

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 749
Commerce Committee Substitute Adopted 5/7/09
House Committee Substitute Favorable 7/6/09
House Committee Substitute #2 Favorable 8/5/09

Short Title: Revise UM/UIM Liability Coverage Requirements.

(Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CLARIFY THE REQUIREMENTS FOR UNINSURED AND UNDERINSURED MOTORIST COVERAGE IN MOTOR VEHICLE LIABILITY INSURANCE POLICIES.

The General Assembly of North Carolina enacts:

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

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

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

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

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



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1 operators of uninsured motor vehicles and hit-and-run motor vehicles
2 because of bodily injury, sickness or disease, including death, resulting
3 ~~therefrom. therefrom, with limits equal to the highest limits of bodily injury~~
4 ~~liability coverage for any one vehicle insured under the policy. The named~~
5 ~~insured may purchase uninsured motorist bodily injury coverage with greater~~
6 ~~limits, subject to the limitation that in no event shall uninsured motorist~~
7 ~~bodily injury coverage limits exceed one million dollars (\$1,000,000) per~~
8 ~~person and one million dollars (\$1,000,000) per accident. The limits of such~~
9 ~~uninsured motorist bodily injury coverage shall be equal to the highest limits~~
10 ~~of bodily injury liability coverage for any one vehicle insured under the~~
11 ~~policy; provided, however, that (i) the limits shall not exceed one million~~
12 ~~dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per~~
13 ~~accident regardless of whether the highest limits of bodily injury liability~~
14 ~~coverage for any one vehicle insured under the policy exceed those limits~~
15 ~~and (ii) a named insured may purchase greater or lesser limits, except that~~
16 ~~the limits shall not be less than the bodily injury liability limits required~~
17 ~~pursuant to subdivision (2) of this subsection, and in no event shall an~~
18 ~~insurer be required by this subdivision to sell uninsured motorist bodily~~
19 ~~injury coverage at limits that exceed one million dollars (\$1,000,000) per~~
20 ~~person and one million dollars (\$1,000,000) per accident. The~~
21 ~~When the policy is issued and renewed, the insurer shall notify the named insured as~~
22 ~~provided in subsection (m) of this section. of his or her right to purchase~~
23 ~~uninsured motorist bodily injury coverage with greater limits, when the~~
24 ~~policy is issued and renewed, as provided in subsection (m) of this section.~~
25 The provisions shall include coverage for the protection of persons insured
26 ~~thereunder under the policy~~ who are legally entitled to recover damages
27 from owners or operators of uninsured motor vehicles because of injury to or
28 destruction of the property of such ~~insured. insured, with a limit in the~~
29 ~~aggregate for all insureds in any one accident equal to the highest limits of~~
30 ~~property damage liability coverage for any one vehicle insured in the~~
31 ~~owner's policy of liability insurance, and~~ The limits of such uninsured
32 ~~motorist property damage coverage shall be equal to the highest limits of~~
33 ~~property damage liability coverage for any one vehicle insured under the~~
34 ~~policy; provided, however, that (i) the limits shall not exceed one million~~
35 ~~dollars (\$1,000,000) per accident regardless of whether the highest limits of~~
36 ~~property damage liability coverage for any one vehicle insured under the~~
37 ~~policy exceed those limits and (ii) a named insured may purchase lesser~~
38 ~~limits, except that the limits shall not be less than the property damage~~
39 ~~liability limits required pursuant to subdivision (2) of this subsection. When~~
40 ~~the policy is issued and renewed, the insurer shall notify the named insured~~
41 ~~as provided in subsection (m) of this section. For uninsured motorist~~
42 ~~property damage coverage, the limits purchased by the named insured shall~~
43 ~~be subject, for each insured, to an exclusion of the first one hundred dollars~~
44 ~~(\$100.00) of such damages. The provision shall further provide that a written~~
45 ~~statement by the liability insurer, whose name appears on the certification of~~
46 ~~financial responsibility made by the owner of any vehicle involved in an~~
47 ~~accident with the insured, that the other motor vehicle was not covered by~~
48 ~~insurance at the time of the accident with the insured shall operate as a prima~~
49 ~~facie presumption that the operator of the other motor vehicle was uninsured~~
50 ~~at the time of the accident with the insured for the purposes of recovery~~
51 ~~under this provision of the insured's liability insurance policy.~~

