

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE DRH10785-MH-51 (3/6)

Short Title: Revise UM/UIM Coverage Requirements.

(Public)

Sponsors: Representative Goforth.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO REVISE AND CLARIFY THE REQUIREMENTS FOR UNINSURED AND  
3 UNDERINSURED MOTORIST COVERAGE IN MOTOR VEHICLE LIABILITY  
4 INSURANCE POLICIES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 20-279.21 reads as rewritten:

7 **"§ 20-279.21. "Motor vehicle liability policy" defined.**

8 (a) A "motor vehicle liability policy" as said term is used in this Article shall mean an  
9 owner's or an operator's policy of liability insurance, certified as provided in G.S. 20-279.19 or  
10 20-279.20 as proof of financial responsibility, and issued, except as otherwise provided in  
11 G.S. 20-279.20, by an insurance carrier duly authorized to transact business in this State, to or  
12 for the benefit of the person named therein as insured.

13 (b) Such owner's policy of liability insurance:

- 14 (1) Shall designate by explicit description or by appropriate reference all motor  
15 vehicles with respect to which coverage is thereby to be granted;
- 16 (2) Shall insure the person named therein and any other person, as insured, using  
17 any such motor vehicle or motor vehicles with the express or implied  
18 permission of such named insured, or any other persons in lawful  
19 possession, against loss from the liability imposed by law for damages  
20 arising out of the ownership, maintenance or use of such motor vehicle or  
21 motor vehicles within the United States of America or the Dominion of  
22 Canada subject to limits exclusive of interest and costs, with respect to each  
23 such motor vehicle, as follows: thirty thousand dollars (\$30,000) because of  
24 bodily injury to or death of one person in any one accident and, subject to  
25 said limit for one person, sixty thousand dollars (\$60,000) because of bodily  
26 injury to or death of two or more persons in any one accident, and  
27 twenty-five thousand dollars (\$25,000) because of injury to or destruction of  
28 property of others in any one accident; and
- 29 (3) No policy of bodily injury liability insurance, covering liability arising out of  
30 the ownership, maintenance, or use of any motor vehicle, shall be delivered  
31 or issued for delivery in this State with respect to any motor vehicle  
32 registered or principally garaged in this State unless coverage is provided  
33 therein or supplemental thereto, under provisions filed with and approved by  
34 the Commissioner of Insurance, for the protection of persons insured  
35 ~~thereunder~~ under the policy who are legally entitled to recover damages



1 from owners or operators of uninsured motor vehicles and hit-and-run motor  
2 vehicles ~~because of bodily injury, sickness or disease, including death,~~  
3 ~~resulting therefrom,~~ who cause bodily injury, sickness or disease, with limits  
4 equal to the highest limits of bodily injury liability coverage for any one  
5 vehicle insured under the policy. ~~The~~ Notwithstanding the previous  
6 sentence, the named insured may purchase uninsured motorist bodily injury  
7 coverage with greater or lesser limits, subject to the limitation that in no  
8 event shall uninsured motorist bodily injury coverage limits be less than the  
9 bodily injury liability limits required pursuant to subdivision (2) of this  
10 subsection or exceed one million dollars (\$1,000,000) per person and one  
11 million dollars (\$1,000,000) per accident. The insurer shall notify the named  
12 insured of his or her right to purchase uninsured motorist bodily injury  
13 coverage with greater or lesser limits, when the policy is issued and  
14 renewed, as provided in subsection (m) of this section. The provisions shall  
15 include coverage for the protection of persons insured ~~thereunder~~ under the  
16 policy who are legally entitled to recover damages from owners or operators  
17 of uninsured motor vehicles because of injury to or destruction of the  
18 property of such insured, with a limit in the aggregate for all insureds in any  
19 one accident equal to the highest limits of property damage liability  
20 coverage for any one vehicle insured in the owner's policy of liability  
21 insurance, and subject, for each insured, to an exclusion of the first one  
22 hundred dollars (\$100.00) of such damages. The provision shall further  
23 provide that a written statement by the liability insurer, whose name appears  
24 on the certification of financial responsibility made by the owner of any  
25 vehicle involved in an accident with the insured, that the other motor vehicle  
26 was not covered by insurance at the time of the accident with the insured  
27 shall operate as a prima facie presumption that the operator of the other  
28 motor vehicle was uninsured at the time of the accident with the insured for  
29 the purposes of recovery under this provision of the insured's liability  
30 insurance policy.

