

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1265

Short Title: MV Safety and Responsibility Changes.

(Public)

Sponsors: Representative Hall.

Referred to: Judiciary.

April 12, 1989

A BILL TO BE ENTITLED

AN ACT TO REWRITE AND CLARIFY THE DEFINITION OF AND PROVISIONS
RELATING TO MOTOR VEHICLE LIABILITY POLICIES IN THE MOTOR
VEHICLE SAFETY AND FINANCIAL RESPONSIBILITY ACT OF 1953.

The General Assembly of North Carolina enacts:

Section 1. Article 9A of Chapter 20 of the General Statutes is amended by adding the following new sections to read:

"§ 20-279.21A. Motor vehicle liability policies; coverage required; provisions required.

(a) As used in this Article, 'policy' means an owner's or an operator's policy of liability insurance, to or for the benefit of the person or persons named in the policy as insured, that is certified pursuant to G.S. 20-279.19 or G.S. 20-279.20 as proof of financial responsibility and that is issued, except as provided in G.S. 20-279.20, by an insurer authorized to transact business in this State.

(b) Such policy shall:

(1) Designate by explicit description or by appropriate reference each motor vehicle covered by the policy.

(2) Insure (i) any person named in the policy, (ii) any other person using any covered motor vehicle with the express or implied permission of such named insured, or (iii) any other person in lawful possession of any covered vehicle;

against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of any covered vehicle, motor vehicle or vehicles within the United

1 States or Canada, subject to limits exclusive of interest and costs, with respect to any
2 covered vehicle, as follows:

- 3 a. Twenty-five thousand dollars (\$25,000) because of bodily
4 injury to or death of one person in any one accident;
5 b. Subject to said limit for one person, fifty thousand dollars
6 (\$50,000) because of bodily injury to or death of two or more
7 persons in any one accident; and
8 c. Ten thousand dollars (\$10,000) because of injury to or
9 destruction of property of others in any one accident.

10 (c) Such policy shall insure the person named as insured therein against loss
11 from the liability imposed upon him by law for damages arising out of the use by him of
12 any motor vehicle not owned by him, and within 30 days following the date of its
13 delivery to him of any motor vehicle owned by him, within the same territorial limits
14 and subject to the same limits of liability as are set forth in subsection (a) of this section.

15 (d) Such policy shall state the name and address of the named insured, the
16 coverage afforded by the policy, the premium charged therefor, the policy period, and
17 the limits of liability; and shall contain a provision that insurance is provided thereunder
18 in accordance with the coverage defined in this Article as respects bodily injury and
19 death or property damage, or both, and is subject to all the provisions of this Article.

20 (e) Such policy need not insure against loss from any liability for which benefits
21 are in whole or in part either payable or required to be provided under any workers'
22 compensation law nor any liability for damage to property owned by, rented to, in
23 charge or transported by the insured.

24 (f) Every policy is subject to the following provisions:

- 25 (1) Except as hereinafter provided, the liability of the insurer with respect
26 to the insurance required by this Article becomes absolute whenever
27 injury or damage covered by the policy occurs. The policy may not be
28 canceled or annulled as to such liability by any agreement between the
29 insurer and the insured after the occurrence of the injury or damage.
30 No statement made by the insured or on his behalf and no violation of
31 the policy defeats or voids the policy. As to policies issued to insureds
32 in this State through the North Carolina Motor Vehicle Reinsurance
33 Facility, a default judgment taken against an insured shall not be used
34 as a basis for obtaining judgment against the insurer unless counsel for
35 the plaintiff has forwarded to the insurer or to one of its agents, by
36 registered or certified mail with return receipt requested, or served by
37 any other method of service provided by law, a copy of the summons,
38 complaint, or other pleadings filed in the action. The return receipt
39 shall, upon its return to plaintiff's counsel, be filed with the clerk of the
40 court in which the action is pending against the insured and shall be
41 admissible in evidence as proof of notice to the insurer. The refusal of
42 the insurer or its agent to accept delivery of the registered mail, as
43 provided in this section, does not affect the validity of such notice; and
44 any insurer or agent of an insurer refusing to accept such registered