1 If a person who is legally entitled to recover damages from the owner or
2 operator of an uninsured motor vehicle is an insured under the uninsured
3 motorist coverage of a policy that insures more than one motor vehicle, that
4 person shall not be permitted to combine the uninsured motorist limit
5 applicable to any one motor vehicle with the uninsured motorist limit
6 applicable to any other motor vehicle to determine the total amount of
7 uninsured motorist coverage available to that person. If a person who is
8 legally entitled to recover damages from the owner or operator of an
9 uninsured motor vehicle is an insured under the uninsured motorist coverage
10 of more than one policy, that person may combine the highest applicable
11 uninsured motorist limit available under each policy to determine the total
12 amount of uninsured motorist coverage available to that person. The
13 previous sentence shall apply only to insurance on nonfleet private passenger
14 motor vehicles as described in G.S. 58-40-10(1) and (2).

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

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

48 b. Where the insured, under the uninsured motorist coverage, claims
49 that he has sustained bodily injury as the result of collision between
50 motor vehicles and asserts that the identity of the operator or owner
51 of a vehicle (other than a vehicle in which the insured is a passenger)

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

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

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

33 In the event of payment to any person under the coverage required by
34 this section and subject to the terms and conditions of coverage, the insurer
35 making payment shall, to the extent thereof, be entitled to the proceeds of
36 any settlement for judgment resulting from the exercise of any limits of
37 recovery of that person against any person or organization legally
38 responsible for the bodily injury for which the payment is made, including
39 the proceeds recoverable from the assets of the insolvent insurer.

40 For the purpose of this section, an "uninsured motor vehicle" shall be a
41 motor vehicle as to which there is no bodily injury liability insurance and
42 property damage liability insurance in at least the amounts specified in
43 subsection (c) of G.S. 20-279.5, or there is that insurance but the insurance
44 company writing the insurance denies coverage thereunder, or has become
45 bankrupt, or there is no bond or deposit of money or securities as provided in
46 G.S. 20-279.24 or 20-279.25 in lieu of the bodily injury and property
47 damage liability insurance, or the owner of the motor vehicle has not
48 qualified as a self-insurer under the provisions of G.S. 20-279.33, or a
49 vehicle that is not subject to the provisions of the Motor Vehicle Safety and
50 Financial Responsibility Act; but the term "uninsured motor vehicle" shall
51 not include:

- 1 a. A motor vehicle owned by the named insured;
 2 b. A motor vehicle that is owned or operated by a self-insurer within the
 3 meaning of any motor vehicle financial responsibility law, motor
 4 carrier law or any similar law;
 5 c. A motor vehicle that is owned by the United States of America,
 6 Canada, a state, or any agency of any of the foregoing (excluding,
 7 however, political subdivisions thereof);
 8 d. A land motor vehicle or trailer, if operated on rails or crawler-treads
 9 or while located for use as a residence or premises and not as a
 10 vehicle; or
 11 e. A farm-type tractor or equipment designed for use principally off
 12 public roads, except while actually upon public roads.

13 For purposes of this section "persons insured" means the named insured and,
 14 while resident of the same household, the spouse of any named insured and
 15 relatives of either, while in a motor vehicle or otherwise, and any person
 16 who uses with the consent, expressed or implied, of the named insured, the
 17 motor vehicle to which the policy applies and a guest in the motor vehicle to
 18 which the policy applies or the personal representative of any of the above or
 19 any other person or persons in lawful possession of the motor vehicle.

