31 shall be liable to the full extent of their policy limits.

32 An underinsured motorist insurer may at its option, upon a claim
33 pursuant to underinsured motorist coverage, pay moneys without there
34 having first been an exhaustion of the liability insurance policy
35 covering the ownership, use, and maintenance of the underinsured
36 highway vehicle. In the event of such payment, the underinsured
37 motorist insurer shall be either: (a) entitled to receive by assignment
38 from the claimant any right or (b) subrogated to the claimant's right
39 regarding any claim the claimant has or had against the owner,
40 operator, or maintainer of the underinsured highway vehicle, provided
41 that the amount of the insurer's right by subrogation or assignment
42 shall not exceed payments made to the claimant by the insurer. No
43 insurer shall exercise any right of subrogation or any right to approve
44 settlement with the original owner, operator, or maintainer of the

1 underinsured highway vehicle under a policy providing coverage
2 against an underinsured motorist where the insurer has been provided
3 with written notice in advance of a settlement between its insured and
4 the underinsured motorist and the insurer fails to advance a payment to
5 the insured in an amount equal to the tentative settlement within 30
6 days following receipt of such notice. Further, the insurer shall have
7 the right, at its election, to pursue its claim by assignment or
8 subrogation in the name of the claimant, and the insurer shall not be
9 denominated as a party in its own name except upon its own election.
10 Assignment or subrogation as provided in this subdivision shall not,
11 absent contrary agreement, operate to defeat the claimant's right to
12 pursue recovery against the owner, operator, or maintainer of the
13 underinsured highway vehicle for damages beyond those paid by the
14 underinsured motorist insurer. The claimant and the underinsured
15 motorist insurer may join their claims in a single suit without requiring
16 that such insurer be named as a party. Any claimant who intends to
17 pursue recovery against the owner, operator, or maintainer of the
18 underinsured highway vehicle for moneys beyond those paid by the
19 underinsured motorist insurer shall prior to doing so give notice to
20 such insurer and give such insurer, at its expense, the opportunity to
21 participate in the prosecution of such claim. Upon the entry of
22 judgment in a suit upon any such claim in which the underinsured
23 motorist insurer and claimant are joined, payment upon such judgment,
24 unless otherwise agreed to, shall be applied pro rata to the claimant's
25 claim beyond payment by the insurer of the owner, operator or
26 maintainer of the underinsured highway vehicle and the claim of the
27 underinsured motorist insurer.

28 A party injured by the operation of an underinsured highway
29 vehicle who institutes a suit for the recovery of moneys for such
30 injuries and in such an amount that, if recovered, would support a
31 claim under underinsured motorist coverage shall give notice of the
32 initiation of the suit to the underinsured motorist insurer as well as to
33 the insurer providing primary liability coverage upon the underinsured
34 highway vehicle. Upon receipt of such notice, the underinsured
35 motorist insurer shall have the right to appear in defense of such claim
36 without being named as a party therein, and without being named as a
37 party may participate in such suit as fully as if it were a party. The
38 underinsured motorist insurer may elect, but may not be compelled, to
39 appear in such action in its own name and present therein a claim
40 against other parties; provided that application is made to and
41 approved by a presiding superior court judge, ~~in any such suit, any~~
42 ~~insurer providing primary liability insurance on the underinsured highway~~
43 ~~vehicle may upon payment of all of its applicable limits of liability be~~
44 ~~released from further liability or obligation to participate in the defense of~~

1 such proceeding. However, prior to approving any such application, the
2 court shall be persuaded that the owner, operator, or maintainer of the
3 underinsured highway vehicle against whom a claim has been made
4 has been apprised of the nature of the proceeding and given his right to
5 select counsel of his own choice to appear in such action on his
6 separate behalf. In the event that an underinsured motorist insurer,
7 following the approval of such application, pays in settlement or
8 partial or total satisfaction of judgment moneys to the claimant, such
9 insurer shall be subrogated to or entitled to an assignment of the
10 claimant's rights against the owner, operator, or maintainer of the
11 underinsured highway vehicle and, provided that adequate notice of
12 right of independent representation was given to such owner, operator,
13 or maintainer, a finding of liability or the award of damages shall be
14 **res judicata** between the underinsured motorist insurer and the owner,
15 operator, or maintainer of underinsured highway vehicle. A full and
16 total release from liability of a tortfeasor by a claimant under
17 underinsured motorist coverage does not bar the claimant, in either a
18 court action against the tortfeasor or direct settlement with an
19 underinsured motorist coverage carrier, from making a claim against
20 one or more policies offering underinsured motorist coverage to the
21 claimant, where the liability coverages afforded the tortfeasor have
22 been exhausted by full payments of liability limits.