1 mail shall be charged with the knowledge of the contents of such
2 notice. When notice is sent to an agent of the insurer such notice shall
3 be notice to the insurer. As used in this subsection, 'agent' includes
4 any person designated by the insurer as its agent for the service of
5 process, any person duly appointed by the insurer in the State as
6 insurance agent, any general agent of the company in the State, any
7 employee of the company in a managerial or other responsible
8 position, or the North Carolina Commissioner of Insurance; provided,
9 where the return receipt is signed by an employee of the insurer or an
10 employee of an agent for the insurer, notice shall be deemed for the
11 purposes of this subsection to have been received. As used in this
12 subsection, 'agent' does not include a producer of record or broker who
13 forwards an application for insurance to the North Carolina Motor
14 Vehicle Reinsurance Facility. The insurer, upon receipt of summons,
15 complaint or other process, is entitled, upon its motion, to intervene in
16 the suit against it insured as a named party defendant and to defend the
17 suit in the name of its insured. The insurer shall have 30 days from the
18 signing of the return receipt acknowledging receipt of the summons,
19 complaint, or other pleading in which to file a motion to intervene,
20 along with any responsible pleading, whether verified or not, that it
21 may deem to be necessary to protect its interest: Provided, the court
22 having jurisdiction over the matter may, upon motion duly made,
23 extend the time for the filing of a responsive pleading or continue the
24 trial of the matter for the purpose of affording the insurer a reasonable
25 time in which to file responsive pleadings or defend the action. If,
26 after receiving copy of the summons, complaint, or other pleading, the
27 insurer elects not to defend the action, if coverage is in fact provided
28 by the policy, the insurer is bound to the extent of its policy limits to
29 the judgment taken by default against the insured; and noncooperation
30 of the insured is not a defense. If the plaintiff initiating an action
31 against the insured has complied with the provisions of this subsection,
32 the insurer may not cancel or annul the policy as to such liability and
33 the defense of noncooperation is not available to the insurer:
34 Provided, however, nothing in this section deprives an insurer of its
35 defenses that the policy was not in force at the time in question, that
36 the operator was not an 'insured' under policy provisions, or that the
37 policy had been lawfully canceled before the time of the accident
38 giving rise to the cause of action. The provisions of this subdivision
39 do not apply when the insured has delivered a copy of the summons,
40 complaint, or other pleadings served on him to his insurer within the
41 time provided by law for filing an answer or other pleadings.

- 42 (2) The satisfaction by the insured of a judgment for such injury or
43 damage shall not be a condition precedent to the right or duty of the
44 insurer to make payment on account of such injury or damage;

1 (3) The insurer has the right to settle any claim covered by the policy; and
2 if such settlement is made in good faith, the amount thereof is
3 deductible from the limits of liability specified in subdivisions (1) and
4 (2) of this section;

5 (4) The policy, the written application therefor, if any, and any
6 endorsement that does not conflict with the provisions of this Article
7 constitutes the entire contract between the parties.

8 (g) Any policy that provides the coverage required by this Article may also
9 provide any lawful coverage in excess of or in addition to the coverage specified for a
10 policy; and such excess or additional coverage is not subject to the provisions of this
11 Article. With respect to a policy that grants such excess or additional coverage the term
12 'policy' applies only to that part of the coverage that is required by this section.

13 (h) Any policy may provide that the insured shall reimburse the insurer for any
14 payment the insurer would not have been obligated to make under the terms of the
15 policy except for the provisions of this Article.

16 (i) Any policy may provide for the prorating of the insurance thereunder with
17 other valid and collectible insurance.

18 (j) The requirements for a policy may be fulfilled by the policies of one or more
19 insurance carriers, which policies together meet such requirements.

20 (k) Any binder issued pending the issuance of a policy fulfills the requirements
21 for such a policy.

22 **"§ 20-279.21B. Uninsured motorist coverage.**

23 (a) As used in this section, 'uninsured motor vehicle' means a motor vehicle
24 as to which there is no policy; or there is a policy but the insurer denies coverage
25 thereunder; or there is no bond or deposit of money or securities as provided in G.S. 20-
26 279.24 or G.S. 20-279.25; or the owner of such motor vehicle has not qualified as a self-
27 insurer under the provisions of G.S. 20-279.33; or a vehicle that is not subject to the
28 provisions of this Article.

