

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 749
Commerce Committee Substitute Adopted 5/7/09

Short Title: Revise UM/UIM Liability Coverage Requirements. (Public)

Sponsors:

Referred to:

March 24, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE AND CLARIFY THE REQUIREMENTS FOR UNINSURED AND
3 UNDERINSURED MOTORIST COVERAGE IN MOTOR VEHICLE LIABILITY
4 INSURANCE POLICIES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 20-279.21 reads as rewritten:

7 "§ 20-279.21. "Motor vehicle liability policy" defined.

8 (a) A "motor vehicle liability policy" as ~~said term is~~ used in this Article shall mean an
9 owner's or an operator's policy of liability insurance, certified as provided in G.S. 20-279.19 or
10 20-279.20 as proof of financial responsibility, and issued, except as otherwise provided in
11 G.S. 20-279.20, by an insurance carrier duly authorized to transact business in this State, to or
12 for the benefit of the person named ~~therein in the policy~~ as insured.

13 (b) Such owner's policy of liability ~~insurance; insurance~~ shall meet the following
14 requirements:

15 (1) ~~Shall It shall~~ designate by explicit description or by appropriate reference all
16 motor vehicles with respect to which coverage is thereby to be
17 ~~granted; granted.~~

18 (2) ~~Shall It shall~~ insure the ~~person named therein~~ persons named in the policy
19 and any other person, as insured, using any ~~such covered~~ motor vehicle or
20 motor vehicles with the express or implied permission of ~~such a~~ named
21 ~~insured, insured~~ or any other persons in lawful possession, against loss from
22 the liability imposed by law for damages arising out of the ownership,
23 maintenance or use of such motor vehicle or motor vehicles within the
24 United States of America or the Dominion of Canada subject to limits
25 exclusive of interest and costs, with respect to each such motor vehicle, as
26 follows: thirty thousand dollars (\$30,000) because of bodily injury to or
27 death of one person in any one accident and, subject to said limit for one
28 person, sixty thousand dollars (\$60,000) because of bodily injury to or death
29 of two or more persons in any one accident, and twenty-five thousand
30 dollars (\$25,000) because of injury to or destruction of property of others in
31 any one ~~accident; and accident.~~

32 (3) In addition to the coverages set forth in subdivisions (2) and (4) of this
33 subsection, no policy of bodily injury liability insurance, covering liability
34 arising out of the ownership, maintenance, or use of any motor vehicle, shall
35 be delivered or issued for delivery in this State with respect to any motor
36 vehicle registered or principally garaged in this State unless coverage is
37 provided therein or supplemental thereto, under provisions filed with and



