

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 749

Short Title: Revise UM/UIM Liability Coverage Requirements. (Public)

Sponsors: Senators Clodfelter; Hartsell and Snow.

Referred to: Commerce.

March 24, 2009

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 in the policy~~ as insured.

13 (b) ~~Such owner's policy of liability insurance:~~ A motor vehicle liability policy shall meet
14 the following requirements:

15 (1) ~~Shall It shall~~ designate by explicit description or by appropriate reference all
16 motor vehicles with respect to which coverage is thereby to be
17 ~~granted;~~ granted.

18 (2) ~~Shall It shall~~ insure the ~~person named therein~~ persons named in the policy
19 and any other person, as insured, using any ~~such covered~~ motor vehicle or
20 motor vehicles with the express or implied permission of ~~such the~~ named
21 ~~insured, insureds~~ or any other persons in lawful possession, against loss from
22 the liability imposed by law for damages arising out of the ownership,
23 maintenance or use of such motor vehicle or motor vehicles within the
24 United States of America or the Dominion of Canada subject to limits
25 exclusive of interest and costs, with respect to each such motor vehicle, as
26 follows: thirty thousand dollars (\$30,000) because of bodily injury to or
27 death of one person in any one accident and, subject to said limit for one
28 person, sixty thousand dollars (\$60,000) because of bodily injury to or death
29 of two or more persons in any one accident, and twenty-five thousand
30 dollars (\$25,000) because of injury to or destruction of property of others in
31 any one ~~accident;~~ and accident.

32 (3) It shall, in addition to the coverages set forth in subdivisions (2) and (4) of
33 this section, provide uninsured motorist coverage ~~No policy of bodily injury~~
34 ~~liability insurance, covering liability arising out of the ownership,~~
35 ~~maintenance, or use of any motor vehicle, shall be delivered or issued for~~
36 ~~delivery in this State with respect to any motor vehicle registered or~~
37 ~~principally garaged in this State unless coverage is provided therein or~~



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

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

48 In addition to the above requirements relating to uninsured motorist
49 insurance, every policy of bodily injury liability insurance covering liability
50 arising out of the ownership, maintenance or use of any motor vehicle,

1 which policy is delivered or issued for delivery in this State, shall be subject
2 to the following provisions which need not be contained therein.

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

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

1 agent. The failure to post notice to the insurer 60 days before the
2 initiation of the suit shall not be grounds for dismissal of the action,
3 but shall automatically extend the time for filing of an answer or
4 other pleadings to 60 days after the time of service of the summons,
5 complaint, or other process on the insurer.

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

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

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

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

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

49 For purposes of this section "persons insured" means the named insured and,
50 while resident of the same household, the spouse of any named insured and
51 relatives of either, while in a motor vehicle or otherwise, and any person

1 who uses with the consent, expressed or implied, of the named insured, the
2 motor vehicle to which the policy applies and a guest in the motor vehicle to
3 which the policy applies or the personal representative of any of the above or
4 any other person or persons in lawful possession of the motor vehicle.

5 Notwithstanding any language or provision to the contrary, no motor
6 vehicle other than a motor vehicle covered under a personal auto policy, the
7 form for which is promulgated by the North Carolina Rate Bureau pursuant
8 to Article 36 of Chapter 58 of the General Statutes and approved by the
9 Commissioner, shall be required by this subsection to be covered by
10 uninsured motorist coverage.~~the provisions of this subsection, no policy of~~
11 ~~motor vehicle liability insurance applicable solely to commercial motor~~
12 ~~vehicles as defined in G.S. 20 4.01(3d) or applicable solely to fleet vehicles~~
13 ~~shall be required to provide uninsured motorist coverage. Any motor vehicle~~
14 ~~liability policy that insures both commercial motor vehicles as defined in~~
15 ~~G.S. 20 4.01(3d) and noncommercial motor vehicles shall provide uninsured~~
16 ~~motorist coverage in accordance with the provisions of this subsection in~~
17 ~~amounts equal to the highest limits of bodily injury and property damage~~
18 ~~liability coverage for any one noncommercial motor vehicle insured under~~
19 ~~the policy, subject to the right of the insured to purchase higher uninsured~~
20 ~~motorist bodily injury liability coverage limits as set forth in this subsection.~~
21 ~~For the purpose of the immediately preceding sentence, noncommercial~~
22 ~~motor vehicle shall mean any motor vehicle that is not a commercial motor~~
23 ~~vehicle as defined in G.S. 20 4.01(3d), but that is otherwise subject to the~~
24 ~~requirements of this subsection.~~