31 If a person who is legally entitled to recover damages from the owner or  
32 operator of an uninsured motor vehicle is an insured under the uninsured  
33 motorist coverage of a policy that insures more than one motor vehicle, that  
34 person shall not be permitted to combine the uninsured motorist limit  
35 applicable to any one motor vehicle with the uninsured motorist limit  
36 applicable to any other motor vehicle to determine the total amount of  
37 uninsured motorist coverage available to that person. If a person who is  
38 legally entitled to recover damages from the owner or operator of an  
39 uninsured motor vehicle is an insured under the uninsured motorist coverage  
40 of more than one policy, that person may combine the highest applicable  
41 uninsured motorist limit available under each policy to determine the total  
42 amount of uninsured motorist coverage available to that person. The  
43 previous sentence shall apply only to insurance on nonfleet private passenger  
44 motor vehicles as described in G.S. 58-40-10(1) and (2).

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

- 50 a. A provision that the insurer shall be bound by a final judgment taken  
51 by the insured against an uninsured motorist if the insurer has been

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

- 27 b. Where the insured, under the uninsured motorist coverage, claims  
28 that he has sustained bodily injury as the result of collision between  
29 motor vehicles and asserts that the identity of the operator or owner  
30 of a vehicle (other than a vehicle in which the insured is a passenger)  
31 cannot be ascertained, the insured may institute an action directly  
32 against the insurer: Provided, in that event, the insured, or someone  
33 in his behalf, shall report the accident within 24 hours or as soon  
34 thereafter as may be practicable, to a police officer, peace officer,  
35 other judicial officer, or to the Commissioner of Motor Vehicles. The  
36 insured shall also within a reasonable time give notice to the insurer  
37 of his injury, the extent thereof, and shall set forth in the notice the  
38 time, date and place of the injury. Thereafter, on forms to be mailed  
39 by the insurer within 15 days following receipt of the notice of the  
40 accident to the insurer, the insured shall furnish to insurer any further  
41 reasonable information concerning the accident and the injury that  
42 the insurer requests. If the forms are not furnished within 15 days, the  
43 insured is deemed to have complied with the requirements for  
44 furnishing information to the insurer. Suit may not be instituted  
45 against the insurer in less than 60 days from the posting of the first  
46 notice of the injury or accident to the insurer at the address shown on  
47 the policy or after personal delivery of the notice to the insurer or its  
48 agent. The failure to post notice to the insurer 60 days before the  
49 initiation of the suit shall not be grounds for dismissal of the action,  
50 but shall automatically extend the time for filing of an answer or

1 other pleadings to 60 days after the time of service of the summons,  
2 complaint, or other process on the insurer.

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

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

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

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

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

46 For purposes of this section "persons insured" means the named insured and,  
47 while resident of the same household, the spouse of any named insured and  
48 relatives of either, while in a motor vehicle or otherwise, and any person  
49 who uses with the consent, expressed or implied, of the named insured, the  
50 motor vehicle to which the policy applies and a guest in the motor vehicle to

1 which the policy applies or the personal representative of any of the above or  
2 any other person or persons in lawful possession of the motor vehicle.

3 Notwithstanding any language or provision to the contrary, no vehicle  
4 other than a nonfleet private passenger motor vehicle shall be required by  
5 this subsection to be covered by uninsured motorist coverage.~~the provisions~~  
6 ~~of this subsection, no policy of motor vehicle liability insurance applicable~~  
7 ~~solely to commercial motor vehicles as defined in G.S. 20 4.01(3d) or~~  
8 ~~applicable solely to fleet vehicles shall be required to provide uninsured~~  
9 ~~motorist coverage. Any motor vehicle liability policy that insures both~~  
10 ~~commercial motor vehicles as defined in G.S. 20 4.01(3d) and~~  
11 ~~noncommercial motor vehicles shall provide uninsured motorist coverage in~~  
12 ~~accordance with the provisions of this subsection in amounts equal to the~~  
13 ~~highest limits of bodily injury and property damage liability coverage for~~  
14 ~~any one noncommercial motor vehicle insured under the policy, subject to~~  
15 ~~the right of the insured to purchase higher uninsured motorist bodily injury~~  
16 ~~liability coverage limits as set forth in this subsection. For the purpose of the~~  
17 ~~immediately preceding sentence, noncommercial motor vehicle shall mean~~  
18 ~~any motor vehicle that is not a commercial motor vehicle as defined in~~  
19 ~~G.S. 20 4.01(3d), but that is otherwise subject to the requirements of this~~  
20 ~~subsection.~~