1 approved by the Commissioner of Insurance, for the protection of persons
2 insured thereunder who are legally entitled to recover damages from owners
3 or operators of uninsured motor vehicles and hit-and-run motor vehicles
4 because of bodily injury, sickness or disease, including death, resulting
5 ~~therefrom. therefrom, with limits equal to the highest limits of bodily injury~~
6 ~~liability coverage for any one vehicle insured under the policy. The named~~
7 ~~insured may purchase uninsured motorist bodily injury coverage with greater~~
8 ~~limits, subject to the limitation that in no event shall uninsured motorist~~
9 ~~bodily injury coverage limits exceed one million dollars (\$1,000,000) per~~
10 ~~person and one million dollars (\$1,000,000) per accident. The limits of such~~
11 ~~uninsured motorist bodily injury coverage shall be equal to the highest limits~~
12 ~~of bodily injury liability coverage for any one vehicle insured under the~~
13 ~~policy; provided, however, that (i) the limits shall not exceed one million~~
14 ~~dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per~~
15 ~~accident regardless of whether the highest limits of bodily injury liability~~
16 ~~coverage for any one vehicle insured under the policy exceed those limits~~
17 ~~and (ii) a named insured may purchase greater or lesser limits, except that~~
18 ~~the limits shall not be less than the bodily injury liability limits required~~
19 ~~pursuant to subdivision (2) of this subsection, and in no event shall an~~
20 ~~insurer be required by this subdivision to sell uninsured motorist bodily~~
21 ~~injury coverage at limits that exceed one million dollars (\$1,000,000) per~~
22 ~~person and one million dollars (\$1,000,000) per accident. The insurer shall~~
23 ~~notify the named insured of his or her right to purchase uninsured motorist~~
24 ~~bodily injury coverage with greater limits, when the policy is issued and~~
25 ~~renewed, as provided in subsection (m) of this section. The provisions shall~~
26 ~~include coverage for the protection of persons insured ~~thereunder~~ under the~~
27 ~~policy who are legally entitled to recover damages from owners or operators~~
28 ~~of uninsured motor vehicles because of injury to or destruction of the~~
29 ~~property of such insured. insured, with a limit in the aggregate for all~~
30 ~~insureds in any one accident equal to the highest limits of property damage~~
31 ~~liability coverage for any one vehicle insured in the owner's policy of~~
32 ~~liability insurance, and The limits of such uninsured motorist property~~
33 ~~damage coverage shall be equal to the highest limits of property damage~~
34 ~~liability coverage for any one vehicle insured under the policy; provided,~~
35 ~~however, that (i) the limits shall not exceed one million dollars (\$1,000,000)~~
36 ~~per accident regardless of whether the highest limits of property damage~~
37 ~~liability coverage for any one vehicle insured under the policy exceed those~~
38 ~~limits and (ii) a named insured may purchase lesser limits, except that the~~
39 ~~limits shall not be less than the property damage liability limits required~~
40 ~~pursuant to subdivision (2) of this subsection. For uninsured motorist~~
41 ~~property damage coverage, the limits purchased by the named insured shall~~
42 ~~be subject, for each insured, to an exclusion of the first one hundred dollars~~
43 ~~(\$100.00) of such damages. The provision shall further provide that a written~~
44 ~~statement by the liability insurer, whose name appears on the certification of~~
45 ~~financial responsibility made by the owner of any vehicle involved in an~~
46 ~~accident with the insured, that the other motor vehicle was not covered by~~
47 ~~insurance at the time of the accident with the insured shall operate as a prima~~
48 ~~facie presumption that the operator of the other motor vehicle was uninsured~~
49 ~~at the time of the accident with the insured for the purposes of recovery~~
50 ~~under this provision of the insured's liability insurance policy.~~

1 If a person who is legally entitled to recover damages from the owner or
2 operator of an uninsured motor vehicle is an insured under the uninsured
3 motorist coverage of a policy that insures more than one motor vehicle, that
4 person shall not be permitted to combine the uninsured motorist limit
5 applicable to any one motor vehicle with the uninsured motorist limit
6 applicable to any other motor vehicle to determine the total amount of
7 uninsured motorist coverage available to that person. If a person who is
8 legally entitled to recover damages from the owner or operator of an
9 uninsured motor vehicle is an insured under the uninsured motorist coverage
10 of more than one policy, that person may combine the highest applicable
11 uninsured motorist limit available under each policy to determine the total
12 amount of uninsured motorist coverage available to that person. The
13 previous sentence shall apply only to insurance on nonfleet private passenger
14 motor vehicles as described in G.S. 58-40-10(1) and (2).

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

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

48 b. Where the insured, under the uninsured motorist coverage, claims
49 that he has sustained bodily injury as the result of collision between
50 motor vehicles and asserts that the identity of the operator or owner
51 of a vehicle (other than a vehicle in which the insured is a passenger)

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

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

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

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

42 For the purpose of this section, an "uninsured motor vehicle" shall be a
43 motor vehicle as to which there is no bodily injury liability insurance and
44 property damage liability insurance in at least the amounts specified in
45 subsection (c) of G.S. 20-279.5, or there is that insurance but the insurance
46 company writing the insurance denies coverage ~~thereunder under the~~
47 insurance policy, or has become bankrupt, or there is no bond or deposit of
48 money or securities as provided in G.S. 20-279.24 or 20-279.25 in lieu of the
49 bodily injury and property damage liability insurance, or the owner of the
50 motor vehicle has not qualified as a self-insurer under the provisions of
51 G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor

1 Vehicle Safety and Financial Responsibility Act; but the term "uninsured
2 motor vehicle" shall not include:

- 3 a. A motor vehicle owned by the named insured;
4 b. A motor vehicle that is owned or operated by a self-insurer within the
5 meaning of any motor vehicle financial responsibility law, motor
6 carrier law or any similar law;
7 c. A motor vehicle that is owned by the United States of America,
8 Canada, a state, or any agency of any of the foregoing (excluding,
9 however, political subdivisions thereof);
10 d. A land motor vehicle or trailer, if operated on rails or crawler-treads
11 or while located for use as a residence or premises and not as a
12 vehicle; or
13 e. A farm-type tractor or equipment designed for use principally off
14 public roads, except while actually upon public roads.

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

22 Notwithstanding any language or provision to the contrary, no motor
23 vehicle other than a motor vehicle covered under a personal auto policy, the
24 form for which is promulgated by the North Carolina Rate Bureau pursuant
25 to Article 36 of Chapter 58 of the General Statutes and approved by the
26 Commissioner, shall be required by this subdivision to be covered by
27 uninsured motorist coverage or in any way be subject to the requirements of
28 this subdivision. For the purposes of this subdivision, a personal auto policy
29 shall not include any endorsement to any policy other than a personal auto
30 policy, even if the form for such endorsement is promulgated by the North
31 Carolina Rate Bureau and approved by the Commissioner.~~the provisions of~~
32 ~~this subsection, no policy of motor vehicle liability insurance applicable~~
33 ~~solely to commercial motor vehicles as defined in G.S. 20 4.01(3d) or~~
34 ~~applicable solely to fleet vehicles shall be required to provide uninsured~~
35 ~~motorist coverage. Any motor vehicle liability policy that insures both~~
36 ~~commercial motor vehicles as defined in G.S. 20 4.01(3d) and~~
37 ~~noncommercial motor vehicles shall provide uninsured motorist coverage in~~
38 ~~accordance with the provisions of this subsection in amounts equal to the~~
39 ~~highest limits of bodily injury and property damage liability coverage for~~
40 ~~any one noncommercial motor vehicle insured under the policy, subject to~~
41 ~~the right of the insured to purchase higher uninsured motorist bodily injury~~
42 ~~liability coverage limits as set forth in this subsection. For the purpose of the~~
43 ~~immediately preceding sentence, noncommercial motor vehicle shall mean~~
44 ~~any motor vehicle that is not a commercial motor vehicle as defined in~~
45 ~~G.S. 20 4.01(3d), but that is otherwise subject to the requirements of this~~
46 ~~subsection.~~

- 47 (4) ~~Shall~~It shall, in addition to the coverages set forth in subdivisions (2) and (3)
48 of this subsection, provide underinsured motorist bodily injury coverage, to
49 be used only with a policy that is written at bodily injury liability limits that
50 exceed those prescribed by subdivision (2) of this subsection. ~~section, with~~
51 ~~limits equal to the highest limits of bodily injury liability coverage for any~~