20 Notwithstanding the provisions of this subsection, no policy of motor
 21 vehicle liability insurance applicable solely to commercial motor vehicles as
 22 defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be
 23 required to provide uninsured motorist coverage. When determining whether
 24 a policy is applicable solely to fleet vehicles, the insurer may rely upon the
 25 number of vehicles reported by the insured at the time of the issuance of the
 26 policy for the policy term in question. In the event of a renewal of the policy,
 27 when determining whether a policy is applicable solely to fleet vehicles, the
 28 insurer may rely upon the number of vehicles reported by the insured at the
 29 time of the renewal of the policy for the policy term in question. Any motor
 30 vehicle liability policy that insures both commercial motor vehicles as
 31 defined in G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide
 32 uninsured motorist coverage in accordance with the provisions of this
 33 subsection in amounts equal to the highest limits of bodily injury and
 34 property damage liability coverage for any one noncommercial motor
 35 vehicle insured under the policy, subject to the right of the insured to
 36 purchase higher-greater or lesser uninsured motorist bodily injury liability
 37 coverage limits and lesser uninsured motorist property damage coverage
 38 limits as set forth in this subsection. For the purpose of the immediately
 39 preceding sentence, noncommercial motor vehicle shall mean any motor
 40 vehicle that is not a commercial motor vehicle as defined in
 41 G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this
 42 subsection.

- 43 (4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this
 44 subsection, provide underinsured motorist coverage, to be used only with a
 45 policy that is written at limits that exceed those prescribed by subdivision (2)
 46 of this ~~subsection. section, with limits equal to the highest limits of bodily~~
 47 ~~injury liability coverage for any one vehicle insured under the policy. The~~
 48 ~~named insured may purchase underinsured motorist coverage with greater~~
 49 ~~limits, subject to the limitation that in no event shall the underinsured~~
 50 ~~motorist coverage limits exceed one million dollars (\$1,000,000) per person~~
 51 ~~and one million dollars (\$1,000,000) per accident. The limits of such~~

1 underinsured motorist bodily injury coverage shall be equal to the highest
2 limits of bodily injury liability coverage for any one vehicle insured under
3 the policy; provided, however, that (i) the limits shall not exceed one million
4 dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per
5 accident regardless of whether the highest limits of bodily injury liability
6 coverage for any one vehicle insured under the policy exceed those limits,
7 (ii) a named insured may purchase greater or lesser limits, except that the
8 limits shall exceed the bodily injury liability limits required pursuant to
9 subdivision (2) of this subsection, and in no event shall an insurer be
10 required by this subdivision to sell underinsured motorist bodily injury
11 coverage at limits that exceed one million dollars (\$1,000,000) per person
12 and one million dollars (\$1,000,000) per accident, and (iii) the limits shall be
13 equal to the limits of uninsured motorist bodily injury coverage purchased
14 pursuant to subdivision (3) of this subsection. When the policy is issued and
15 renewed, the ~~The insurer shall notify the named insured as provided in~~
16 ~~subsection (m) of this section. his or her right to purchase underinsured~~
17 ~~motorist coverage with greater limits, when the policy is issued and~~
18 ~~renewed, as provided in subsection (m) of this section.~~ An "uninsured motor
19 vehicle," as described in subdivision (3) of this subsection, includes an
20 "underinsured highway vehicle," which means a highway vehicle with
21 respect to the ownership, maintenance, or use of which, the sum of the limits
22 of liability under all bodily injury liability bonds and insurance policies
23 applicable at the time of the accident is less than the applicable limits of
24 underinsured motorist coverage for the vehicle involved in the accident and
25 insured under the owner's policy. For purposes of an underinsured motorist
26 claim asserted by a person injured in an accident where more than one
27 person is injured, a highway vehicle will also be an "underinsured highway
28 vehicle" if the total amount actually paid to that person under all bodily
29 injury liability bonds and insurance policies applicable at the time of the
30 accident is less than the applicable limits of underinsured motorist coverage
31 for the vehicle involved in the accident and insured under the owner's policy.
32 Notwithstanding the immediately preceding sentence, a highway vehicle
33 shall not be an "underinsured motor vehicle" for purposes of an underinsured
34 motorist claim under an owner's policy insuring that vehicle unless the
35 owner's policy insuring that vehicle provides underinsured motorist coverage
36 with limits that are greater than that policy's bodily injury liability limits. For
37 the purposes of this subdivision, the term "highway vehicle" means a land
38 motor vehicle or trailer other than (i) a farm-type tractor or other vehicle
39 designed for use principally off public roads and while not upon public
40 roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a vehicle
41 while located for use as a residence or premises. The provisions of
42 subdivision (3) of this subsection shall apply to the coverage required by this
43 subdivision. Underinsured motorist coverage is deemed to apply when, by
44 reason of payment of judgment or settlement, all liability bonds or insurance
45 policies providing coverage for bodily injury caused by the ownership,
46 maintenance, or use of the underinsured highway vehicle have been
47 exhausted. Exhaustion of that liability coverage for the purpose of any single
48 liability claim presented for underinsured motorist coverage is deemed to
49 occur when either (a) the limits of liability per claim have been paid upon
50 the claim, or (b) by reason of multiple claims, the aggregate per occurrence
51 limit of liability has been paid. Underinsured motorist coverage is deemed to