- 21 (4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this  
22 subsection, provide underinsured motorist coverage, to be used only with a  
23 policy that is written at limits that exceed those prescribed by subdivision (2)  
24 of this section, with limits equal to the highest limits of bodily injury liability  
25 coverage for any one vehicle insured under the policy. The named insured  
26 may purchase underinsured motorist coverage with greater or lesser limits,  
27 subject to the limitation that in no event shall the underinsured motorist  
28 coverage limits be less than or equal to the bodily injury liability limits  
29 required pursuant to subdivision (2) of this subsection or exceed one million  
30 dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per  
31 accident. The insurer shall notify the named insured of his or her right to  
32 purchase underinsured motorist coverage with greater or lesser limits, when  
33 the policy is issued and renewed, as provided in subsection (m) of this  
34 section. An "uninsured motor vehicle," as described in subdivision (3) of this  
35 subsection, includes an "underinsured highway vehicle," which means a  
36 highway vehicle with respect to the ownership, maintenance, or use of  
37 which, the sum of the limits of liability under all bodily injury liability bonds  
38 and insurance policies applicable at the time of the accident is less than the  
39 applicable limits of underinsured motorist coverage for the vehicle involved  
40 in the accident and insured under the owner's policy. For purposes of an  
41 underinsured motorist claim asserted by a person injured in an accident  
42 where more than one person is injured, a highway vehicle will also be an  
43 "underinsured highway vehicle" if the total amount actually paid to that  
44 person under all bodily injury liability bonds and insurance policies  
45 applicable at the time of the accident is less than the applicable limits of  
46 underinsured motorist coverage for the vehicle involved in the accident and  
47 insured under the owner's policy. Notwithstanding the immediately  
48 preceding sentence, a highway vehicle shall not be an "underinsured motor  
49 vehicle" for purposes of an underinsured motorist claim under an owner's  
50 policy insuring that vehicle unless the owner's policy insuring that vehicle  
51 provides underinsured motorist coverage with limits that are greater than that

1 policy's bodily injury liability limits. For the purposes of this subdivision,  
2 the term "highway vehicle" means a land motor vehicle or ~~trailer~~ ~~other~~  
3 ~~than trailer, but shall not include:~~

4 (i)a. A farm-type tractor or other vehicle designed for use principally off  
5 public roads and while not upon public ~~roads, roads;~~

6 (ii)b. A vehicle operated on rails or ~~crawler-treads, crawler-treads;~~ or

7 (iii)c. A vehicle while located for use as a residence or premises.

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

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

36 An underinsured motorist insurer may at its option, upon a claim  
37 pursuant to underinsured motorist coverage, pay moneys without there  
38 having first been an exhaustion of the liability insurance policy covering the  
39 ownership, use, and maintenance of the underinsured highway vehicle. In  
40 the event of payment, the underinsured motorist insurer shall be either: (a)  
41 entitled to receive by assignment from the claimant any right or (b)  
42 subrogated to the claimant's right regarding any claim the claimant has or  
43 had against the owner, operator, or maintainer of the underinsured highway  
44 vehicle, provided that the amount of the insurer's right by subrogation or  
45 assignment shall not exceed payments made to the claimant by the insurer.  
46 No insurer shall exercise any right of subrogation or any right to approve  
47 settlement with the original owner, operator, or maintainer of the  
48 underinsured highway vehicle under a policy providing coverage against an  
49 underinsured motorist where the insurer has been provided with written  
50 notice before a settlement between its insured and the underinsured motorist  
51 and the insurer fails to advance a payment to the insured in an amount equal