1 ~~one vehicle insured under the policy. The named insured may purchase~~
2 ~~underinsured motorist coverage with greater limits, subject to the limitation~~
3 ~~that in no event shall the underinsured motorist coverage limits exceed one~~
4 ~~million dollars (\$1,000,000) per person and one million dollars (\$1,000,000)~~
5 ~~per accident. The limits of such underinsured motorist bodily injury~~
6 ~~coverage shall be equal to the highest limits of bodily injury liability~~
7 ~~coverage for any one vehicle insured under the policy; provided, however,~~
8 ~~that (i) the limits shall not exceed one million dollars (\$1,000,000) per~~
9 ~~person and one million dollars (\$1,000,000) per accident regardless of~~
10 ~~whether the highest limits of bodily injury liability coverage for any one~~
11 ~~vehicle insured under the policy exceed those limits, (ii) a named insured~~
12 ~~may purchase greater or lesser limits, except that the limits shall exceed the~~
13 ~~bodily injury liability limits required pursuant to subdivision (2) of this~~
14 ~~subsection, and in no event shall an insurer be required by this subdivision to~~
15 ~~sell underinsured motorist bodily injury coverage at limits that exceed one~~
16 ~~million dollars (\$1,000,000) per person and one million dollars (\$1,000,000)~~
17 ~~per accident, and (iii) the limits shall be equal to the limits of uninsured~~
18 ~~motorist bodily injury coverage purchased pursuant to subdivision (3) of this~~
19 ~~subsection. The insurer shall notify the named insured of his or her right to~~
20 ~~purchase underinsured motorist coverage with greater limits, when the~~
21 ~~policy is issued and renewed, as provided in subsection (m) of this section.~~
22 ~~An "uninsured motor vehicle," as described in subdivision (3) of this~~
23 ~~subsection, includes an "underinsured highway vehicle," which means a~~
24 ~~highway vehicle with respect to the ownership, maintenance, or use of~~
25 ~~which, the sum of the limits of liability under all bodily injury liability bonds~~
26 ~~and insurance policies applicable at the time of the accident is less than the~~
27 ~~applicable limits of underinsured motorist coverage for the vehicle involved~~
28 ~~in the accident and insured under the owner's policy. For purposes of an~~
29 ~~underinsured motorist claim asserted by a person injured in an accident~~
30 ~~where more than one person is injured, a highway vehicle will also be an~~
31 ~~"underinsured highway vehicle" if the total amount actually paid to that~~
32 ~~person under all bodily injury liability bonds and insurance policies~~
33 ~~applicable at the time of the accident is less than the applicable limits of~~
34 ~~underinsured motorist coverage for the vehicle involved in the accident and~~
35 ~~insured under the owner's policy. Notwithstanding the immediately~~
36 ~~preceding sentence, a highway vehicle shall not be an "underinsured motor~~
37 ~~vehicle" for purposes of an underinsured motorist claim under an owner's~~
38 ~~policy insuring that vehicle unless the owner's policy insuring that vehicle~~
39 ~~provides underinsured motorist coverage with limits that are greater than that~~
40 ~~policy's bodily injury liability limits. For the purposes of this subdivision,~~
41 ~~the term "highway vehicle" means a land motor vehicle or ~~trailer~~ other~~
42 ~~than trailer, but shall not include:~~

43 ~~(i)a.~~ A farm-type tractor or other vehicle designed for use principally off
44 public roads and while not upon public roads;

45 ~~(ii)b.~~ A vehicle operated on rails or crawler treads;

46 ~~(iii)c.~~ A vehicle while located for use as a residence or premises.

47 The provisions of subdivision (3) of this subsection shall apply to the
48 coverage required by this subdivision. Underinsured motorist coverage is
49 deemed to apply when, by reason of payment of judgment or settlement, all
50 liability bonds or insurance policies providing coverage for bodily injury
51 caused by the ownership, maintenance, or use of the underinsured highway

1 vehicle have been exhausted. Exhaustion of that liability coverage for the
2 purpose of any single liability claim presented for underinsured motorist
3 coverage is deemed to occur when either (a) the limits of liability per claim
4 have been paid upon the claim, or (b) by reason of multiple claims, the
5 aggregate per occurrence limit of liability has been paid. Underinsured
6 motorist coverage is deemed to apply to the first dollar of an underinsured
7 motorist coverage claim beyond amounts paid to the claimant under the
8 exhausted liability policy.

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

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

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

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

39 As consideration for payment of policy limits by a liability insurer on
40 behalf of the owner, operator, or maintainer of an underinsured motor
41 vehicle, a party injured by an underinsured motor vehicle may execute a
42 contractual covenant not to enforce against the owner, operator, or
43 maintainer of the vehicle any judgment that exceeds the policy limits. A
44 covenant not to enforce judgment shall not preclude the injured party from
45 pursuing available underinsured motorist benefits, unless the terms of the
46 covenant expressly provide otherwise, and shall not preclude an insurer
47 providing underinsured motorist coverage from pursuing any right of
48 subrogation.