29 (b) 'Uninsured motor vehicle' also includes an insured motor vehicle where
30 the insurer of that vehicle is unable to make payment with respect to the legal liability
31 within the limits specified in that vehicle's policy because of insolvency. An insurer's
32 insolvency protection is applicable only to accidents occurring during a policy period in
33 which its insured's uninsured motorist coverage is in effect where the liability insurer of
34 the tort-feasor becomes insolvent within three years after such an accident. Nothing in
35 this section prevents any insurer from affording insolvency protection under terms and
36 conditions more favorable to the insured than is provided in this subdivision.

37 (c) 'Uninsured motor vehicle' does not include:

38 (1) A motor vehicle owned by the named insured;

39 (2) A motor vehicle that is owned or operated by a self-insurer within the
40 meaning of any motor vehicle financial responsibility law, motor
41 carrier law, or any similar law;

42 (3) A motor vehicle that is owned by the United States; Canada; a state or
43 any agency thereof, but not including political subdivisions thereof;

- 1 (4) A land motor vehicle or trailer, if operated on rails or crawler-treads or
2 while located for use as a residence on premises and not as a vehicle;
3 or
4 (5) A farm-type tractor or equipment designed for use principally off
5 public roads, except while actually upon public roads.

6 (d) As used in this section, 'person insured' means the named insured and,
7 while resident of the same household, the spouse of any such named insured and
8 relatives of either, while in a motor vehicle or otherwise; any person who uses, with the
9 express or implied consent of the named insured, the motor vehicle to which the policy
10 applies; the personal representative of any person; or any other person in lawful
11 possession of such motor vehicle.

12 (e) Every policy shall provide uninsured motorist coverage, in addition to and in
13 the same limits as the coverages set forth in G.S. 20-279.21A. Uninsured motorist
14 coverage is for the protection of persons insured thereunder who are legally entitled to
15 recover damages for bodily injury or death from owners or operators of uninsured motor
16 vehicles and hit-and-run motor vehicles; provided, an insured is entitled to secure
17 additional coverage up to the limits of bodily injury liability that he carries for the
18 protection of third persons in his own policy. Such provisions shall include coverage
19 for the protection of third persons. Such provisions shall include coverage for the
20 protection of persons insured thereunder who are legally entitled to recover damages
21 from owners or operators of uninsured motor vehicles because of injury to or
22 destruction of the property of such insured, with a limit in the aggregate for all insureds
23 in any one accident of up to the limits of property damage liability in the owner's policy;
24 and subject, for each insured, to an exclusion of the first one hundred dollars (\$100.00)
25 of such damages. Such provision shall further provide that a written statement by the
26 liability insurer, whose name appears on the certification of financial responsibility
27 made by the owner of any vehicle involved in an accident with the insured, that such
28 other motor vehicle was not covered by liability insurance at the time of the accident
29 with the insured, operates as a **prima facie** presumption that the operator of such other
30 motor vehicle was uninsured at the time of the accident with the insured for the
31 purposes of recovery under this provision of the insured's policy.

32 (f) The coverage required under this section is not applicable where any insured
33 named in the policy rejects the coverage. If a named insured rejects the coverage
34 required under this subdivision, the insurer is not required to offer the coverage in any
35 renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement
36 policy, unless the named insured makes a written request for the coverage. Rejection of
37 this coverage for policies issued after October 1, 1986, shall be made in writing by the
38 named insured on a form promulgated by the North Carolina Rate Bureau and approved
39 by the Commissioner of Insurance.

40 (g) In addition to other requirements in this section, every policy that is
41 delivered or issued for delivery in this State is subject to the following provisions:

- 42 (1) A provision that the insurer shall be bound by a final judgment taken
43 by the insured against an uninsured motorist if the insurer has been
44 served with copy of summons, complaint, or other process in the