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

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

1 As consideration for payment of policy limits by a liability insurer on  
2 behalf of the owner, operator, or maintainer of an underinsured motor  
3 vehicle, a party injured by an underinsured motor vehicle may execute a  
4 contractual covenant not to enforce against the owner, operator, or  
5 maintainer of the vehicle any judgment that exceeds the policy limits. A  
6 covenant not to enforce judgment shall not preclude the injured party from  
7 pursuing available underinsured motorist benefits, unless the terms of the  
8 covenant expressly provide otherwise, and shall not preclude an insurer  
9 providing underinsured motorist coverage from pursuing any right of  
10 subrogation.

11 Notwithstanding any language or provision to the contrary, no vehicle  
12 other than a nonfleet private passenger motor vehicle shall be required by  
13 this subsection to be covered by underinsured motorist coverage.~~the~~  
14 ~~provisions of this subsection, no policy of motor vehicle liability insurance~~  
15 ~~applicable solely to commercial motor vehicles as defined in~~  
16 ~~G.S. 20 4.01(3d) or applicable solely to fleet vehicles shall be required to~~  
17 ~~provide underinsured motorist coverage. Any motor vehicle liability policy~~  
18 ~~that insures both commercial motor vehicles as defined in G.S. 20 4.01(3d)~~  
19 ~~and noncommercial motor vehicles shall provide underinsured motorist~~  
20 ~~coverage in accordance with the provisions of this subsection in an amount~~  
21 ~~equal to the highest limits of bodily injury liability coverage for any one~~  
22 ~~noncommercial motor vehicle insured under the policy, subject to the right~~  
23 ~~of the insured to purchase higher underinsured motorist bodily injury~~  
24 ~~liability coverage limits as set forth in this subsection. For the purpose of the~~  
25 ~~immediately preceding sentence, noncommercial motor vehicle shall mean~~  
26 ~~any motor vehicle that is not a commercial motor vehicle as defined in~~  
27 ~~G.S. 20 4.01(3d), but that is otherwise subject to the requirements of this~~  
28 ~~subsection.~~

29 (c) Such operator's policy of liability insurance shall insure the person named as insured  
30 therein against loss from the liability imposed upon him by law for damages arising out of the  
31 use by him of any motor vehicle not owned by him, and within 30 days following the date of its  
32 delivery to him of any motor vehicle owned by him, within the same territorial limits and  
33 subject to the same limits of liability as are set forth above with respect to an owner's policy of  
34 liability insurance.

35 (d) Such motor vehicle liability policy shall state the name and address of the named  
36 insured, the coverage afforded by the policy, the premium charged ~~therefor~~for the policy, the  
37 policy period and the limits of liability, and shall contain an agreement or be endorsed that  
38 insurance is provided ~~thereunder~~under the policy in accordance with the coverage defined in  
39 this Article as respects bodily injury and death or property damage, or both, and is subject to all  
40 the provisions of this Article.

41 (e) Uninsured or underinsured motorist coverage that is provided as part of a motor  
42 vehicle liability policy shall insure that portion of a loss uncompensated by any workers'  
43 compensation law and the amount of an employer's lien determined pursuant to G.S. 97-10.2(h)  
44 or (j). In no event shall this subsection be construed to require that coverage exceed the  
45 applicable uninsured or underinsured coverage limits of the motor vehicle policy or allow a  
46 recovery for damages already paid by workers' compensation. The policy need not insure a loss  
47 from any liability for damage to property owned by, rented to, in charge of or transported by  
48 the insured.

49 (f) Every motor vehicle liability policy shall be subject to the following provisions  
50 which need not be contained therein:



