

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 1601

Short Title: Uninsured and Underinsured Motorist Coverage. (Public)

Sponsors: Representative Faison.

Referred to: Insurance.

April 19, 2007

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE UNINSURED AND UNDERINSURED MOTORIST  
3 COVERAGE AND TO INCREASE THE LIMITS FOR UNINSURED AND  
4 UNDERINSURED MOTORIST COVERAGE.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 20-279.21(b)(3) reads as rewritten:

7 "(3) No policy of bodily injury liability insurance, covering liability arising  
8 out of the ownership, maintenance, or use of any motor vehicle, shall  
9 be delivered or issued for delivery in this State with respect to any  
10 motor vehicle registered or principally garaged in this State unless  
11 coverage is provided therein or supplemental thereto, under provisions  
12 filed with and approved by the Commissioner of Insurance, for the  
13 protection of persons insured thereunder who are legally entitled to  
14 recover damages from owners or operators of uninsured motor  
15 vehicles and hit-and-run motor vehicles because of bodily injury,  
16 sickness or disease, including death, resulting therefrom, in an amount  
17 not to be less than ~~the financial responsibility amounts for bodily~~  
18 ~~injury liability as set forth in G.S. 20-279.5~~ seventy-five thousand  
19 dollars (\$75,000) because of bodily injury to or death of one person in  
20 any one accident and, subject to said limit for one person, to a limit of  
21 not less than one hundred fifty thousand dollars (\$150,000) because of  
22 bodily injury to or death of two or more persons in any one accident,  
23 and in the amount of fifty thousand dollars (\$50,000) because of injury  
24 to or destruction of property of others in any one accident, nor greater  
25 than one million dollars (\$1,000,000), as selected by the policy owner.  
26 The provisions shall include coverage for the protection of persons  
27 insured thereunder who are legally entitled to recover damages from  
28 owners or operators of uninsured motor vehicles because of injury to  
29 or destruction of the property of such insured, with a limit in the

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. The provision shall further provide  
5 that a written statement by the liability insurer, whose name appears on  
6 the certification of financial responsibility made by the owner of any  
7 vehicle involved in an accident with the insured, that the other motor  
8 vehicle was not covered by insurance at the time of the accident with  
9 the insured shall operate as a prima facie presumption that the operator  
10 of the other motor vehicle was uninsured at the time of the accident  
11 with the insured for the purposes of recovery under this provision of  
12 the insured's liability insurance policy. ~~The coverage required under  
13 this subdivision is not applicable where any insured named in the  
14 policy rejects the coverage. An insured named in the policy may select  
15 different coverage limits as provided in this subdivision. If the named  
16 insured in the policy does not reject uninsured motorist coverage and  
17 does not select different coverage limits, the amount of uninsured  
18 motorist coverage shall be equal to the highest limit of bodily injury  
19 and property damage liability coverage for any one vehicle in the  
20 policy. Once the option to reject the uninsured motorist coverage or to  
21 select different coverage limits is offered by the insurer, the insurer is  
22 not required to offer the option in any renewal, reinstatement,  
23 substitute, amended, altered, modified, transfer, or replacement policy  
24 unless the named insured makes a written request to exercise a  
25 different option. The selection or rejection of uninsured motorist  
26 coverage or the failure to select or reject by a named insured is valid  
27 and binding on all insureds and vehicles under the policy. Rejection of  
28 or selection of different coverage limits for uninsured motorist  
29 coverage for policies under the jurisdiction of the North Carolina Rate  
30 Bureau shall be made in writing by a named insured on a form  
31 promulgated by the Bureau and approved by the Commissioner of  
32 Insurance.~~

33 If a person who is legally entitled to recover damages from the  
34 owner or operator of an uninsured motor vehicle is an insured under  
35 the uninsured motorist coverage of a policy that insures more than one  
36 motor vehicle, that person shall not be permitted to combine the  
37 uninsured motorist limit applicable to any one motor vehicle with the  
38 uninsured motorist limit applicable to any other motor vehicle to  
39 determine the total amount of uninsured motorist coverage available to  
40 that person. If a person who is legally entitled to recover damages from  
41 the owner or operator of an uninsured motor vehicle is an insured  
42 under the uninsured motorist coverage of more than one policy, that  
43 person may combine the highest applicable uninsured motorist limit  
44 available under each policy to determine the total amount of uninsured

1 motorist coverage available to that person. The previous sentence shall  
2 apply only to insurance on nonfleet private passenger motor vehicles  
3 as described in G.S. 58-40-10(1) and (2).

