

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

H

1

HOUSE BILL 1253

Short Title: Uninsured Motorist Coverage.

(Public)

Sponsors: Representative Goodwin.

Referred to: Insurance.

April 12, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO AMEND THE DEFINITION OF UNDERINSURED HIGHWAY
3 VEHICLE TO PROVIDE GREATER PROTECTION TO CONSUMERS
4 INJURED IN MOTOR VEHICLE ACCIDENTS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 20-279.21(b)(4) reads as rewritten:

7 "(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3)
8 of this subsection, provide underinsured motorist coverage, to be used
9 only with a policy that is written at limits that exceed those prescribed
10 by subdivision (2) of this section and that afford uninsured motorist
11 coverage as provided by subdivision (3) of this subsection, in an
12 amount not to be less than the financial responsibility amounts for
13 bodily injury liability as set forth in G.S. 20-279.5 nor greater than one
14 million dollars (\$1,000,000) as selected by the policy owner. An
15 "uninsured motor vehicle," as described in subdivision (3) of this
16 subsection, includes an "underinsured highway vehicle," which means
17 a highway vehicle with respect to the ownership, maintenance, or use
18 of which, the sum of the limits of liability under all bodily injury
19 liability bonds and insurance policies applicable at the time of the
20 accident and available for payment for bodily injury are insufficient to
21 pay damages for bodily injury of all persons injured at the time of the
22 accident. is less than the applicable limits of underinsured motorist
23 coverage for the vehicle involved in the accident and insured under the
24 owner's policy. For the purposes of this subdivision, the term
25 "highway vehicle" means a land motor vehicle or trailer other than (i)
26 a farm-type tractor or other vehicle designed for use principally off
27 public roads and while not upon public roads, (ii) a vehicle operated on
28 rails or crawler-treads, or (iii) a vehicle while located for use as a

1 residence or premises. The provisions of subdivision (3) of this
2 subsection shall apply to the coverage required by this subdivision.
3 Underinsured motorist coverage is deemed to apply when, by reason of
4 payment of judgment or settlement, all liability bonds or insurance
5 policies providing coverage for bodily injury caused by the ownership,
6 maintenance, or use of the underinsured highway vehicle have been
7 exhausted. Exhaustion of that liability coverage for the purpose of any
8 single liability claim presented for underinsured motorist coverage is
9 deemed to occur when either (a) the limits of liability per claim have
10 been paid upon the claim, or (b) by reason of multiple claims, the
11 aggregate per occurrence limit of liability has been paid. Underinsured
12 motorist coverage is deemed to apply to the first dollar of an
13 underinsured motorist coverage claim beyond amounts paid to the
14 claimant under the exhausted liability policy.

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

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 payment, the underinsured motorist
37 insurer shall be either: (a) entitled to receive by assignment from the
38 claimant any right or (b) subrogated to the claimant's right regarding
39 any claim the claimant has or had against the owner, operator, or
40 maintainer of the underinsured highway vehicle, provided that the
41 amount of the insurer's right by subrogation or assignment shall not
42 exceed payments made to the claimant by the insurer. No insurer shall
43 exercise any right of subrogation or any right to approve settlement
44 with the original owner, operator, or maintainer of the underinsured

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

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

1 application, the court shall be persuaded that the owner, operator, or
2 maintainer of the underinsured highway vehicle against whom a claim
3 has been made has been apprised of the nature of the proceeding and
4 given his right to select counsel of his own choice to appear in the
5 action on his separate behalf. If an underinsured motorist insurer,
6 following the approval of the application, pays in settlement or partial
7 or total satisfaction of judgment moneys to the claimant, the insurer
8 shall be subrogated to or entitled to an assignment of the claimant's
9 rights against the owner, operator, or maintainer of the underinsured
10 highway vehicle and, provided that adequate notice of right of
11 independent representation was given to the owner, operator, or
12 maintainer, a finding of liability or the award of damages shall be res
13 judicata between the underinsured motorist insurer and the owner,
14 operator, or maintainer of underinsured highway vehicle.

15 As consideration for payment of policy limits by a liability insurer
16 on behalf of the owner, operator, or maintainer of an underinsured
17 motor vehicle, a party injured by an underinsured motor vehicle may
18 execute a contractual covenant not to enforce against the owner,
19 operator, or maintainer of the vehicle any judgment that exceeds the
20 policy limits. A covenant not to enforce judgment shall not preclude
21 the injured party from pursuing available underinsured motorist
22 benefits, unless the terms of the covenant expressly provide otherwise,
23 and shall not preclude an insurer providing underinsured motorist
24 coverage from pursuing any right of subrogation.

25 The coverage required under this subdivision shall not be
26 applicable where any insured named in the policy rejects the coverage.
27 An insured named in the policy may select different coverage limits as
28 provided in this subdivision. If the named insured does not reject
29 underinsured motorist coverage and does not select different coverage
30 limits, the amount of underinsured motorist coverage shall be equal to
31 the highest limit of bodily injury liability coverage for any one vehicle
32 in the policy. Once the option to reject underinsured motorist coverage
33 or to select different coverage limits is offered by the insurer, the
34 insurer is not required to offer the option in any renewal,
35 reinstatement, substitute, amended, altered, modified, transfer, or
36 replacement policy unless a named insured makes a written request to
37 exercise a different option. The selection or rejection of underinsured
38 motorist coverage by a named insured or the failure to select or reject
39 is valid and binding on all insureds and vehicles under the policy.

40 Rejection of or selection of different coverage limits for
41 underinsured motorist coverage for policies under the jurisdiction of
42 the North Carolina Rate Bureau shall be made in writing by the named
43 insured on a form promulgated by the Bureau and approved by the
44 Commissioner of Insurance."

1 **SECTION 2.** This act becomes effective October 1, 2001, and applies to
2 accidents occurring on or after that date.