

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991

CHAPTER 837
HOUSE BILL 846

AN ACT TO AMEND AND MAKE TECHNICAL CORRECTIONS TO VARIOUS
INSURANCE LAWS AND TO CLARIFY THE UNINSURED AND
UNDERINSURED MOTORISTS LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-35-40(a) reads as rewritten:

"(a) No insurance premium finance company, and no employee of such a company shall pay, allow, or offer to pay or allow in any manner whatsoever to an insurance agent or any employee of an insurance agent, or to any other person, or as an inducement to the financing of an insurance policy with the insurance premium finance company or after any such policy has been financed, any rebate whatsoever, either from the service charge for financing specified in the insurance premium finance agreement or otherwise, or shall give or offer to give any valuable consideration or inducement of any kind directly or indirectly, other than an article of merchandise not exceeding one dollar (\$1.00) in value which shall have thereon the advertisement of the insurance premium finance company; but an insurance premium finance company may purchase or otherwise acquire an insurance premium finance agreement provided that it conforms to this Article in all respects, from another insurance premium finance company with ~~or without~~ recourse against the insurance premium finance company on such terms and conditions as may be mutually agreed upon and such terms and conditions shall be subject to the approval of the Commissioner. ~~A premium finance company may sell or transfer ownership of any premium finance agreement or power of attorney to cancel an insurance contract to another premium finance company as long as the terms and conditions of the sale or transfer are approved in writing by the Commissioner. Any consideration for such sale or transfer does not constitute a rebate or an inducement within the meaning of this section. The transferee company in such sale or transfer has the option of using the premium finance contract and forms of either the transferor company or of the transferee company, provided such forms have been approved by the Commissioner.~~"

Sec. 2. G.S. 58-8-35 reads as rewritten:

"§ 58-8-35. Contingent liability printed on policy.

Every insurance company licensed to do business in this State shall print ~~upon the front of~~ on each policy and application in clear and explicit language the full contingent liability of its members. ~~The language shall include the following statements printed in bold red type for each unlimited assessment policy: "CAUTION: THIS IS AN ASSESSMENT POLICY. YOU MAY BE LIABLE FOR THE PAYMENT OF~~

~~LOSSES, RESERVES, AND/OR EXPENSES INCURRED WHILE YOU ARE A MEMBER OF OUR ASSOCIATION."~~

Sec. 3. G.S. 58-33-125(d) reads as rewritten:

"(d) The requirement for an ~~examination~~ examination, prelicensing education, continuing education, or a registration fee does not apply to agents for domestic farmers' mutual assessment fire insurance companies or associations who solicit and sell only those kinds of insurance specified in G.S. 58-7-75(5)d for such ~~companies.~~ companies or associations."

Sec. 4. Section 6 of Chapter 775 of the 1989 Session Laws, as added by Section 88 of Chapter 720 of the 1991 Session Laws, reads as rewritten:

"Sec. 6. This act does not apply to ~~noncancelable disability insurance as defined in G.S. 58-7-15(3)b.~~ disability income insurance."

Sec. 5. G.S. 58-7-32(b) reads as rewritten:

"(b) No insurer shall, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the Commissioner if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

- (1) The primary effect of the reinsurance agreement is to transfer deficiency reserves or excess interest reserves to the books of the reinsurer for a risk charge and the agreement does not provide for significant participation by the reinsurer in one or more of the following risks: mortality, morbidity, investment, or surrender benefit;
- (2) The reserve credit taken by the ceding insurer is not in compliance with insurance statutes or with rules or actuarial interpretations or standards adopted by the Commissioner;
- (3) The reserve credit taken by the ceding insurer is greater than the underlying reserve of the ceding insurer supporting the policy obligations transferred under the reinsurance agreement;
- (4) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against prior years' losses nor payment by the ceding insurer of an amount equal to prior years' losses upon voluntary termination of in-force reinsurance by that ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience;
- (5) The ceding insurer can be deprived of surplus at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer; except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums shall not be considered to be such a deprivation of surplus;
- (6) The ceding insurer must, at scheduled times specified or implied in the agreement, terminate or automatically recapture all or part of the coverage ceded;
- (7) No cash payment is due from the reinsurer, throughout the lifetime of the reinsurance agreement, with all settlements before the termination

date of the agreement made only in a reinsurance account, and no funds in the account are available for the payment of benefits; or

- (8) The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income reasonably expected from the reinsured policies."