49 Notwithstanding any language or provision to the contrary, no motor
50 vehicle other than a motor vehicle covered under a personal auto policy, the
51 form for which is promulgated by the North Carolina Rate Bureau pursuant

1 to Article 36 of Chapter 58 of the General Statutes and approved by the
2 Commissioner, shall be required by this subdivision to be covered by
3 underinsured motorist coverage or in any way be subject to the requirements
4 of this subdivision. For the purposes of this subdivision, a personal auto
5 policy shall not include any endorsement to any policy other than a personal
6 auto policy, even if the form for such endorsement is promulgated by the
7 North Carolina Rate Bureau and approved by the Commissioner.~~the~~
8 ~~provisions of this subsection, no policy of motor vehicle liability insurance~~
9 ~~applicable solely to commercial motor vehicles as defined in~~
10 ~~G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to~~
11 ~~provide underinsured motorist coverage. Any motor vehicle liability policy~~
12 ~~that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d)~~
13 ~~and noncommercial motor vehicles shall provide underinsured motorist~~
14 ~~coverage in accordance with the provisions of this subsection in an amount~~
15 ~~equal to the highest limits of bodily injury liability coverage for any one~~
16 ~~noncommercial motor vehicle insured under the policy, subject to the right~~
17 ~~of the insured to purchase higher underinsured motorist bodily injury~~
18 ~~liability coverage limits as set forth in this subsection. For the purpose of the~~
19 ~~immediately preceding sentence, noncommercial motor vehicle shall mean~~
20 ~~any motor vehicle that is not a commercial motor vehicle as defined in~~
21 ~~G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this~~
22 ~~subsection.~~

23 (c) Such operator's policy of liability insurance shall insure the person named as insured
24 therein against loss from the liability imposed upon him by law for damages arising out of the
25 use by him of any motor vehicle not owned by him, and within 30 days following the date of its
26 delivery to him of any motor vehicle owned by him, within the same territorial limits and
27 subject to the same limits of liability as are set forth above with respect to an owner's policy of
28 liability insurance.

29 (d) Such motor vehicle liability policy shall state the name and address of the named
30 insured, the coverage afforded by the policy, the premium charged ~~therefor~~for the policy, the
31 policy period and the limits of liability, and shall contain an agreement or be endorsed that
32 insurance is provided ~~thereunder~~under the policy in accordance with the coverage defined in
33 this Article as respects bodily injury and death or property damage, or both, and is subject to all
34 the provisions of this Article.

35 (e) ~~Uninsured or underinsured motorist coverage that is provided as part of a motor~~
36 ~~vehicle liability policy~~personal auto policy, the form for which is promulgated by the North
37 Carolina Rate Bureau pursuant to Article 36 of Chapter 58 of the General Statutes and
38 approved by the Commissioner, shall insure that portion of a loss uncompensated by any
39 workers' compensation law and the amount of an employer's lien determined pursuant to
40 G.S. 97-10.2(h) or (j). In no event shall this subsection be construed to require that coverage
41 exceed the applicable uninsured or underinsured coverage limits of the motor vehicle policy or
42 allow a recovery for damages already paid by workers' compensation. The policy need not
43 insure a loss from any liability for damage to property owned by, rented to, in charge of or
44 transported by the insured. For the purposes of this subsection, a personal auto policy shall not
45 include any endorsement to any policy other than a personal auto policy, even if the form for
46 such endorsement is promulgated by the North Carolina Rate Bureau and approved by the
47 Commissioner.

48 (f) Every motor vehicle liability policy shall be subject to the following provisions
49 which need not be contained therein:

- 50 (1) Except as hereinafter provided, the liability of the insurance carrier with
51 respect to the insurance required by this Article shall become absolute