1 (1) Except as hereinafter provided, the liability of the insurance carrier with  
2 respect to the insurance required by this Article shall become absolute  
3 whenever injury or damage covered by said motor vehicle liability policy  
4 occurs; said policy may not be canceled or annulled as to such liability by  
5 any agreement between the insurance carrier and the insured after the  
6 occurrence of the injury or damage; no statement made by the insured or on  
7 his behalf and no violation of said policy shall defeat or void said policy. As  
8 to policies issued to insureds in this State under the assigned risk plan or  
9 through the North Carolina Motor Vehicle Reinsurance Facility, a default  
10 judgment taken against such an insured shall not be used as a basis for  
11 obtaining judgment against the insurer unless counsel for the plaintiff has  
12 forwarded to the insurer, or to one of its agents, by registered or certified  
13 mail with return receipt requested, or served by any other method of service  
14 provided by law, a copy of summons, complaint, or other pleadings, filed in  
15 the action. The return receipt shall, upon its return to plaintiff's counsel, be  
16 filed with the clerk of court wherein the action is pending against the insured  
17 and shall be admissible in evidence as proof of notice to the insurer. The  
18 refusal of insurer or its agent to accept delivery of the registered mail, as  
19 provided in this section, shall not affect the validity of such notice and any  
20 insurer or agent of an insurer refusing to accept such registered mail shall be  
21 charged with the knowledge of the contents of such notice. When notice has  
22 been sent to an agent of the insurer such notice shall be notice to the insurer.  
23 The word "agent" as used in this subsection shall include, but shall not be  
24 limited to, any person designated by the insurer as its agent for the service of  
25 process, any person duly licensed by the insurer in the State as insurance  
26 agent, any general agent of the company in the State of North Carolina, and  
27 any employee of the company in a managerial or other responsible position,  
28 or the North Carolina Commissioner of Insurance; provided, where the  
29 return receipt is signed by an employee of the insurer or an employee of an  
30 agent for the insurer, shall be deemed for the purposes of this subsection to  
31 have been received. The term "agent" as used in this subsection shall not  
32 include a producer of record or broker, who forwards an application for  
33 insurance to the North Carolina Motor Vehicle Reinsurance Facility.

34 The insurer, upon receipt of summons, complaint or other process, shall  
35 be entitled, upon its motion, to intervene in the suit against its insured as a  
36 party defendant and to defend the same in the name of its insured. In the  
37 event of such intervention by an insurer it shall become a named party  
38 defendant. The insurer shall have 30 days from the signing of the return  
39 receipt acknowledging receipt of the summons, complaint or other pleading  
40 in which to file a motion to intervene, along with any responsive pleading,  
41 whether verified or not, which it may deem necessary to protect its interest:  
42 Provided, the court having jurisdiction over the matter may, upon motion  
43 duly made, extend the time for the filing of responsive pleading or continue  
44 the trial of the matter for the purpose of affording the insurer a reasonable  
45 time in which to file responsive pleading or defend the action. If, after  
46 receiving copy of the summons, complaint or other pleading, the insurer  
47 elects not to defend the action, if coverage is in fact provided by the policy,  
48 the insurer shall be bound to the extent of its policy limits to the judgment  
49 taken by default against the insured, and noncooperation of the insured shall  
50 not be a defense.

1           If the plaintiff initiating an action against the insured has complied with  
2           the provisions of this subsection, then, in such event, the insurer may not  
3           cancel or annul the policy as to such liability and the defense of  
4           noncooperation shall not be available to the insurer: Provided, however,  
5           nothing in this section shall be construed as depriving an insurer of its  
6           defenses that the policy was not in force at the time in question, that the  
7           operator was not an "insured" under policy provisions, or that the policy had  
8           been lawfully canceled at the time of the accident giving rise to the cause of  
9           action.

10           Provided further that the provisions of this subdivision shall not apply  
11           when the insured has delivered a copy of the summons, complaint or other  
12           pleadings served on him to his insurance carrier within the time provided by  
13           law for filing answer, demurrer or other pleadings.

- 14           (2)    The satisfaction by the insured of a judgment for such injury or damage shall  
15           not be a condition precedent to the right or duty of the insurance carrier to  
16           make payment on account of such injury or damage;
- 17           (3)    The insurance carrier shall have the right to settle any claim covered by the  
18           policy, and if such settlement is made in good faith, the amount thereof shall  
19           be deductible from the limits of liability specified in subdivision (2) of  
20           subsection (b) of this section;
- 21           (4)    The policy, the written application ~~therefor~~ for the policy, if any, and any  
22           rider or endorsement which does not conflict with the provisions of the  
23           Article shall constitute the entire contract between the parties.