Sec. 6. G.S. 58-58-135 reads as rewritten:

"§ 58-58-135. 'Group life insurance' defined.

No policy of group life insurance shall be delivered in this State unless it conforms to one of the following descriptions:

- (1) A policy issued to an employer, or to the trustee of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer subject to the following requirements:
 - a. The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term 'employees' shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term 'employees' shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term 'employees' shall include retired employees. The term 'employer' as used herein may be deemed to include any county, municipality, or the proper officers, as such, of any unincorporated municipality or any department, division, agency, instrumentality or subdivision of a county, unincorporated municipality or municipality. In all cases where counties, municipalities or unincorporated municipalities or any officer, agent, division, subdivision or agency of the same have heretofore entered into contracts and purchased group life insurance for their employees, such transactions, contracts and insurance and the purchase of the same is hereby approved, authorized and validated.
 - b. The premium for the policy shall be paid ~~by the policyholder,~~ either wholly or partly from the employer's funds or funds contributed by him, or wholly or partly ~~from such funds and partly~~ from funds contributed by the insured ~~employees.~~ employees, or by both. ~~No policy may be issued on which the entire premium is to be derived from funds contributed by the~~

~~insured employees.~~—A policy on which all or part of the premium is to be derived from funds contributed by the insured employees may be placed in force provided the group is structured on an actuarially sound basis. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

- c. The policy must cover at least 10 employees at date of issue.
 - d. ~~The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustee.~~
- (2) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:
- a. The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term 'debtors' shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise.
 - b. The premium for the policy shall be paid ~~by the policyholder, either~~ from the creditor's funds, ~~or~~ from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors or identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless the group is structured on an actuarially sound basis. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.
 - c. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly, or may reasonably be expected to receive at least 100 new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual

insurability if less than seventy-five percent (75%) of the new entrants become insured.

d, e. Repealed by Session Laws 1975, c. 660, s. 4.

- (3) A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:
- a. The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.
 - b. The premium for the policy shall be paid ~~by the policyholder, either wholly or partly from the union's funds, or wholly or partly from such funds and partly from funds contributed by the insured members specifically for their insurance.~~ insurance, or by both. ~~No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance.~~ A policy on which all or part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force provided the group is structured on an actuarially sound basis. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.
 - c. The policy must cover at least 25 members at date of issue.
 - d. ~~The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.~~
- (4) A policy issued to the trustee of a fund established by two or more employers in the same industry or kind of business or by two or more labor unions, which trustee shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:
- a. The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to memberships in the unions, or to both. The policy may provide that the term 'employees' shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term 'employees' shall include the trustee or the

employees of the trustee, or both, if their duties are principally connected with such trusteeship. The policy may provide that the term 'employees' shall include retired employees.

- b. The premium for the policy shall be paid ~~by the trustee wholly or partly from funds contributed by the participating employer or employer, labor union, or partly from funds contributed by the participating employer or labor union and partly from funds contributed by the insured persons. In no event shall the funds contributed by the participating employer or labor union represent less than twenty five percent (25%) of the total cost of the insurance with respect to the insured persons of a participating employer or labor union.~~

If none of the premium paid by the participating employer or labor union is to be derived from funds contributed by the insured persons specifically for the insurance, all eligible employees of that particular participating employer or labor union must be insured, or all except any as to whom evidence of insurability is not satisfactory to the insurer. ~~Insurance may not be placed into effect for employees of a participating employer or labor union if less than twenty five percent (25%) of the total cost is paid by the participating employer or labor union.~~

If part of the premium paid by the participating employer or labor union is to be derived from funds contributed by the insured persons specifically for their insurance, coverage may be placed in force on employees of a participating employer or on members of a participating labor union provided the group is structured on an actuarially sound basis.