1 apply to the first dollar of an underinsured motorist coverage claim beyond
2 amounts paid to the claimant under the exhausted liability policy.

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

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

1 owner, operator or maintainer of the underinsured highway vehicle and the
2 claim of the underinsured motorist insurer.

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

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

43 Notwithstanding the provisions of this subsection, no policy of motor
44 vehicle liability insurance applicable solely to commercial motor vehicles as
45 defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be
46 required to provide underinsured motorist coverage. When determining
47 whether a policy is applicable solely to fleet vehicles, the insurer may rely
48 upon the number of vehicles reported by the insured at the time of the
49 issuance of the policy for the policy term in question. In the event of a
50 renewal of the policy, when determining whether a policy is applicable
51 solely to fleet vehicles, the insurer may rely upon the number of vehicles

1 reported by the insured at the time of the renewal of the policy for the policy
2 term in question. Any motor vehicle liability policy that insures both
3 commercial motor vehicles as defined in G.S. 20-4.01(3d) and
4 noncommercial motor vehicles shall provide underinsured motorist coverage
5 in accordance with the provisions of this subsection in an amount equal to
6 the highest limits of bodily injury liability coverage for any one
7 noncommercial motor vehicle insured under the policy, subject to the right
8 of the insured to purchase ~~higher~~ greater or lesser underinsured motorist
9 bodily injury liability coverage limits as set forth in this subsection. For the
10 purpose of the immediately preceding sentence, noncommercial motor
11 vehicle shall mean any motor vehicle that is not a commercial motor vehicle
12 as defined in G.S. 20-4.01(3d), but that is otherwise subject to the
13 requirements of this subsection.

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

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

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

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

- 35 (1) Except as hereinafter provided, the liability of the insurance carrier with
36 respect to the insurance required by this Article shall become absolute
37 whenever injury or damage covered by said motor vehicle liability policy
38 occurs; said policy may not be canceled or annulled as to such liability by
39 any agreement between the insurance carrier and the insured after the
40 occurrence of the injury or damage; no statement made by the insured or on
41 his behalf and no violation of said policy shall defeat or void said policy. As
42 to policies issued to insureds in this State under the assigned risk plan or
43 through the North Carolina Motor Vehicle Reinsurance Facility, a default
44 judgment taken against such an insured shall not be used as a basis for
45 obtaining judgment against the insurer unless counsel for the plaintiff has
46 forwarded to the insurer, or to one of its agents, by registered or certified
47 mail with return receipt requested, or served by any other method of service
48 provided by law, a copy of summons, complaint, or other pleadings, filed in
49 the action. The return receipt shall, upon its return to plaintiff's counsel, be
50 filed with the clerk of court wherein the action is pending against the insured
51 and shall be admissible in evidence as proof of notice to the insurer. The