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

1 and insurance policies applicable at the time of the accident is less than the
2 applicable limits of underinsured motorist coverage for the vehicle involved
3 in the accident and insured under the owner's policy. Notwithstanding the
4 immediately preceding sentence, a highway vehicle shall not be an
5 "underinsured motor vehicle" for purposes of an underinsured motorist claim
6 under an owner's policy insuring that vehicle unless the owner's policy
7 insuring that vehicle provides underinsured motorist coverage with limits
8 that are greater than that policy's bodily injury liability limits. For the
9 purposes of this subdivision, the term "highway vehicle" means a land motor
10 vehicle or ~~trailer other than trailer~~, but shall not include:

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

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

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

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

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

43 An underinsured motorist insurer may at its option, upon a claim
44 pursuant to underinsured motorist coverage, pay moneys without there
45 having first been an exhaustion of the liability insurance policy covering the
46 ownership, use, and maintenance of the underinsured highway vehicle. In
47 the event of payment, the underinsured motorist insurer shall be either: (a)
48 entitled to receive by assignment from the claimant any right or (b)
49 subrogated to the claimant's right regarding any claim the claimant has or
50 had against the owner, operator, or maintainer of the underinsured highway
51 vehicle, provided that the amount of the insurer's right by subrogation or

1 assignment shall not exceed payments made to the claimant by the insurer.
2 No insurer shall exercise any right of subrogation or any right to approve
3 settlement with the original owner, operator, or maintainer of the
4 underinsured highway vehicle under a policy providing coverage against an
5 underinsured motorist where the insurer has been provided with written
6 notice before a settlement between its insured and the underinsured motorist
7 and the insurer fails to advance a payment to the insured in an amount equal
8 to the tentative settlement within 30 days following receipt of that notice.
9 Further, the insurer shall have the right, at its election, to pursue its claim by
10 assignment or subrogation in the name of the claimant, and the insurer shall
11 not be denominated as a party in its own name except upon its own election.
12 Assignment or subrogation as provided in this subdivision shall not, absent
13 contrary agreement, operate to defeat the claimant's right to pursue recovery
14 against the owner, operator, or maintainer of the underinsured highway
15 vehicle for damages beyond those paid by the underinsured motorist insurer.
16 The claimant and the underinsured motorist insurer may join their claims in
17 a single suit without requiring that the insurer be named as a party. Any
18 claimant who intends to pursue recovery against the owner, operator, or
19 maintainer of the underinsured highway vehicle for moneys beyond those
20 paid by the underinsured motorist insurer shall before doing so give notice to
21 the insurer and give the insurer, at its expense, the opportunity to participate
22 in the prosecution of the claim. Upon the entry of judgment in a suit upon
23 any such claim in which the underinsured motorist insurer and claimant are
24 joined, payment upon the judgment, unless otherwise agreed to, shall be
25 applied pro rata to the claimant's claim beyond payment by the insurer of the
26 owner, operator or maintainer of the underinsured highway vehicle and the
27 claim of the underinsured motorist insurer.

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

1 claimant's rights against the owner, operator, or maintainer of the
2 underinsured highway vehicle and, provided that adequate notice of right of
3 independent representation was given to the owner, operator, or maintainer,
4 a finding of liability or the award of damages shall be res judicata between
5 the underinsured motorist insurer and the owner, operator, or maintainer of
6 underinsured highway vehicle.