- c. The policy must cover at least 100 persons at date of issue.
 - d. ~~The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions.~~
- (5) A policy issued to an association of persons having a common professional or business interest, which association shall be deemed the policyholder, to insure members of such association for the benefit of persons other than the association or any of its officials, representatives or agents, subject to the following requirements:
- a. Such association shall have had an active existence for at least two years immediately preceding the purchase of such insurance, was formed for purposes other than procuring insurance and does not derive its funds principally from contributions of insured members toward the payment of premiums for the insurance.
 - b. The members eligible for insurance under the policy shall be all of the members of the association or all of any class or classes

thereof determined by conditions pertaining to their employment, or the membership in the association, or both. The policy may provide that the term 'members' shall include the employees of members, if their duties are principally connected with the member's business or profession.

c. The premium for the policy shall be paid ~~by the policyholder,~~ either wholly or partly from the association's funds, or wholly or partly from such funds and partly from funds contributed by the insured members specifically for their ~~insurance.~~ insurance, or by both. No policy may be issued ~~on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance,~~ nor if the Commissioner finds that the rate of ~~such insured members'~~ contributions will exceed the maximum rate customarily charged employees insured under like group life insurance policies issued in accordance with the provisions of subdivision (1). A policy on which all or part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force provided the group is structured on an actuarially sound basis. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

d. The policy must cover at least 25 members at date of issue.

e. ~~The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the association.~~

(6) Notwithstanding the provisions of this section, or any other provisions of law to the contrary, a policy may be issued to the employees of the State or any other political subdivision where the entire amount of premium therefor is paid by such employees."

Sec. 7. G.S. 58-7-95(p) reads as rewritten:

"(p) Any variable annuity contract providing benefits payable in variable amounts issued under this section may include as an incidental benefit provision for payment on death during the deferred period of an amount not in excess of the greater of the sum of the premiums or stipulated payments paid under the contract or the value of the contract at time of ~~death;~~ death or any other incidental amount approved by the Commissioner; such contracts will be deemed not to be contracts of life insurance and therefore not subject to the provisions of the insurance law governing life insurance contracts. Provision for any other benefit on death during the deferred period will be subject to such insurance provisions."

Sec. 8. G.S. 58-67-35(a) reads as rewritten:

"(a) The powers of a health maintenance organization include, but are not limited to the following:

- (1) The purchase, lease, construction, renovation, operation, or maintenance of hospitals, medical facilities, or both, and their ancillary equipment, and such property as may reasonably be required for its principal office or for such other purposes as may be necessary in the transaction of the business of the organization;
- (2) The making of loans to a medical group under contract with it in furtherance of its program or the making of loans to a corporation or corporations under its control for the purpose of acquiring or constructing medical facilities and hospitals or in furtherance of a program providing health care services to enrollees;
- (3) The furnishing of health care services through providers which are under contract with or employed by the health maintenance organization;
- (4) The contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment and administration;
- (5) The contracting with an insurance company licensed in this State, or with a hospital or medical service corporation authorized to do business in this State, for the provision of insurance, indemnity, or reimbursement against the cost of health care services provided by the health maintenance organization;
- (6) The offering and contracting for the provision or arranging of, in addition to health care services, of:
 - a. Additional health care services;
 - b. Indemnity benefits, covering out-of-area or emergency services;
~~and~~
 - c. Indemnity benefits, in addition to those relating to out-of-area and emergency services, provided through insurers or hospital or medical service ~~corporations.~~ corporations; and
 - d. Point-of-service products, for which the Commissioner shall adopt rules governing:
 1. The percentage of an HMO's total health care expenditures for out-of-plan covered services for all of its members that may be spent on those services, which may not exceed twenty percent (20%);
 2. Product limitations;
 3. Deposit and other financial requirements; and
 4. Other requirements for marketing and administering those products."

Sec. 9. G.S. 20-279.21(b) reads as rewritten:

"(b) Such owner's policy of liability insurance:

- (1) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted;

