

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1023
Committee Substitute Favorable 4/24/03
Senate Commerce Committee Substitute Adopted 6/16/03

Short Title: Uninsured/Underinsured Motorist Coverage.

(Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO ALLOW INTERPOLICY STACKING OF UNINSURED MOTORIST
COVERAGE, TO AMEND THE DEFINITION OF UNDERINSURED HIGHWAY
VEHICLE, AND TO CLARIFY THE AMOUNT OF UNDERINSURED
LIABILITY COVERAGE AVAILABLE WHEN MULTIPLE PARTIES ARE
INJURED IN MOTOR VEHICLE ACCIDENTS.

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, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom, in an amount not to be less than the financial responsibility amounts for bodily injury liability as set forth in G.S. 20-279.5 nor greater than one million dollars (\$1,000,000), as selected by the policy owner. The provisions shall include coverage for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such insured, with a limit in the aggregate for all insureds in any one accident of up to the limits of property damage liability in the owner's policy of liability insurance, and subject, for each insured, to an exclusion of the first one hundred

1 dollars (\$100.00) of such damages. The provision shall further provide
2 that a written statement by the liability insurer, whose name appears on
3 the certification of financial responsibility made by the owner of any
4 vehicle involved in an accident with the insured, that the other motor
5 vehicle was not covered by insurance at the time of the accident with
6 the insured shall operate as a prima facie presumption that the operator
7 of the other motor vehicle was uninsured at the time of the accident
8 with the insured for the purposes of recovery under this provision of
9 the insured's liability insurance policy. The coverage required under
10 this subdivision is not applicable where any insured named in the
11 policy rejects the coverage. An insured named in the policy may select
12 different coverage limits as provided in this subdivision. If the named
13 insured in the policy does not reject uninsured motorist coverage and
14 does not select different coverage limits, the amount of uninsured
15 motorist coverage shall be equal to the highest limit of bodily injury
16 and property damage liability coverage for any one vehicle in the
17 policy. Once the option to reject the uninsured motorist coverage or to
18 select different coverage limits is offered by the insurer, the insurer is
19 not required to offer the option in any renewal, reinstatement,
20 substitute, amended, altered, modified, transfer, or replacement policy
21 unless the named insured makes a written request to exercise a
22 different option. The selection or rejection of uninsured motorist
23 coverage or the failure to select or reject by a named insured is valid
24 and binding on all insureds and vehicles under the policy. Rejection of
25 or selection of different coverage limits for uninsured motorist
26 coverage for policies under the jurisdiction of the North Carolina Rate
27 Bureau shall be made in writing by a named insured on a form
28 promulgated by the Bureau and approved by the Commissioner of
29 Insurance.

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

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

1 under the uninsured motorist coverage of more than one policy, that
2 person may combine the highest applicable uninsured motorist limit
3 available under each policy to determine the total amount of uninsured
4 motorist coverage available to that person. The previous sentence shall
5 apply only to insurance on nonfleet private passenger motor vehicles
6 as described in G.S. 58-40-10(1) and (2).

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

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

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

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

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

40 In the event of payment to any person under the coverage required
41 by this section and subject to the terms and conditions of coverage, the
42 insurer making payment shall, to the extent thereof, be entitled to the
43 proceeds of any settlement for judgment resulting from the exercise of
44 any limits of recovery of that person against any person or

1 organization legally responsible for the bodily injury for which the
2 payment is made, including the proceeds recoverable from the assets
3 of the insolvent insurer.

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

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

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

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

- 39 "(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3)
40 of this subsection, provide underinsured motorist coverage, to be used
41 only with a policy that is written at limits that exceed those prescribed
42 by subdivision (2) of this section and that afford uninsured motorist
43 coverage as provided by subdivision (3) of this subsection, in an
44 amount not to be less than the financial responsibility amounts for

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

41 In any event, the limit of underinsured motorist coverage
42 applicable to any claim is determined to be the difference between the
43 amount paid to the claimant under the exhausted liability policy or
44 policies and the limit of underinsured motorist coverage applicable to

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

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

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

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

40 As consideration for payment of policy limits by a liability insurer
41 on behalf of the owner, operator, or maintainer of an underinsured
42 motor vehicle, a party injured by an underinsured motor vehicle may
43 execute a contractual covenant not to enforce against the owner,
44 operator, or maintainer of the vehicle any judgment that exceeds the

1 policy limits. A covenant not to enforce judgment shall not preclude
2 the injured party from pursuing available underinsured motorist
3 benefits, unless the terms of the covenant expressly provide otherwise,
4 and shall not preclude an insurer providing underinsured motorist
5 coverage from pursuing any right of subrogation.

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

21 Rejection of or selection of different coverage limits for
22 underinsured motorist coverage for policies under the jurisdiction of
23 the North Carolina Rate Bureau shall be made in writing by the named
24 insured on a form promulgated by the Bureau and approved by the
25 Commissioner of Insurance."

26 **SECTION 3.** This act becomes effective January 1, 2004, and applies to
27 accidents occurring on or after that date.