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

26 (2) Where the insured, under the uninsured motorist coverage, claims that
27 he has sustained bodily injury as the result of collision between motor
28 vehicles and assets that the identity of the operator or owner of a
29 vehicle (other than a vehicle in which the insured is a passenger)
30 cannot be ascertained, the insured may institute an action directly
31 against the insurer: Provided, in such event, the insured, or someone in
32 his behalf, shall report the accident within 24 hours or as soon
33 thereafter as is practicable, to a law enforcement officer or other
34 judicial officer, or to the Commissioner of Motor Vehicles. The
35 insured shall also within a reasonable time give notice to the insurer of
36 the nature and extent of his injury, and shall set forth in such notice the
37 time, date, and place of such injury. Thereafter, on forms to be mailed
38 by the insurer within 15 days following receipt of the notice of the
39 accident to the insurer, the insured shall furnish to the insurer such
40 further reasonable information concerning the accident and the injury
41 as the insurer shall request. If such forms are not so furnished within
42 15 days, the insured shall be deemed to have complied with the
43 requirements for furnishing information to the insurer. Suit may not
44 be instituted against the insurer in less than 60 days from the posting of

1 the first notice of such injury or accident to the insurer at the address
2 shown on the policy or after personal delivery of such notice to the
3 insurer or its agent. The failure to post notice to the insurer 60 days in
4 advance of the initiation of the suit shall not be grounds for dismissal
5 of the action, but shall automatically extend the time for the filing of
6 an answer or other pleadings to 60 days after the time for the filing of
7 an answer or other pleadings to 60 days after the time of service of the
8 summons, complaint, or other process on the insured.

9 (h) In the event of payment to any person under the coverage required by this
10 section and subject to the terms and conditions of such coverage, the insurer making
11 such payment shall have the right of subrogation.

12 **"§ 20-279.21C. Underinsured motorist coverage.**

13 (a) An 'uninsured motor vehicle', as described in G.S. 20-279.21B, includes
14 an 'underinsured highway vehicle', which means a highway vehicle with respect to the
15 ownership, maintenance, or use of which, the sum of the limits of liability under all
16 bodily injury liability bonds and policies applicable at the time of the accident is less
17 than the applicable limits of liability under the owner's liability policy.

18 (b) As used in this section, 'highway vehicle' means a land motor vehicle or
19 trailer other than:

20 (1) A farm-type tractor or other vehicle designed for use principally off
21 public roads and while not upon public roads;

22 (2) A vehicle operated on rails or crawler-treads; or

23 (3) A vehicle while located for use as a residence on premises.

24 (c) Every policy shall provide underinsured motorist coverage, in addition to
25 the coverages set forth in G.S. 20-279.21A and G.S. 20-279.21B. Underinsured
26 motorist coverage is to be provided only with liability policies that are written at limits
27 that exceed those prescribed by G.S. 20-270.21A and that afford uninsured motorist
28 coverage shall be written in an amount equal to the limits for bodily injury liability that
29 are specified in the owner's policy.

30 (d) The provision of G.S. 20-279.21B apply to the coverage required by this
31 subdivision. Underinsured motorist coverage applies when, by reason of payment of
32 judgment or settlement, all liability bonds or policies providing coverage for bodily
33 injury caused by the ownership, maintenance, or use of the underinsured highway
34 vehicle have been exhausted. Exhaustion of such liability coverage for the purpose of
35 any single liability claim presented for underinsured motorist coverage shall be deemed
36 to occur when either (i) the limits of liability per claim have been paid upon such claim,
37 or (ii) by reason of multiple claims, the aggregate per occurrence limit of liability has
38 been paid. Underinsured motorist coverage applies to the first dollar of an underinsured
39 motorist coverage claim beyond amounts paid to the claimant pursuant to the exhausted
40 liability coverage.

41 (e) The limit of underinsured motorist coverage applicable to any claim is the
42 difference between the amount paid to the claimant pursuant to the exhausted liability
43 coverage and the total limits of the owner's policies of insurance; and it is the intent of
44 this subsection to provide to the owner, in instances where more than one policy may

1 apply, the benefit of all limits of liability of underinsured motorist coverages under all
2 such policies. This subsection applies only to insurance on nonfleet private passenger
3 motor vehicles, as defined in G.S. 58-131.36A.

