

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1052

Senate Pensions & Retirement and Insurance Committee Substitute Adopted 7/3/97

Short Title: Exclude Excess Coverage/Covenants.

(Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW INSURERS TO LIMIT OR EXCLUDE EXCESS LIABILITY COVERAGE FOR UNINSURED AND UNDERINSURED MOTORISTS AS PROVIDED BY LAW AND TO ALLOW INJURED PARTIES TO EXECUTE COVENANTS NOT TO ENFORCE JUDGMENT AS CONSIDERATION FOR PAYMENT OF THE APPLICABLE LIMITS OF LIABILITY BY THE INSURER.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-3-152. Excess liability policies; uninsured and underinsured motorist coverages.

With respect to policy forms that provide excess liability coverage, an insurer may limit or exclude coverage for uninsured motorists as provided in G.S. 20-279.21(b)(3) and for underinsured motorists as provided in G.S. 20-279.21(b)(4)."

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

"(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with a policy that is written at limits that exceed those prescribed by subdivision (2) of this section and that afford uninsured motorist

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

30 In any event, the limit of underinsured motorist coverage applicable
31 to any claim is determined to be the difference between the amount paid
32 to the claimant under the exhausted liability policy or policies and the
33 limit of underinsured motorist coverage applicable to the motor vehicle
34 involved in the accident. Furthermore, if a claimant is an insured under
35 the underinsured motorist coverage on separate or additional policies,
36 the limit of underinsured motorist coverage applicable to the claimant is
37 the difference between the amount paid to the claimant under the
38 exhausted liability policy or policies and the total limits of the
39 claimant's underinsured motorist coverages as determined by combining
40 the highest limit available under each policy; provided that this sentence
41 shall apply only to insurance on nonfleet private passenger motor
42 vehicles as described in G.S. 58-40-15(9) and (10). The underinsured
43 motorist limits applicable to any one motor vehicle under a policy shall

1 not be combined with or added to the limits applicable to any other
2 motor vehicle under that policy.

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

42 A party injured by the operation of an underinsured highway vehicle
43 who institutes a suit for the recovery of moneys for those injuries and in

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

30 As consideration for payment of policy limits by a liability insurer
31 on behalf of the owner, operator, or maintainer of an underinsured
32 motor vehicle, a party injured by an underinsured motor vehicle may
33 execute a contractual covenant not to enforce against the owner,
34 operator, or maintainer of the vehicle any judgment that exceeds the
35 policy limits. A covenant not to enforce judgment shall not preclude the
36 injured party from pursuing available underinsured motorist benefits,
37 unless the terms of the covenant expressly provide otherwise, and shall
38 not preclude an insurer providing underinsured motorist coverage from
39 pursuing any right of subrogation.

40 The coverage required under this subdivision shall not be applicable
41 where any insured named in the policy rejects the coverage. An insured
42 named in the policy may select different coverage limits as provided in
43 this subdivision. If the named insured does not reject underinsured

1 motorist coverage and does not select different coverage limits, the
2 amount of underinsured motorist coverage shall be equal to the highest
3 limit of bodily injury liability coverage for any one vehicle in the policy.
4 Once the option to reject underinsured motorist coverage or to select
5 different coverage limits is offered by the insurer, the insurer is not
6 required to offer the option in any renewal, reinstatement, substitute,
7 amended, altered, modified, transfer, or replacement policy unless a
8 named insured makes a written request to exercise a different option.
9 The selection or rejection of underinsured motorist coverage by a named
10 insured or the failure to select or reject is valid and binding on all
11 insureds and vehicles under the policy.

12 Rejection of or selection of different coverage limits for
13 underinsured motorist coverage for policies under the jurisdiction of the
14 North Carolina Rate Bureau shall be made in writing by the named
15 insured on a form promulgated by the Bureau and approved by the
16 Commissioner of Insurance."

17 Section 3. G.S. 20-279.21 is amended by adding a new subsection to read:

18 "(1) A party injured by an uninsured motor vehicle covered under a policy in
19 amounts less than those set forth in G.S. 20-279.5, may execute a contractual covenant
20 not to enforce against the owner, operator, or maintainer of the uninsured vehicle any
21 judgment that exceeds the liability policy limits, as consideration for payment of any
22 applicable policy limits by the insurer where judgment exceeds the policy limits. A
23 covenant not to enforce judgment shall not preclude the injured party from pursuing
24 available uninsured motorist benefits, unless the terms of the covenant expressly provide
25 otherwise, and shall not preclude an insurer providing uninsured motorist coverage from
26 pursuing any right of subrogation."

27 Section 4. This act is effective when it becomes law.