- (2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, or any other persons in lawful possession, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: twenty-five thousand dollars (\$25,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, fifty thousand dollars (\$50,000) because of bodily injury to or death of two or more persons in any one accident, and fifteen thousand dollars (\$15,000) because of injury to or destruction of property of others in any one accident; and
- (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, 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, in an amount not to be less than the financial responsibility amounts for bodily injury liability as set forth in G.S. 20-279.5 nor greater than one million dollars (\$1,000,000), as selected by the policy owner. The 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 aggregate for all insureds in any one accident of up to the limits of property damage liability in the owner's policy of liability insurance, and subject, for each insured, to an exclusion of the first one hundred dollars (\$100.00) of such damages. The provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that the other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a **prima facie** presumption that the operator of the other motor vehicle was uninsured at the time of the accident with the insured for the purposes of recovery under this provision of the insured's liability insurance policy. The coverage required under this subdivision is not applicable where any insured

named in the policy rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. If the named insured in the policy does not reject uninsured motorist coverage and does not select different coverage limits, the amount of uninsured motorist coverage shall be equal to the highest limit of bodily injury and property damage liability coverage for any one vehicle in the policy. ~~Once the named insured exercises this option, the option to reject the uninsured motorist coverage or to select different coverage limits is offered by the insurer, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless the named insured makes a written request to exercise a different option. The selection or rejection of uninsured motorist coverage or the failure to select or reject by a named insured is valid and binding on all insureds and vehicles under the policy. If the named insured rejects the coverage required under this subdivision, the insurer is not required to offer the coverage in any renewal, reinstatement, substitute, amended, altered, modified, transfer or replacement policy unless the named insured makes a written request for the coverage. Rejection of this coverage or selection of different coverage limits for uninsured motorist coverage for policies issued after October 1, 1986, under the jurisdiction of the North Carolina Rate Bureau shall be made in writing by the a named insured on a form promulgated by the North Carolina Rate Bureau and approved by the Commissioner of Insurance.~~

Where coverage is provided on more than one vehicle insured on the same policy or where the owner or the named insured has more than one policy with coverage under this subdivision, there shall not be permitted any combination of coverage within a policy or where more than one policy may apply to determine the total amount of coverage available.

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

- a. A provision that the insurer shall be bound by a final judgment taken by the insured against an uninsured motorist if the insurer has been served with copy of summons, complaint or other process in the action against the uninsured motorist by registered or certified mail, return receipt requested, or in any manner provided by law; provided however, that the determination of whether a motorist is uninsured may be

decided only by an action against the insurer alone. The insurer, upon being served as herein provided, shall be a party to the action between the insured and the uninsured motorist though not named in the caption of the pleadings and may defend the suit in the name of the uninsured motorist or in its own name. The insurer, upon being served with copy of summons, complaint or other pleading, shall have the time allowed by statute in which to answer, demur or otherwise plead (whether the pleading is verified or not) to the summons, complaint or other process served upon it. The consent of the insurer shall not be required for the initiation of suit by the insured against the uninsured motorist: Provided, however, no action shall be initiated by the insured until 60 days following the posting of notice to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent setting forth the belief of the insured that the prospective defendant or defendants are uninsured motorists. No default judgment shall be entered when the insurer has timely filed an answer or other pleading as required by law. The failure to post notice to the insurer 60 days in advance of the initiation of suit shall not be grounds for dismissal of the action, but shall automatically extend the time for the filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

- b. Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury as the result of collision between motor vehicles and asserts that the identity of the operator or owner of a vehicle (other than a vehicle in which the insured is a passenger) cannot be ascertained, the insured may institute an action directly against the insurer: Provided, in that event, the insured, or someone in his behalf, shall report the accident within 24 hours or as soon thereafter as may be practicable, to a police officer, peace officer, other judicial officer, or to the Commissioner of Motor Vehicles. The insured shall also within a reasonable time give notice to the insurer of his injury, the extent thereof, and shall set forth in the notice the time, date and place of the injury. Thereafter, on forms to be mailed by the insurer within 15 days following receipt of the notice of the accident to the insurer, the insured shall furnish to insurer any further reasonable information concerning the accident and the injury that the insurer requests. If the forms are not furnished within 15 days, the insured is deemed to have complied with the requirements for furnishing information to the insurer. Suit may not be instituted against the insurer in less

than 60 days from the posting of the first notice of the injury or accident to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent. The failure to post notice to the insurer 60 days before the initiation of the suit shall not be grounds for dismissal of the action, but shall automatically extend the time for filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

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

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

In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of coverage, the insurer making payment shall, to the extent thereof, be entitled to the proceeds of any settlement for judgment resulting from the exercise of any limits of recovery of that person against any person or organization legally responsible for the bodily injury for which the payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

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

- a. A motor vehicle owned by the named insured;
- b. A motor vehicle that is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;