1 refusal of insurer or its agent to accept delivery of the registered mail, as
2 provided in this section, shall not affect the validity of such notice and any
3 insurer or agent of an insurer refusing to accept such registered mail shall be
4 charged with the knowledge of the contents of such notice. When notice has
5 been sent to an agent of the insurer such notice shall be notice to the insurer.
6 The word "agent" as used in this subsection shall include, but shall not be
7 limited to, any person designated by the insurer as its agent for the service of
8 process, any person duly licensed by the insurer in the State as insurance
9 agent, any general agent of the company in the State of North Carolina, and
10 any employee of the company in a managerial or other responsible position,
11 or the North Carolina Commissioner of Insurance; provided, where the
12 return receipt is signed by an employee of the insurer or an employee of an
13 agent for the insurer, shall be deemed for the purposes of this subsection to
14 have been received. The term "agent" as used in this subsection shall not
15 include a producer of record or broker, who forwards an application for
16 insurance to the North Carolina Motor Vehicle Reinsurance Facility.

17 The insurer, upon receipt of summons, complaint or other process, shall
18 be entitled, upon its motion, to intervene in the suit against its insured as a
19 party defendant and to defend the same in the name of its insured. In the
20 event of such intervention by an insurer it shall become a named party
21 defendant. The insurer shall have 30 days from the signing of the return
22 receipt acknowledging receipt of the summons, complaint or other pleading
23 in which to file a motion to intervene, along with any responsive pleading,
24 whether verified or not, which it may deem necessary to protect its interest:
25 Provided, the court having jurisdiction over the matter may, upon motion
26 duly made, extend the time for the filing of responsive pleading or continue
27 the trial of the matter for the purpose of affording the insurer a reasonable
28 time in which to file responsive pleading or defend the action. If, after
29 receiving copy of the summons, complaint or other pleading, the insurer
30 elects not to defend the action, if coverage is in fact provided by the policy,
31 the insurer shall be bound to the extent of its policy limits to the judgment
32 taken by default against the insured, and noncooperation of the insured shall
33 not be a defense.

34 If the plaintiff initiating an action against the insured has complied with
35 the provisions of this subsection, then, in such event, the insurer may not
36 cancel or annul the policy as to such liability and the defense of
37 noncooperation shall not be available to the insurer: Provided, however,
38 nothing in this section shall be construed as depriving an insurer of its
39 defenses that the policy was not in force at the time in question, that the
40 operator was not an "insured" under policy provisions, or that the policy had
41 been lawfully canceled at the time of the accident giving rise to the cause of
42 action.

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

- 47 (2) The satisfaction by the insured of a judgment for such injury or damage shall
48 not be a condition precedent to the right or duty of the insurance carrier to
49 make payment on account of such injury or damage;
- 50 (3) The insurance carrier shall have the right to settle any claim covered by the
51 policy, and if such settlement is made in good faith, the amount thereof shall

1 be deductible from the limits of liability specified in subdivision (2) of
2 subsection (b) of this section;

3 (4) The policy, the written application therefor, if any, and any rider or
4 endorsement which does not conflict with the provisions of the Article shall
5 constitute the entire contract between the parties.

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

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

15 (i) Any motor vehicle liability policy may provide for the prorating of the insurance
16 thereunder with other valid and collectible insurance.

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

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

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

29 (m) Every insurer that sells motor vehicle liability policies subject to the requirements of
30 subdivisions (b)(3) and (b)(4) of this section ~~shall~~ shall, when issuing and renewing a policy,
31 give reasonable notice to the named insured, when the policy is issued and renewed, insured of
32 all of the following:

33 (1) The named insured is required to purchase uninsured motorist bodily injury
34 coverage, uninsured motorist property damage coverage, and, if applicable,
35 underinsured motorist bodily injury coverage.

36 (2) The named insured's uninsured motorist bodily injury coverage limits shall
37 be equal to the highest limits of bodily injury liability coverage for any one
38 vehicle insured under the policy unless the insured elects to purchase greater
39 or lesser limits for uninsured motorist bodily injury coverage.

40 (3) The named insured's uninsured motorist property damage coverage limits
41 shall be equal to the highest limits of property damage liability coverage for
42 any one vehicle insured under the policy unless the insured elects to
43 purchase lesser limits for uninsured motorist property damage coverage.