24           (g)    Any policy which grants the coverage required for a motor vehicle liability policy  
25           may also grant any lawful coverage in excess of or in addition to the coverage specified for a  
26           motor vehicle liability policy and such excess or additional coverage shall not be subject to the  
27           provisions of this Article. With respect to a policy which grants such excess or additional  
28           coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage  
29           which is required by this section.

30           (h)    Any motor vehicle liability policy may provide that the insured shall reimburse the  
31           insurance carrier for any payment the insurance carrier would not have been obligated to make  
32           under the terms of the policy except for the provisions of this Article.

33           (i)    Any motor vehicle liability policy may provide for the prorating of the insurance  
34           ~~thereunder~~ coverage provided by the policy with other valid and collectible insurance.

35           (j)    The requirements for a motor vehicle liability policy may be fulfilled by the policies  
36           of one or more insurance carriers which policies together meet such requirements.

37           (k)    Any binder issued pending the issuance of a motor vehicle liability policy shall be  
38           deemed to fulfill the requirements for such a policy.

39           (l)    A party injured by an uninsured motor vehicle covered under a policy in amounts  
40           less than those set forth in G.S. 20-279.5, may execute a contractual covenant not to enforce  
41           against the owner, operator, or maintainer of the uninsured vehicle any judgment that exceeds  
42           the liability policy limits, as consideration for payment of any applicable policy limits by the  
43           insurer where judgment exceeds the policy limits. A covenant not to enforce judgment shall not  
44           preclude the injured party from pursuing available uninsured motorist benefits, unless the terms  
45           of the covenant expressly provide otherwise, and shall not preclude an insurer providing  
46           uninsured motorist coverage from pursuing any right of subrogation.

47           (m)    Every insurer that sells motor vehicle liability policies subject to the requirements of  
48           subdivisions (b)(3) and (b)(4) of this section shall give reasonable notice to the named insured,  
49           when the policy is issued and renewed, that the named insured may purchase uninsured  
50           motorist bodily injury coverage and, if applicable, underinsured motorist coverage with limits  
51           up to one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per

1 accident. An insurer shall be deemed to have given reasonable notice if it includes the  
2 following or substantially similar language on the policy's original and renewal declarations  
3 pages or in a separate notice accompanying the original and renewal declarations pages in at  
4 least 10 point type:

5 "NOTICE: YOU MAY PURCHASE UNINSURED MOTORIST BODILY INJURY  
6 COVERAGE AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE WITH  
7 LIMITS UP TO ONE MILLION DOLLARS (\$1,000,000) PER PERSON AND ONE  
8 MILLION DOLLARS (\$1,000,000) PER ACCIDENT. THIS INSURANCE PROTECTS YOU  
9 AND YOUR FAMILY AGAINST INJURIES CAUSED BY THE NEGLIGENCE OF OTHER  
10 DRIVERS WHO MAY HAVE LIMITED OR ONLY MINIMUM COVERAGE OR EVEN  
11 NO LIABILITY INSURANCE. YOU SHOULD CONTACT YOUR INSURANCE  
12 COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING THIS  
13 ADDITIONAL COVERAGE. YOU SHOULD ALSO READ YOUR ENTIRE POLICY TO  
14 UNDERSTAND WHAT IS COVERED UNDER UNINSURED AND UNDERINSURED  
15 MOTORIST COVERAGES."

16 Payment of premium for the cost of uninsured or underinsured motorist coverage by or on  
17 behalf of the insured shall create an irrebuttable presumption that the reasonable notice required  
18 by this subsection has been given to the named insured. In addition, evidence of the amount of  
19 premium paid for the cost of uninsured or underinsured motorist coverage shall constitute  
20 irrebuttable proof of the amount of uninsured and underinsured motorist coverage purchased by  
21 the insured.

22 (n) Nothing in this section shall be construed to provide greater amounts of uninsured  
23 or underinsured motorist coverage in a liability policy than the insured has purchased from the  
24 insurer under this section.

25 (o) An insurer that fails to comply with subsection (m) of this section is subject to a  
26 civil penalty under G.S. 58-2-70."

27 **SECTION 2.** This act becomes effective October 1, 2009, and applies to motor  
28 vehicle liability insurance policies issued or renewed after that date.