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

17 Notwithstanding any language or provision to the contrary, no motor
18 vehicle other than a motor vehicle covered under a personal auto policy, the
19 form for which is promulgated by the North Carolina Rate Bureau pursuant
20 to Article 36 of Chapter 58 of the General Statutes and approved by the
21 Commissioner, shall be required by this subsection to be covered by
22 underinsured motorist coverage.~~the provisions of this subsection, no policy~~
23 ~~of motor vehicle liability insurance applicable solely to commercial motor~~
24 ~~vehicles as defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles~~
25 ~~shall be required to provide underinsured motorist coverage. Any motor~~
26 ~~vehicle liability policy that insures both commercial motor vehicles as~~
27 ~~defined in G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide~~
28 ~~underinsured motorist coverage in accordance with the provisions of this~~
29 ~~subsection in an amount equal to the highest limits of bodily injury liability~~
30 ~~coverage for any one noncommercial motor vehicle insured under the policy,~~
31 ~~subject to the right of the insured to purchase higher underinsured motorist~~
32 ~~bodily injury liability coverage limits as set forth in this subsection. For the~~
33 ~~purpose of the immediately preceding sentence, noncommercial motor~~
34 ~~vehicle shall mean any motor vehicle that is not a commercial motor vehicle~~
35 ~~as defined in G.S. 20-4.01(3d), but that is otherwise subject to the~~
36 ~~requirements of this subsection.~~

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

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

49 (e) Uninsured or underinsured motorist coverage that is provided as part of a ~~motor~~
50 ~~vehicle liability policy~~personal auto policy, the form for which is promulgated by the North
51 Carolina Rate Bureau pursuant to Article 36 of Chapter 58 of the General Statutes and

1 approved by the Commissioner, shall insure that portion of a loss uncompensated by any
2 workers' compensation law and the amount of an employer's lien determined pursuant to
3 G.S. 97-10.2(h) or (j). In no event shall this subsection be construed to require that coverage
4 exceed the applicable uninsured or underinsured coverage limits of the motor vehicle policy or
5 allow a recovery for damages already paid by workers' compensation. The policy need not
6 insure a loss from any liability for damage to property owned by, rented to, in charge of or
7 transported by the insured.

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

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

43 The insurer, upon receipt of summons, complaint or other process, shall
44 be entitled, upon its motion, to intervene in the suit against its insured as a
45 party defendant and to defend the same in the name of its insured. In the
46 event of such intervention by an insurer it shall become a named party
47 defendant. The insurer shall have 30 days from the signing of the return
48 receipt acknowledging receipt of the summons, complaint or other pleading
49 in which to file a motion to intervene, along with any responsive pleading,
50 whether verified or not, which it may deem necessary to protect its interest:
51 Provided, the court having jurisdiction over the matter may, upon motion

1 duly made, extend the time for the filing of responsive pleading or continue
2 the trial of the matter for the purpose of affording the insurer a reasonable
3 time in which to file responsive pleading or defend the action. If, after
4 receiving copy of the summons, complaint or other pleading, the insurer
5 elects not to defend the action, if coverage is in fact provided by the policy,
6 the insurer shall be bound to the extent of its policy limits to the judgment
7 taken by default against the insured, and noncooperation of the insured shall
8 not be a defense.

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

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

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

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

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

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

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

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

47 (l) A party injured by an uninsured motor vehicle covered under a policy in amounts
48 less than those set forth in G.S. 20-279.5, may execute a contractual covenant not to enforce
49 against the owner, operator, or maintainer of the uninsured vehicle any judgment that exceeds
50 the liability policy limits, as consideration for payment of any applicable policy limits by the
51 insurer where judgment exceeds the policy limits. A covenant not to enforce judgment shall not

1 preclude the injured party from pursuing available uninsured motorist benefits, unless the terms
2 of the covenant expressly provide otherwise, and shall not preclude an insurer providing
3 uninsured motorist coverage from pursuing any right of subrogation.

4 (m) Every insurer that sells motor vehicle liability policies subject to the requirements of
5 subdivisions (b)(3) and (b)(4) of this section shall give reasonable notice to the named insured,
6 when the policy is issued and renewed, that the named insured may purchase uninsured
7 motorist bodily injury coverage and, if applicable, underinsured motorist coverage with limits
8 up to one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per
9 accident. An insurer shall be deemed to have given reasonable notice if it includes the
10 following or substantially similar language on the policy's original and renewal declarations
11 pages or in a separate notice accompanying the original and renewal declarations pages in at
12 least 10 point type:

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

24 Payment of premium for the cost of uninsured or underinsured motorist coverage by or on
25 behalf of the insured shall create an irrebuttable presumption that the reasonable notice required
26 by this subsection has been given to the named insured. In addition, evidence of the amount of
27 premium paid for the cost of uninsured or underinsured motorist coverage shall constitute
28 irrebuttable proof of the amount of uninsured and underinsured motorist coverage purchased by
29 the insured.

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

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

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