44 (4) The named insured's underinsured motorist bodily injury coverage limits, if
45 applicable, shall be equal to the highest limits of bodily injury liability
46 coverage for any one vehicle insured under the policy unless the insured
47 elects to purchase greater or lesser limits for underinsured motorist bodily
48 injury coverage.

49 (5) ~~that the~~ The named insured may purchase uninsured motorist bodily injury
50 coverage and, if applicable, underinsured motorist coverage with limits up to

1 one million dollars (\$1,000,000) per person and one million dollars
2 (\$1,000,000) per accident.

3 An insurer shall be deemed to have given reasonable notice if it includes the following or
4 substantially similar language on the policy's original and renewal declarations pages or in a
5 separate notice accompanying the original and renewal declarations pages in at least 12
6 point type:

7 "NOTICE: YOU ARE REQUIRED TO PURCHASE UNINSURED MOTORIST BODILY
8 INJURY COVERAGE, UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE
9 AND, IN SOME CASES, UNDERINSURED MOTORIST BODILY INJURY COVERAGE.
10 THIS INSURANCE PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES AND
11 PROPERTY DAMAGE CAUSED BY THE NEGLIGENCE OF OTHER DRIVERS WHO
12 MAY HAVE LIMITED OR ONLY MINIMUM COVERAGE OR EVEN NO LIABILITY
13 INSURANCE. 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. ACCIDENT OR AT SUCH LESSER
17 LIMITS YOU CHOOSE. YOU CANNOT PURCHASE COVERAGE FOR LESS THAN THE
18 MINIMUM LIMITS FOR THE BODILY INJURY AND PROPERTY DAMAGE
19 COVERAGE THAT ARE REQUIRED FOR YOUR OWN VEHICLE. IF YOU DO NOT
20 CHOOSE A GREATER OR LESSER LIMIT FOR UNINSURED MOTORIST BODILY
21 INJURY COVERAGE, A LESSER LIMIT FOR UNINSURED MOTORIST PROPERTY
22 DAMAGE COVERAGE, AND/OR A GREATER OR LESSER LIMIT FOR
23 UNDERINSURED MOTORIST BODILY INJURY COVERAGE, THEN THE LIMITS FOR
24 THE UNINSURED MOTORIST BODILY INJURY COVERAGE AND, IF APPLICABLE,
25 THE UNDERINSURED MOTORIST BODILY INJURY COVERAGE WILL BE THE SAME
26 AS THE HIGHEST LIMITS FOR BODILY INJURY LIABILITY COVERAGE FOR ANY
27 ONE OF YOUR OWN VEHICLES INSURED UNDER THE POLICY AND THE LIMITS
28 FOR THE UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE WILL BE THE
29 SAME AS THE HIGHEST LIMITS FOR PROPERTY DAMAGE LIABILITY COVERAGE
30 FOR ANY ONE OF YOUR OWN VEHICLES INSURED UNDER THE POLICY. IF YOU
31 WISH TO PURCHASE UNINSURED MOTORIST AND, IF APPLICABLE,
32 UNDERINSURED MOTORIST COVERAGE AT DIFFERENT LIMITS THAN THE
33 LIMITS FOR YOUR OWN VEHICLE INSURED UNDER THE POLICY, THEN YOU
34 SHOULD THIS INSURANCE PROTECTS YOU AND YOUR FAMILY AGAINST
35 INJURIES CAUSED BY THE NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE
36 LIMITED OR ONLY MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE.
37 YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS
38 YOUR OPTIONS FOR OBTAINING THIS ADDITIONAL COVERAGE. DIFFERENT
39 COVERAGE LIMITS. YOU SHOULD ALSO READ YOUR ENTIRE POLICY TO
40 UNDERSTAND WHAT IS COVERED UNDER UNINSURED AND UNDERINSURED
41 MOTORIST COVERAGES."

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

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

47 **SECTION 2.** This act becomes effective February 1, 2010, and applies to motor
48 vehicle liability insurance policies issued or renewed on or after that date.