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

10 a. A provision that the insurer shall be bound by a final judgment  
11 taken by the insured against an uninsured motorist if the insurer  
12 has been served with copy of summons, complaint or other  
13 process in the action against the uninsured motorist by  
14 registered or certified mail, return receipt requested, or in any  
15 manner provided by law; provided however, that the  
16 determination of whether a motorist is uninsured may be  
17 decided only by an action against the insurer alone. The insurer,  
18 upon being served as herein provided, shall be a party to the  
19 action between the insured and the uninsured motorist though  
20 not named in the caption of the pleadings and may defend the  
21 suit in the name of the uninsured motorist or in its own name.  
22 The insurer, upon being served with copy of summons,  
23 complaint or other pleading, shall have the time allowed by  
24 statute in which to answer, demur or otherwise plead (whether  
25 the pleading is verified or not) to the summons, complaint or  
26 other process served upon it. The consent of the insurer shall  
27 not be required for the initiation of suit by the insured against  
28 the uninsured motorist: Provided, however, no action shall be  
29 initiated by the insured until 60 days following the posting of  
30 notice to the insurer at the address shown on the policy or after  
31 personal delivery of the notice to the insurer or its agent setting  
32 forth the belief of the insured that the prospective defendant or  
33 defendants are uninsured motorists. No default judgment shall  
34 be entered when the insurer has timely filed an answer or other  
35 pleading as required by law. The failure to post notice to the  
36 insurer 60 days in advance of the initiation of suit shall not be  
37 grounds for dismissal of the action, but shall automatically  
38 extend the time for the filing of an answer or other pleadings to  
39 60 days after the time of service of the summons, complaint, or  
40 other process on the insurer.

41 b. Where the insured, under the uninsured motorist coverage,  
42 claims that he has sustained bodily injury as the result of  
43 collision between motor vehicles and asserts that the identity of  
44 the operator or owner of a vehicle (other than a vehicle in which

1 the insured is a passenger) cannot be ascertained, the insured  
2 may institute an action directly against the insurer: Provided, in  
3 that event, the insured, or someone in his behalf, shall report the  
4 accident within 24 hours or as soon thereafter as may be  
5 practicable, to a police officer, peace officer, other judicial  
6 officer, or to the Commissioner of Motor Vehicles. The insured  
7 shall also within a reasonable time give notice to the insurer of  
8 his injury, the extent thereof, and shall set forth in the notice the  
9 time, date and place of the injury. Thereafter, on forms to be  
10 mailed by the insurer within 15 days following receipt of the  
11 notice of the accident to the insurer, the insured shall furnish to  
12 insurer any further reasonable information concerning the  
13 accident and the injury that the insurer requests. If the forms are  
14 not furnished within 15 days, the insured is deemed to have  
15 complied with the requirements for furnishing information to  
16 the insurer. Suit may not be instituted against the insurer in less  
17 than 60 days from the posting of the first notice of the injury or  
18 accident to the insurer at the address shown on the policy or  
19 after personal delivery of the notice to the insurer or its agent.  
20 The failure to post notice to the insurer 60 days before the  
21 initiation of the suit shall not be grounds for dismissal of the  
22 action, but shall automatically extend the time for filing of an  
23 answer or other pleadings to 60 days after the time of service of  
24 the summons, complaint, or other process on the insurer.