4 (f) An underinsured motorist insurer may, at its option, upon a claim pursuant to
5 underinsured motorist coverage, pay moneys without there having first been an
6 exhaustion of the liability coverage for the ownership, use, and maintenance of the
7 underinsured highway vehicle. In the event of such payment, the underinsured motorist
8 insurer shall be either: (i) entitled to receive by assignment from the claimant any right
9 or (ii) subrogated to the claimant's right regarding any claim the claimant has or had
10 against the owner, operator, or maintainer of the underinsured highway vehicle;
11 provided that the amount of the insurer's right by subrogation or assignment shall not
12 exceed payments made to the claimant by the insurer. No insurer shall exercise any
13 right of subrogation or any right to approve settlement with the original owner, operator,
14 or maintainer of the underinsured highway vehicle under a policy providing
15 underinsured motorist coverage where the insurer has been provided with written notice
16 in advance of a settlement between its insured and the underinsured motorist and the
17 insurer fails to advance a payment to the insured in an amount equal to the tentative
18 settlement within 30 days following receipt of such notice. Further, the insurer has the
19 right, at its election, to pursue its claim by assignment or subrogation in the name of the
20 claimant; and the insurer shall not be denominated as a party in its own name except
21 upon its own election. Assignment or subrogation as provided in this subsection does
22 not, absent a contrary agreement, operate to defeat the claimant's right to pursue
23 recovery against the owner, operator, or maintainer of the underinsured highway vehicle
24 for damages beyond those paid by the underinsured motorist insurer. The claimant and
25 the underinsured motorist insurer may join their claims in a single suit without requiring
26 that such insurer be named as a party. Any claimant who intends to pursue recovery
27 against the owner, operator, or maintainer of the underinsured highway vehicle for
28 moneys beyond those paid by the underinsured motorist insurer shall, prior to doing so,
29 give notice to such insurer and give such insurer, at its expense, the opportunity to
30 participate in the prosecution of such claim. Upon the entry of judgment in a suit upon
31 any such claim in which the underinsured motorist insurer and claimant are joined,
32 payment upon such judgment, unless otherwise agreed to, shall be applied pro rata to
33 the claimant's claim beyond payment by the insurer of the owner, operator, or
34 maintainer of the underinsured highway vehicle and the claim of the underinsured
35 motorist insurer.

36 (g) A party injured by the operation of an underinsured highway vehicle who
37 institutes a suit for the recovery of moneys for such injuries and in such an amount that,
38 if recovered, would support a claim under underinsured motorist coverage, shall give
39 notice of the initiation of the suit to the underinsured motorist insurer as well as to the
40 insurer providing primary liability coverage upon the underinsured highway vehicle.
41 Upon receipt of such notice, the underinsured motorist insurer has the right to appear in
42 defense of such claim without being named as a party therein; and without being named
43 as a party may participate in such suit as fully as if it were a party. The underinsured
44 motorist insurer may elect, but may not be compelled, to appear in such action in its

1 own name and present therein a claim against other parties; provided that application is
2 made to and approved by a presiding superior court judge. In any such suit, any insurer
3 providing primary liability insurance on the underinsured highway vehicle may, upon
4 payment of all of its applicable limits of liability, be released from further liability or
5 obligation to participate in the defense of such proceeding. However, prior to approving
6 any such application, the court shall be persuaded that the owner, operator, or
7 maintainer of the underinsured highway vehicle against whom a claim has been made
8 has been apprised of the nature of the proceeding and given his right to select counsel of
9 his own choice to appear in such action on his separate behalf. In the event that an
10 underinsured motorist insurer, following the approval of such application, pays in
11 settlement or partial or total satisfaction of judgment moneys to the claimant, such
12 insurer shall be subrogated to or entitled to an assignment of the claimant's rights
13 against the owner, operator, or maintainer of the underinsured highway vehicle and,
14 provided that adequate notice of right to independent representation was given to such
15 owner, operator, or maintainer, a finding of liability or the award of damages shall be
16 **res judicata** between the underinsured motorist insurer and the owner, operator, or
17 maintainer of underinsured highway vehicle.

18 (h) The coverage required under this section is not applicable where any named
19 insured rejects the coverage. If the named insured rejects the coverage required under
20 this subdivision, the insurer is not required to offer the coverage in any renewal,
21 reinstatement, substitute, amended, altered, modified, transfer, or replacement policy
22 unless the named insured makes a written request for the coverage. Rejection of this
23 coverage for policies issued after October 1, 1986, shall be made in writing by the
24 named insured on a form promulgated by the North Carolina Rate Bureau and approved
25 by the Commissioner of Insurance."

26 Sec. 2. G.S. 20-279.21 is repealed.

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