23 In any civil action where a claim is brought alleging negligence in
24 the ownership, operation, maintenance, or use of an underinsured
25 highway vehicle, any company providing a liability bond or liability
26 insurance coverage for the claim may, upon tendering its remaining
27 coverage applicable to the claim, plus prejudgment interest on the
28 amount tendered from the date of commencement of the action and the
29 claimant's court costs accrued to the date of the tender, be released by
30 the court from any further liability for the claim under its bond or
31 policy to any person insured, and further liability for the claim to the
32 claimant, and any further liability for the claim to any person claiming
33 through any of them; including, without limitation, a release of the
34 company from any duty on its part to provide a defense for the claim
35 to any person insured or any person claiming through a person insured,
36 of any duty on its part otherwise to participate in the action. Each
37 applying company shall file the original application and a request for a
38 hearing with the court, and shall mail a copy of the application and
39 request for a hearing to each person insured for the action (or the other
40 party's attorney of record) and to every underinsured motorist carrier to
41 which the claimant gave notice of the action. This mailing shall be by
42 certified mail, return receipt requested, to each addressee's last known
43 address, and shall be sent at least 30 days prior to the date that a trial of
44 the case begins. Each return receipt shall be filed with the court as

1 proof of the required mailing. Unless mailed with the application, the
2 company making application to the court shall also mail, by first class
3 mail, to each person entitled to receive the application, a notice of the
4 hearing on the application, which shall be mailed to each addressee's
5 last known address at least 10 days prior to the hearing date, with a
6 certification of the mailing to be filed with the court. Any mailing to a
7 person insured under the bond or policy shall be sufficient if mailed to
8 the last address for the person that appears in the company's records
9 for the bond or policy in question unless the company has actual
10 knowledge that the address is incorrect and has actual knowledge of a
11 correct address; and the validity of the address used shall be verified in
12 a sworn affidavit from an authorized representative of the company,
13 which shall be filed with the court. The notice of hearing shall
14 expressly inform each person insured of his right to attend the hearing
15 and be informed by the court of the reason for the hearing, the
16 consequences to the person insured of the entry of the order, and the
17 right of the person insured to employ counsel of his choice, at his
18 expense, to represent him in defense of the action. Upon the hearing
19 on the application, if the record establishes compliance with the
20 procedure provided in this paragraph and that the applying company is
21 ready, willing, and able to pay into court the amounts required by this
22 paragraph, the court shall enter the order applied for and shall further
23 order that the company at the same time pay the required amount to the
24 clerk of court to be disbursed to the claimant, and any subrogated
25 underinsured motorist insurance carriers, as the court determines their
26 respective interests to be. The court shall advise each person insured
27 who appears at the hearing of the reason for the hearing, the
28 consequences to the person insured of the entry of the order, and the
29 right to the person insured to employ counsel of his choice, at his
30 expense, to represent him in defense of the action; provided, however,
31 the failure of any one or more of the persons insured either to have
32 received any mailing required by this paragraph or to attend the
33 hearing shall not be grounds to deny the application or to deny entry of
34 the order. Upon entry of the order the underinsured motorist carrier or
35 carriers that were properly given notice of the action shall be liable to
36 the claimant for all subsequent court costs taxed against the
37 underinsured tortfeasor; and each underinsured motorist carrier or
38 carriers that were properly given notice of the action shall further be
39 liable to the claimant for interest on the damages payable by it from
40 the date of commencement of the action until payment is made. The
41 filing of the application and any other act required of the applying
42 company may be performed on its behalf by the attorney of record for
43 the claimant if the company and the claimant so agree.

1 The coverage required under this subdivision shall not be
2 applicable where any insured named in the policy rejects the coverage.

3 If the named insured rejects the coverage required under this subdivision, the insurer
4 shall not be required to offer the coverage in any renewal, reinstatement, substitute,
5 amended, altered, modified, transfer or replacement policy unless the named insured
6 makes a written request for the coverage. Rejection of this coverage for policies issued
7 after October 1, 1986, shall be made in writing by the named insured on a form
8 promulgated by the North Carolina Rate Bureau and approved by the Commissioner of
9 Insurance.

10 In the event there are multiple claimants, after a judgment or settlement, seeking
11 payment under the coverage provided by this subdivision, and the claimants are unable
12 to agree upon their respective shares of the payments, the insurer providing the coverage
13 shall apportion payment to those claimants according to the proportion their damages
14 bear to the total amount of coverage available to those claimants."

15 Sec. 3. This act shall become effective October 1, 1989.