- c. A motor vehicle that is owned by the United States of America, Canada, a state, or any agency of any of the foregoing (excluding, however, political subdivisions thereof);
- d. A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or
- e. A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

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

- (4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with a policy that is written at limits that exceed those prescribed by subdivision (2) of this section and that afford uninsured motorist coverage as provided by subdivision (3) of this subsection, in an amount not to be less than the financial responsibility amounts for bodily injury liability as set forth in G.S. 20-279.5 nor greater than one million dollars (\$1,000,000) as selected by the policy owner. An 'uninsured motor vehicle,' as described in subdivision (3) of this subsection, includes an 'underinsured highway vehicle,' which means a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. For the purposes of this subdivision, the term 'highway vehicle' means a land motor vehicle or trailer other than (i) a farm-type tractor or other vehicle designed for use principally off public roads and while not upon public roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a vehicle while located for use as a residence or premises. The provisions of subdivision (3) of this subsection shall apply to the coverage required by this subdivision. Underinsured motorist coverage is deemed to apply when, by reason of payment of judgment or settlement, all liability bonds or insurance policies providing coverage for bodily injury caused by the ownership, maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of that liability coverage for the purpose of any single liability claim presented for underinsured motorist coverage is deemed to occur when

either (a) the limits of liability per claim have been paid upon the claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been paid. Underinsured motorist coverage is deemed to apply to the first dollar of an underinsured motorist coverage claim beyond amounts paid to the claimant under the exhausted liability policy.

In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant under the exhausted liability policy or policies and the limit of underinsured motorist coverage applicable to the motor vehicle involved in the accident. Furthermore, if a claimant is an insured under the underinsured motorist coverage on separate or additional policies, the limit of underinsured motorist coverage applicable to the claimant is the difference between the amount paid to the claimant under the exhausted liability policy or policies and the total limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy; provided that this sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-15(9) and (10). The underinsured motorist limits applicable to any one motor vehicle under a policy shall not be combined with or added to the limits applicable to any other motor vehicle under that policy.

An underinsured motorist insurer may at its option, upon a claim pursuant to underinsured motorist coverage, pay moneys without there having first been an exhaustion of the liability insurance policy covering the ownership, use, and maintenance of the underinsured highway vehicle. In the event of payment, the underinsured motorist insurer shall be either: (a) entitled to receive by assignment from the claimant any right or (b) subrogated to the claimant's right regarding any claim the claimant has or had against the owner, operator, or maintainer of the underinsured highway vehicle, provided that the amount of the insurer's right by subrogation or assignment shall not exceed payments made to the claimant by the insurer. No insurer shall exercise any right of subrogation or any right to approve settlement with the original owner, operator, or maintainer of the underinsured highway vehicle under a policy providing coverage against an underinsured motorist where the insurer has been provided with written notice before a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of that notice. Further, the insurer shall have the right, at its election, to pursue its claim by assignment or subrogation in the name of the claimant, and the insurer shall not be denominated as a party in its own name except upon its own election. Assignment or

subrogation as provided in this subdivision shall not, absent contrary agreement, operate to defeat the claimant's right to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for damages beyond those paid by the underinsured motorist insurer. The claimant and the underinsured motorist insurer may join their claims in a single suit without requiring that the insurer be named as a party. Any claimant who intends to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for moneys beyond those paid by the underinsured motorist insurer shall before doing so give notice to the insurer and give the insurer, at its expense, the opportunity to participate in the prosecution of the claim. Upon the entry of judgment in a suit upon any such claim in which the underinsured motorist insurer and claimant are joined, payment upon the judgment, unless otherwise agreed to, shall be applied pro rata to the claimant's claim beyond payment by the insurer of the owner, operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys for those injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of notice, the underinsured motorist insurer shall have the right to appear in defense of the claim without being named as a party therein, and without being named as a party may participate in the suit as fully as if it were a party. The underinsured motorist insurer may elect, but may not be compelled, to appear in the action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge, in any such suit, any insurer providing primary liability insurance on the underinsured highway vehicle may upon payment of all of its applicable limits of liability be released from further liability or obligation to participate in the defense of such proceeding. However, before approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in the action on his separate behalf. If an underinsured motorist insurer, following the approval of the application, pays in settlement or partial or total satisfaction of judgment moneys to the claimant, the insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the underinsured

highway vehicle and, provided that adequate notice of right of independent representation was given to the owner, operator, or maintainer, a finding of liability or the award of damages shall be **res judicata** between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle.