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

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

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

1 For the purpose of this section, an "uninsured motor vehicle" shall  
2 be a motor vehicle as to which there is no bodily injury liability  
3 insurance and property damage liability insurance in at least the  
4 amounts specified in subsection (c) of G.S. 20-279.5, or there is that  
5 insurance but the insurance company writing the insurance denies  
6 coverage thereunder, or has become bankrupt, or there is no bond or  
7 deposit of money or securities as provided in G.S. 20-279.24 or  
8 20-279.25 in lieu of the bodily injury and property damage liability  
9 insurance, or the owner of the motor vehicle has not qualified as a  
10 self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is  
11 not subject to the provisions of the Motor Vehicle Safety and Financial  
12 Responsibility Act; but the term "uninsured motor vehicle" shall not  
13 include:

- 14 a. A motor vehicle owned by the named insured;
- 15 b. A motor vehicle that is owned or operated by a self-insurer  
16 within the meaning of any motor vehicle financial responsibility  
17 law, motor carrier law or any similar law;
- 18 c. A motor vehicle that is owned by the United States of America,  
19 Canada, a state, or any agency of any of the foregoing  
20 (excluding, however, political subdivisions thereof);
- 21 d. A land motor vehicle or trailer, if operated on rails or  
22 crawler-treads or while located for use as a residence or  
23 premises and not as a vehicle; or
- 24 e. A farm-type tractor or equipment designed for use principally  
25 off public roads, except while actually upon public roads.

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

34 **SECTION 2.** G.S. 20-279.21(b)(4) reads as rewritten:

- 35 "(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3)  
36 of this subsection, provide underinsured motorist coverage, to be used  
37 only with a policy that is written at limits that exceed those prescribed  
38 by subdivision (2) of this section and that afford uninsured motorist  
39 coverage as provided by subdivision (3) of this subsection, in an  
40 amount not to be less than seventy-five thousand dollars (\$75,000)  
41 because of bodily injury to or death of one person in any one accident  
42 and, subject to said limit for one person, to a limit of not less than one  
43 hundred fifty thousand dollars (\$150,000) because of bodily injury to  
44 or death of two or more persons in any one accident and in the amount

1 of fifty thousand dollars (\$50,000) because of injury to or destruction  
2 of property of others in any one accident, ~~the financial responsibility~~  
3 ~~amounts for bodily injury liability as set forth in G.S. 20-279.5~~ nor  
4 greater than one million dollars ~~(\$1,000,000)~~ (\$1,000,000), as selected  
5 by the policy owner. An "uninsured motor vehicle," as described in  
6 subdivision (3) of this subsection, includes an "underinsured highway  
7 vehicle," which means a highway vehicle with respect to the  
8 ownership, maintenance, or use of which, the sum of the limits of  
9 liability under all bodily injury liability bonds and insurance policies  
10 applicable at the time of the accident is less than the applicable limits  
11 of underinsured motorist coverage for the vehicle involved in the  
12 accident and insured under the owner's policy. For purposes of an  
13 underinsured motorist claim asserted by a person injured in an accident  
14 where more than one person is injured, a highway vehicle will also be  
15 an "underinsured highway vehicle" if the total amount actually paid to  
16 that person under all bodily injury liability bonds and insurance  
17 policies applicable at the time of the accident is less than the  
18 applicable limits of underinsured motorist coverage for the vehicle  
19 involved in the accident and insured under the owner's policy.  
20 Notwithstanding the immediately preceding sentence, a highway  
21 vehicle shall not be an "underinsured motor vehicle" for purposes of an  
22 underinsured motorist claim under an owner's policy insuring that  
23 vehicle if the owner's policy insuring that vehicle provides  
24 underinsured motorist coverage with limits that are less than or equal  
25 to that policy's bodily injury liability limits. For the purposes of this  
26 subdivision, the term "highway vehicle" means a land motor vehicle or  
27 trailer other than (i) a farm-type tractor or other vehicle designed for  
28 use principally off public roads and while not upon public roads, (ii) a  
29 vehicle operated on rails or crawler-treads, or (iii) a vehicle while  
30 located for use as a residence or premises. The provisions of  
31 subdivision (3) of this subsection shall apply to the coverage required  
32 by this subdivision. Underinsured motorist coverage is deemed to  
33 apply when, by reason of payment of judgment or settlement, all  
34 liability bonds or insurance policies providing coverage for bodily  
35 injury caused by the ownership, maintenance, or use of the  
36 underinsured highway vehicle have been exhausted. Exhaustion of that  
37 liability coverage for the purpose of any single liability claim  
38 presented for underinsured motorist coverage is deemed to occur when  
39 either (a) the limits of liability per claim have been paid upon the  
40 claim, or (b) by reason of multiple claims, the aggregate per  
41 occurrence limit of liability has been paid. Underinsured motorist  
42 coverage is deemed to apply to the first dollar of an underinsured  
43 motorist coverage claim beyond amounts paid to the claimant under  
44 the exhausted liability policy.