1 whenever injury or damage covered by said motor vehicle liability policy
2 occurs; said policy may not be canceled or annulled as to such liability by
3 any agreement between the insurance carrier and the insured after the
4 occurrence of the injury or damage; no statement made by the insured or on
5 his behalf and no violation of said policy shall defeat or void said policy. As
6 to policies issued to insureds in this State under the assigned risk plan or
7 through the North Carolina Motor Vehicle Reinsurance Facility, a default
8 judgment taken against such an insured shall not be used as a basis for
9 obtaining judgment against the insurer unless counsel for the plaintiff has
10 forwarded to the insurer, or to one of its agents, by registered or certified
11 mail with return receipt requested, or served by any other method of service
12 provided by law, a copy of summons, complaint, or other pleadings, filed in
13 the action. The return receipt shall, upon its return to plaintiff's counsel, be
14 filed with the clerk of court wherein the action is pending against the insured
15 and shall be admissible in evidence as proof of notice to the insurer. The
16 refusal of insurer or its agent to accept delivery of the registered mail, as
17 provided in this section, shall not affect the validity of such notice and any
18 insurer or agent of an insurer refusing to accept such registered mail shall be
19 charged with the knowledge of the contents of such notice. When notice has
20 been sent to an agent of the insurer such notice shall be notice to the insurer.
21 The word "agent" as used in this subsection shall include, but shall not be
22 limited to, any person designated by the insurer as its agent for the service of
23 process, any person duly licensed by the insurer in the State as insurance
24 agent, any general agent of the company in the State of North Carolina, and
25 any employee of the company in a managerial or other responsible position,
26 or the North Carolina Commissioner of Insurance; provided, where the
27 return receipt is signed by an employee of the insurer or an employee of an
28 agent for the insurer, shall be deemed for the purposes of this subsection to
29 have been received. The term "agent" as used in this subsection shall not
30 include a producer of record or broker, who forwards an application for
31 insurance to the North Carolina Motor Vehicle Reinsurance Facility.

32 The insurer, upon receipt of summons, complaint or other process, shall
33 be entitled, upon its motion, to intervene in the suit against its insured as a
34 party defendant and to defend the same in the name of its insured. In the
35 event of such intervention by an insurer it shall become a named party
36 defendant. The insurer shall have 30 days from the signing of the return
37 receipt acknowledging receipt of the summons, complaint or other pleading
38 in which to file a motion to intervene, along with any responsive pleading,
39 whether verified or not, which it may deem necessary to protect its interest:
40 Provided, the court having jurisdiction over the matter may, upon motion
41 duly made, extend the time for the filing of responsive pleading or continue
42 the trial of the matter for the purpose of affording the insurer a reasonable
43 time in which to file responsive pleading or defend the action. If, after
44 receiving copy of the summons, complaint or other pleading, the insurer
45 elects not to defend the action, if coverage is in fact provided by the policy,
46 the insurer shall be bound to the extent of its policy limits to the judgment
47 taken by default against the insured, and noncooperation of the insured shall
48 not be a defense.

49 If the plaintiff initiating an action against the insured has complied with
50 the provisions of this subsection, then, in such event, the insurer may not
51 cancel or annul the policy as to such liability and the defense of

1 noncooperation shall not be available to the insurer: Provided, however,
2 nothing in this section shall be construed as depriving an insurer of its
3 defenses that the policy was not in force at the time in question, that the
4 operator was not an "insured" under policy provisions, or that the policy had
5 been lawfully canceled at the time of the accident giving rise to the cause of
6 action.

7 Provided further that the provisions of this subdivision shall not apply
8 when the insured has delivered a copy of the summons, complaint or other
9 pleadings served on him to his insurance carrier within the time provided by
10 law for filing answer, demurrer or other pleadings.

11 (2) The satisfaction by the insured of a judgment for such injury or damage shall
12 not be a condition precedent to the right or duty of the insurance carrier to
13 make payment on account of such injury or damage;

14 (3) The insurance carrier shall have the right to settle any claim covered by the
15 policy, and if such settlement is made in good faith, the amount thereof shall
16 be deductible from the limits of liability specified in subdivision (2) of
17 subsection (b) of this section;

18 (4) The policy, the written application ~~therefor~~ for the policy, if any, and any
19 rider or endorsement which does not conflict with the provisions of the
20 Article shall constitute the entire contract between the parties.

