

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1115\*

Short Title: Uninsured/Underinsured Motorist Coverage.

(Public)

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Sponsors: Representative Hall.

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Referred to: Commerce.

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April 7, 1989

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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