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

17          An underinsured motorist insurer may at its option, upon a claim  
18          pursuant to underinsured motorist coverage, pay moneys without there  
19          having first been an exhaustion of the liability insurance policy  
20          covering the ownership, use, and maintenance of the underinsured  
21          highway vehicle. In the event of payment, the underinsured motorist  
22          insurer shall be either: (a) entitled to receive by assignment from the  
23          claimant any right or (b) subrogated to the claimant's right regarding  
24          any claim the claimant has or had against the owner, operator, or  
25          maintainer of the underinsured highway vehicle, provided that the  
26          amount of the insurer's right by subrogation or assignment shall not  
27          exceed payments made to the claimant by the insurer. No insurer shall  
28          exercise any right of subrogation or any right to approve settlement  
29          with the original owner, operator, or maintainer of the underinsured  
30          highway vehicle under a policy providing coverage against an  
31          underinsured motorist where the insurer has been provided with  
32          written notice before a settlement between its insured and the  
33          underinsured motorist and the insurer fails to advance a payment to the  
34          insured in an amount equal to the tentative settlement within 30 days  
35          following receipt of that notice. Further, the insurer shall have the  
36          right, at its election, to pursue its claim by assignment or subrogation  
37          in the name of the claimant, and the insurer shall not be denominated  
38          as a party in its own name except upon its own election. Assignment or  
39          subrogation as provided in this subdivision shall not, absent contrary  
40          agreement, operate to defeat the claimant's right to pursue recovery  
41          against the owner, operator, or maintainer of the underinsured highway  
42          vehicle for damages beyond those paid by the underinsured motorist  
43          insurer. The claimant and the underinsured motorist insurer may join  
44          their claims in a single suit without requiring that the insurer be named

1 as a party. Any claimant who intends to pursue recovery against the  
2 owner, operator, or maintainer of the underinsured highway vehicle for  
3 moneys beyond those paid by the underinsured motorist insurer shall  
4 before doing so give notice to the insurer and give the insurer, at its  
5 expense, the opportunity to participate in the prosecution of the claim.  
6 Upon the entry of judgment in a suit upon any such claim in which the  
7 underinsured motorist insurer and claimant are joined, payment upon  
8 the judgment, unless otherwise agreed to, shall be applied pro rata to  
9 the claimant's claim beyond payment by the insurer of the owner,  
10 operator or maintainer of the underinsured highway vehicle and the  
11 claim of the underinsured motorist insurer.

12 A party injured by the operation of an underinsured highway  
13 vehicle who institutes a suit for the recovery of moneys for those  
14 injuries and in such an amount that, if recovered, would support a  
15 claim under underinsured motorist coverage shall give notice of the  
16 initiation of the suit to the underinsured motorist insurer as well as to  
17 the insurer providing primary liability coverage upon the underinsured  
18 highway vehicle. Upon receipt of notice, the underinsured motorist  
19 insurer shall have the right to appear in defense of the claim without  
20 being named as a party therein, and without being named as a party  
21 may participate in the suit as fully as if it were a party. The  
22 underinsured motorist insurer may elect, but may not be compelled, to  
23 appear in the action in its own name and present therein a claim  
24 against other parties; provided that application is made to and  
25 approved by a presiding superior court judge, in any such suit, any  
26 insurer providing primary liability insurance on the underinsured  
27 highway vehicle may upon payment of all of its applicable limits of  
28 liability be released from further liability or obligation to participate in  
29 the defense of such proceeding. However, before approving any such  
30 application, the court shall be persuaded that the owner, operator, or  
31 maintainer of the underinsured highway vehicle against whom a claim  
32 has been made has been apprised of the nature of the proceeding and  
33 given his right to select counsel of his own choice to appear in the  
34 action on his separate behalf. If an underinsured motorist insurer,  
35 following the approval of the application, pays in settlement or partial  
36 or total satisfaction of judgment moneys to the claimant, the insurer  
37 shall be subrogated to or entitled to an assignment of the claimant's  
38 rights against the owner, operator, or maintainer of the underinsured  
39 highway vehicle and, provided that adequate notice of right of  
40 independent representation was given to the owner, operator, or  
41 maintainer, a finding of liability or the award of damages shall be res  
42 judicata between the underinsured motorist insurer and the owner,  
43 operator, or maintainer of underinsured highway vehicle.



1           As consideration for payment of policy limits by a liability insurer  
2 on behalf of the owner, operator, or maintainer of an underinsured  
3 motor vehicle, a party injured by an underinsured motor vehicle may  
4 execute a contractual covenant not to enforce against the owner,  
5 operator, or maintainer of the vehicle any judgment that exceeds the  
6 policy limits. A covenant not to enforce judgment shall not preclude  
7 the injured party from pursuing available underinsured motorist  
8 benefits, unless the terms of the covenant expressly provide otherwise,  
9 and shall not preclude an insurer providing underinsured motorist  
10 coverage from pursuing any right of subrogation.

11           ~~The coverage required under this subdivision shall not be~~  
12 ~~applicable where any insured named in the policy rejects the coverage.~~  
13 ~~An insured named in the policy may select different coverage limits as~~  
14 ~~provided in this subdivision. If the named insured does not reject~~  
15 ~~underinsured motorist coverage and does not select different coverage~~  
16 ~~limits, the amount of underinsured motorist coverage shall be equal to~~  
17 ~~the highest limit of bodily injury liability coverage for any one vehicle~~  
18 ~~in the policy. Once the option to reject underinsured motorist coverage~~  
19 ~~or to select different coverage limits is offered by the insurer, the~~  
20 ~~insurer is not required to offer the option in any renewal,~~  
21 ~~reinstatement, substitute, amended, altered, modified, transfer, or~~  
22 ~~replacement policy unless a named insured makes a written request to~~  
23 ~~exercise a different option. The selection or rejection of underinsured~~  
24 ~~motorist coverage by a named insured or the failure to select or reject~~  
25 ~~is valid and binding on all insureds and vehicles under the policy.~~  
26 ~~Rejection of or selection of different coverage limits for underinsured~~  
27 ~~motorist coverage for policies under the jurisdiction of the North~~  
28 ~~Carolina Rate Bureau shall be made in writing by the named insured~~  
29 ~~on a form promulgated by the Bureau and approved by the~~  
30 ~~Commissioner of Insurance."~~

31 **SECTION 3.** G.S. 58-37-35(b)(1) reads as rewritten:

- 32 "(1) For the following coverages of motor vehicle insurance and in at least  
33 the following amounts of insurance:
- 34 a. Bodily injury liability: thirty thousand dollars (\$30,000) each  
35 person, sixty thousand dollars (\$60,000) each accident;
  - 36 b. Property damage liability: twenty-five thousand dollars  
37 (\$25,000) each accident;
  - 38 c. Medical payments: one thousand dollars (\$1,000) each person;  
39 except that this coverage shall not be available for motorcycles;
  - 40 d. Uninsured motorist: ~~thirty thousand dollars (\$30,000)~~  
41 seventy-five thousand dollars (\$75,000) each person; ~~sixty~~  
42 ~~thousand dollars (\$60,000)~~ one hundred fifty thousand dollars  
43 (\$150,000) each accident for bodily injury; ~~twenty-five~~  
44 ~~thousand dollars (\$25,000)~~ fifty thousand dollars (\$50,000)

1                   each accident property damage (one hundred dollars (\$100.00)  
2                   deductible);  
3                e.     Any other motor vehicle insurance or financial responsibility  
4                   limits in the amounts required by any federal law or federal  
5                   agency regulation; by any law of this State; or by any rule duly  
6                   adopted under Chapter 150B of the General Statutes or by the  
7                   North Carolina Utilities Commission."

8                **SECTION 4.** This act becomes effective January 1, 2008, and applies to  
9 policies issued or renewed on or after that date.