21 (g) Any policy which grants the coverage required for a motor vehicle liability policy
22 may also grant any lawful coverage in excess of or in addition to the coverage specified for a
23 motor vehicle liability policy and such excess or additional coverage shall not be subject to the
24 provisions of this Article. With respect to a policy which grants such excess or additional
25 coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage
26 which is required by this section.

27 (h) Any motor vehicle liability policy may provide that the insured shall reimburse the
28 insurance carrier for any payment the insurance carrier would not have been obligated to make
29 under the terms of the policy except for the provisions of this Article.

30 (i) Any motor vehicle liability policy may provide for the prorating of the insurance
31 ~~thereunder~~ coverage provided by the policy with other valid and collectible insurance.

32 (j) The requirements for a motor vehicle liability policy may be fulfilled by the policies
33 of one or more insurance carriers which policies together meet such requirements.

34 (k) Any binder issued pending the issuance of a motor vehicle liability policy shall be
35 deemed to fulfill the requirements for such a policy.

36 (l) A party injured by an uninsured motor vehicle covered under a policy in amounts
37 less than those set forth in G.S. 20-279.5, may execute a contractual covenant not to enforce
38 against the owner, operator, or maintainer of the uninsured vehicle any judgment that exceeds
39 the liability policy limits, as consideration for payment of any applicable policy limits by the
40 insurer where judgment exceeds the policy limits. A covenant not to enforce judgment shall not
41 preclude the injured party from pursuing available uninsured motorist benefits, unless the terms
42 of the covenant expressly provide otherwise, and shall not preclude an insurer providing
43 uninsured motorist coverage from pursuing any right of subrogation.

44 (m) Every insurer that sells motor vehicle liability policies subject to the requirements of
45 subdivisions (b)(3) and (b)(4) of this section shall give reasonable notice to ~~the~~ the named insured,
46 when the policy is issued and renewed, that ~~the~~ the named insured may purchase uninsured
47 motorist bodily injury coverage and, if applicable, underinsured motorist coverage with limits
48 up to one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per
49 accident. An insurer shall be deemed to have given reasonable notice if it includes the
50 following or substantially similar language on the policy's original and renewal declarations

1 pages or in a separate notice accompanying the original and renewal declarations pages in at
2 least 10 point type:

3 "NOTICE: YOU MAY PURCHASE UNINSURED MOTORIST BODILY INJURY
4 COVERAGE AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE WITH
5 LIMITS UP TO ONE MILLION DOLLARS (\$1,000,000) PER PERSON AND ONE
6 MILLION DOLLARS (\$1,000,000) PER ACCIDENT. THIS INSURANCE PROTECTS YOU
7 AND YOUR FAMILY AGAINST INJURIES CAUSED BY THE NEGLIGENCE OF OTHER
8 DRIVERS WHO MAY HAVE LIMITED OR ONLY MINIMUM COVERAGE OR EVEN
9 NO LIABILITY INSURANCE. YOU SHOULD CONTACT YOUR INSURANCE
10 COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING THIS
11 ADDITIONAL COVERAGE. YOU SHOULD ALSO READ YOUR ENTIRE POLICY TO
12 UNDERSTAND WHAT IS COVERED UNDER UNINSURED AND UNDERINSURED
13 MOTORIST COVERAGES."

14 Payment of premium for the cost of uninsured or underinsured motorist coverage by or on
15 behalf of a named insured shall create an irrebuttable presumption that the reasonable notice
16 required by this subsection has been given to the named insured. In addition, evidence of the
17 coverage limits stated in the policy for uninsured or underinsured motorist coverage shall
18 constitute irrebuttable proof of the amount of uninsured and underinsured motorist coverage
19 provided by the policy.

20 (n) Nothing in this section shall be construed to provide greater amounts of uninsured
21 or underinsured motorist coverage in a liability policy than the insured has purchased from the
22 insurer under this section.

23 (o) An insurer that fails to comply with subsection (m) of this section is subject to a
24 civil penalty under G.S. 58-2-70."

25 **SECTION 2.** This act becomes effective October 1, 2009, and applies to motor
26 vehicle liability insurance policies issued or renewed after that date.