The coverage required under this subdivision shall not be applicable where any insured named in the policy rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. If the named insured does not reject underinsured motorist coverage and does not select different coverage limits, the amount of underinsured motorist coverage shall be equal to the highest limit of bodily injury liability coverage for any one vehicle in the policy. Once the named insured exercises this option, the option to reject underinsured motorist coverage or to select different coverage limits is offered by the insurer, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless ~~the~~ a named insured makes a written request to exercise a different option. The selection or rejection of underinsured motorist coverage by a named insured or the failure to select or reject is valid and binding on all insureds and vehicles under the policy.

~~If the named insured rejects the coverage required under this subdivision, the insurer shall not be required to offer the coverage in any renewal, reinstatement, substitute, amended, altered, modified, transfer or replacement policy unless the named insured makes a written request for the coverage. Rejection of this coverage or selection of different coverage limits for underinsured motorist coverage for policies issued after October 1, 1986, under the jurisdiction of the North Carolina Rate Bureau shall be made in writing by the named insured on a form promulgated by the North Carolina Rate Bureau and approved by the Commissioner of Insurance."~~

Sec. 10. Section 9 of Chapter 469 of the 1991 Session Laws reads as rewritten:

"Sec. 9. Sections 1, 4, 5, 6, 7 and 8 of this act become effective January 1, 1992, for all new and renewal policies written to be effective on or after that date. Sections 2 and 3 of the act become effective January 1, ~~1992.~~ 1992, but shall not affect any policy in effect before that date until the policy is renewed."

Sec. 11. G.S. 58-36-75(c) reads as rewritten:

"(c) The subclassification plan promulgated pursuant to G.S. 58-36-65(b) shall provide for facility recoupment surcharges pursuant to G.S. 58-37-40(f) and G.S. 58-37-75, in addition to premium surcharges, for convictions for the following moving traffic violations:

General Statute	Description of Offense
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20-12.1	Being impaired while accompanying a permittee who is learning to drive
20-28	Driving while license is suspended or revoked
20-138.1	Driving a vehicle while impaired
<u>20-138.2</u>	<u>Driving a commercial vehicle while impaired</u>
20-138.3	Driving by provisional licensee after consuming alcohol or drugs
20-140(a)	Driving carelessly and heedlessly in willful or wanton disregard of the rights of others
20-140(b)	Driving without due caution in a manner so as to endanger other people or property
20-141(a)	Only driving at least 11 miles per hour over the posted speed limit
20-141(j)	Driving in excess of 55 mph and at least 15 mph over legal limit, while fleeing or attempting to elude arrest by a law enforcement officer
20-141(j1)	Driving more than 15 mph over legal limit
20-141.1	Speeding in a school zone
20-141.3(a)	Engaging in prearranged speed competition with another motor vehicle
20-141.3(b)	Willfully engaging in speed competition with another motor vehicle (not prearranged)
20-141.3(c)	Allowing or authorizing others to use one's motor vehicle in prearranged speed competition or placing or receiving a bet or wager on a prearranged speed competition
20-141.4(a1)	Death by vehicle (unintentionally causing death of another while engaged in impaired driving)
20-141.4(a2)	Death by vehicle (unintentionally causing death of another as a result of a violation of motor vehicle law intended to regulate traffic or used to control operation of a vehicle)
20-166(a)	Failure to stop by driver who knew or should have known he was involved in accident and that accident caused death or injury to any person
20-166(c)	Failure of driver involved in accident causing property damage or personal injury or death (if driver did not know of injury or death) to stop at scene of accident
20-175.2	Failure to yield right-of-way to blind person at crossings, intersections, and traffic control signal points

20-217 Failure to stop and remain stopped when
approaching a stopped school bus engaged in
receiving or discharging passengers and while
bus has mechanical stop signal displayed
14-18 Voluntary manslaughter
14-18 Involuntary manslaughter"

Sec. 12. Section 9 of this act becomes effective October 1, 1992, and applies to all new and renewal policies to be effective on or after that date. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1992.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives