

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE DRH70175-MH-57 (3/9)

Short Title: Make UM/UIM Insurance Optional Again. (Public)

Sponsors: Representative Allen.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO RESTORE MOTORIST CHOICE WITH RESPECT TO UNINSURED AND  
3 UNDERINSURED MOTOR VEHICLE COVERAGE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 20-279.21(b)(3) and (b)(4) read as rewritten:  
6 "§ 20-279.21. "Motor vehicle liability policy" defined.

7 ...  
8 (b) Such owner's policy of liability insurance:

9 ...  
10 (3) No policy of bodily injury liability insurance, covering liability arising out of  
11 the ownership, maintenance, or use of any motor vehicle, shall be delivered  
12 or issued for delivery in this State with respect to any motor vehicle  
13 registered or principally garaged in this State unless coverage is provided  
14 therein or supplemental thereto, under provisions filed with and approved by  
15 the Commissioner of Insurance, for the protection of persons insured  
16 thereunder who are legally entitled to recover damages from owners or  
17 operators of uninsured motor vehicles and hit-and-run motor vehicles  
18 because of bodily injury, sickness or disease, including death, resulting  
19 therefrom, with limits equal to the highest limits of bodily injury liability  
20 coverage for any one vehicle insured under the policy.

21 ~~The named insured may purchase uninsured motorist bodily injury coverage~~  
22 ~~with greater limits, subject to the limitation that in no event shall uninsured~~  
23 ~~motorist bodily injury coverage limits exceed one million dollars~~  
24 ~~(\$1,000,000) per person and one million dollars (\$1,000,000) per accident.~~  
25 ~~The insurer shall notify the named insured of his or her right to purchase~~  
26 ~~uninsured motorist bodily injury coverage with greater limits, when the~~  
27 ~~policy is issued and renewed, as provided in subsection (m) of this section.~~  
28 ~~The provisions shall include coverage for the protection of persons insured~~  
29 ~~thereunder who are legally entitled to recover damages from owners or~~  
30 ~~operators of uninsured motor vehicles because of injury to or destruction of~~  
31 ~~the property of such insured, with a limit in the aggregate for all insureds in~~  
32 ~~any one accident equal to the highest limits of property damage liability~~  
33 ~~coverage for any one vehicle insured in the owner's policy of liability~~  
34 ~~insurance, and subject, for each insured, to an exclusion of the first one~~  
35 ~~hundred dollars (\$100.00) of such damages. The provision shall further~~



1 provide that a written statement by the liability insurer, whose name appears  
2 on the certification of financial responsibility made by the owner of any  
3 vehicle involved in an accident with the insured, that the other motor vehicle  
4 was not covered by insurance at the time of the accident with the insured  
5 shall operate as a prima facie presumption that the operator of the other  
6 motor vehicle was uninsured at the time of the accident with the insured for  
7 the purposes of recovery under this provision of the insured's liability  
8 insurance policy.

9 a. Rejection of coverage by the insured. – The coverage required under  
10 this subdivision is not applicable where any insured named in the  
11 policy rejects the coverage. An insured named in the policy may  
12 select different coverage limits as provided in sub-subdivision b. of  
13 this subdivision. Rejection of uninsured motorist coverage for  
14 policies under the jurisdiction of the North Carolina Rate Bureau  
15 shall be made in writing by a named insured on a form promulgated  
16 by the Bureau and approved by the Commissioner of Insurance.

17 b. Selection of different coverage limits by the insured. – The named  
18 insured may purchase uninsured motorist bodily injury coverage with  
19 greater limits, subject to the limitation that in no event shall  
20 uninsured motorist bodily injury coverage limits exceed one million  
21 dollars (\$1,000,000) per person and one million dollars (\$1,000,000)  
22 per accident. The insurer shall notify the named insured of his or her  
23 right to purchase uninsured motorist bodily injury coverage with  
24 greater limits, when the policy is issued and renewed, as provided in  
25 subsection (m) of this section. If the named insured in the policy does  
26 not reject uninsured motorist coverage and does not select different  
27 coverage limits, the amount of uninsured motorist coverage shall be  
28 equal to the highest limit of bodily injury and property damage  
29 liability coverage for any one vehicle in the policy. Once the option  
30 to reject the uninsured motorist coverage or to select different  
31 coverage limits is offered by the insurer, the insurer is not required to  
32 offer the option in any renewal, reinstatement, substitute, amended,  
33 altered, modified, transfer, or replacement policy unless the named  
34 insured makes a written request to exercise a different option. The  
35 selection or rejection of uninsured motorist coverage or the failure to  
36 select or reject by a named insured is valid and binding on all  
37 insureds and vehicles under the policy. Selection of different  
38 coverage limits for uninsured motorist coverage for policies under  
39 the jurisdiction of the North Carolina Rate Bureau shall be made in  
40 writing by a named insured on a form promulgated by the Bureau  
41 and approved by the Commissioner of Insurance.

42 c. The provisions shall include coverage for the protection of persons  
43 insured thereunder who are legally entitled to recover damages from  
44 owners or operators of uninsured motor vehicles because of injury to  
45 or destruction of the property of such insured, with a limit in the  
46 aggregate for all insureds in any one accident equal to the highest  
47 limits of property damage liability coverage for any one vehicle  
48 insured in the owner's policy of liability insurance, and subject, for  
49 each insured, to an exclusion of the first one hundred dollars  
50 (\$100.00) of such damages. The provision shall further provide that a  
51 written statement by the liability insurer, whose name appears on the

1                   certification of financial responsibility made by the owner of any  
2                   vehicle involved in an accident with the insured, that the other motor  
3                   vehicle was not covered by insurance at the time of the accident with  
4                   the insured shall operate as a prima facie presumption that the  
5                   operator of the other motor vehicle was uninsured at the time of the  
6                   accident with the insured for the purposes of recovery under this  
7                   provision of the insured's liability insurance policy.

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

24                  e.       Provisions applicable to actions against or concerning uninsured  
25                  motorists. – In addition to the above requirements relating to  
26                  uninsured motorist insurance, every policy of bodily injury liability  
27                  insurance covering liability arising out of the ownership,  
28                  maintenance or use of any motor vehicle, which policy is delivered  
29                  or issued for delivery in this State, shall be subject to the following  
30                  provisions which need not be contained therein.

31                  a.1.       A provision that the insurer shall be bound by a final  
32                  judgment taken by the insured against an uninsured motorist  
33                  if the insurer has been served with copy of summons,  
34                  complaint or other process in the action against the uninsured  
35                  motorist by registered or certified mail, return receipt  
36                  requested, or in any manner provided by law; provided  
37                  however, that the determination of whether a motorist is  
38                  uninsured may be decided only by an action against the  
39                  insurer alone. The insurer, upon being served as herein  
40                  provided, shall be a party to the action between the insured  
41                  and the uninsured motorist though not named in the caption  
42                  of the pleadings and may defend the suit in the name of the  
43                  uninsured motorist or in its own name. The insurer, upon  
44                  being served with copy of summons, complaint or other  
45                  pleading, shall have the time allowed by statute in which to  
46                  answer, demur or otherwise plead (whether the pleading is  
47                  verified or not) to the summons, complaint or other process  
48                  served upon it. The consent of the insurer shall not be  
49                  required for the initiation of suit by the insured against the  
50                  uninsured motorist: Provided, however, no action shall be  
51                  initiated by the insured until 60 days following the posting of

1 notice to the insurer at the address shown on the policy or  
2 after personal delivery of the notice to the insurer or its agent  
3 setting forth the belief of the insured that the prospective  
4 defendant or defendants are uninsured motorists. No default  
5 judgment shall be entered when the insurer has timely filed an  
6 answer or other pleading as required by law. The failure to  
7 post notice to the insurer 60 days in advance of the initiation  
8 of suit shall not be grounds for dismissal of the action, but  
9 shall automatically extend the time for the filing of an answer  
10 or other pleadings to 60 days after the time of service of the  
11 summons, complaint, or other process on the insurer.

12 b.2. Where the insured, under the uninsured motorist coverage,  
13 claims that he has sustained bodily injury as the result of  
14 collision between motor vehicles and asserts that the identity  
15 of the operator or owner of a vehicle (other than a vehicle in  
16 which the insured is a passenger) cannot be ascertained, the  
17 insured may institute an action directly against the insurer:  
18 Provided, in that event, the insured, or someone in his behalf,  
19 shall report the accident within 24 hours or as soon thereafter  
20 as may be practicable, to a police officer, peace officer, other  
21 judicial officer, or to the Commissioner of Motor Vehicles.  
22 The insured shall also within a reasonable time give notice to  
23 the insurer of his injury, the extent thereof, and shall set forth  
24 in the notice the time, date and place of the injury. Thereafter,  
25 on forms to be mailed by the insurer within 15 days following  
26 receipt of the notice of the accident to the insurer, the insured  
27 shall furnish to insurer any further reasonable information  
28 concerning the accident and the injury that the insurer  
29 requests. If the forms are not furnished within 15 days, the  
30 insured is deemed to have complied with the requirements for  
31 furnishing information to the insurer. Suit may not be  
32 instituted against the insurer in less than 60 days from the  
33 posting of the first notice of the injury or accident to the  
34 insurer at the address shown on the policy or after personal  
35 delivery of the notice to the insurer or its agent. The failure to  
36 post notice to the insurer 60 days before the initiation of the  
37 suit shall not be grounds for dismissal of the action, but shall  
38 automatically extend the time for filing of an answer or other  
39 pleadings to 60 days after the time of service of the summons,  
40 complaint, or other process on the insurer.

41 f. Insolvency of insurers. – ~~Provided under~~ Under this section the term  
42 "uninsured motor vehicle" shall include, but not be limited to, an  
43 insured motor vehicle where the liability insurer thereof is unable to  
44 make payment with respect to the legal liability within the limits  
45 specified therein because of insolvency.

46 An insurer's insolvency protection shall be applicable only to  
47 accidents occurring during a policy period in which its insured's  
48 uninsured motorist coverage is in effect where the liability insurer of  
49 the tort-feasor becomes insolvent within three years after such an  
50 accident. Nothing herein shall be construed to prevent any insurer

1 from affording insolvency protection under terms and conditions  
2 more favorable to the insured than is provided herein.

3 In the event of payment to any person under the coverage  
4 required by this section and subject to the terms and conditions of  
5 coverage, the insurer making payment shall, to the extent thereof, be  
6 entitled to the proceeds of any settlement for judgment resulting from  
7 the exercise of any limits of recovery of that person against any  
8 person or organization legally responsible for the bodily injury for  
9 which the payment is made, including the proceeds recoverable from  
10 the assets of the insolvent insurer.

11 g. Definitions; exclusions. – For the purpose of this section, an  
12 "uninsured motor vehicle" shall be a motor vehicle as to which there  
13 is no bodily injury liability insurance and property damage liability  
14 insurance in at least the amounts specified in subsection (c) of  
15 G.S. 20-279.5, or there is that insurance but the insurance company  
16 writing the insurance denies coverage thereunder, or has become  
17 bankrupt, or there is no bond or deposit of money or securities as  
18 provided in G.S. 20-279.24 or 20-279.25 in lieu of the bodily injury  
19 and property damage liability insurance, or the owner of the motor  
20 vehicle has not qualified as a self-insurer under the provisions of  
21 G.S. 20-279.33, or a vehicle that is not subject to the provisions of  
22 the Motor Vehicle Safety and Financial Responsibility Act; but the  
23 term "uninsured motor vehicle" shall not include:

24 a.1. A motor vehicle owned by the named insured;

25 b.2. A motor vehicle that is owned or operated by a self-insurer  
26 within the meaning of any motor vehicle financial  
27 responsibility law, motor carrier law or any similar law;

28 e.3. A motor vehicle that is owned by the United States of  
29 America, Canada, a state, or any agency of any of the  
30 foregoing (excluding, however, political subdivisions  
31 thereof);

32 d.4. A land motor vehicle or trailer, if operated on rails or  
33 crawler-treads or while located for use as a residence or  
34 premises and not as a vehicle; or

35 e.5. A farm-type tractor or equipment designed for use principally  
36 off public roads, except while actually upon public roads.

37 For purposes of this section "persons insured" means the named  
38 insured and, while resident of the same household, the spouse of any  
39 named insured and relatives of either, while in a motor vehicle or  
40 otherwise, and any person who uses with the consent, expressed or  
41 implied, of the named insured, the motor vehicle to which the policy  
42 applies and a guest in the motor vehicle to which the policy applies  
43 or the personal representative of any of the above or any other person  
44 or persons in lawful possession of the motor vehicle.

45 ~~Notwithstanding the provisions of this subsection, no policy of motor~~  
46 ~~vehicle liability insurance applicable solely to commercial motor vehicles as~~  
47 ~~defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be~~  
48 ~~required to provide uninsured motorist coverage. Any motor vehicle liability~~  
49 ~~policy that insures both commercial motor vehicles as defined in~~  
50 ~~G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide uninsured~~  
51 ~~motorist coverage in accordance with the provisions of this subsection in~~

1 amounts equal to the highest limits of bodily injury and property damage  
2 liability coverage for any one noncommercial motor vehicle insured under  
3 the policy, subject to the right of the insured to purchase higher uninsured  
4 motorist bodily injury liability coverage limits as set forth in this subsection.  
5 For the purpose of the immediately preceding sentence, noncommercial  
6 motor vehicle shall mean any motor vehicle that is not a commercial motor  
7 vehicle as defined in G.S. 20 4.01(3d), but that is otherwise subject to the  
8 requirements of this subsection.

9 (4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this  
10 subsection, provide underinsured motorist coverage, to be used only with a  
11 policy that is written at limits that exceed those prescribed by subdivision (2)  
12 of this section, with limits equal to the highest limits of bodily injury liability  
13 coverage for any one vehicle insured under the policy. If the named insured  
14 does not reject underinsured motorist coverage as provided in  
15 sub-subdivision a. of this subdivision and does not select different coverage  
16 limits as provided in sub-subdivision b. of this subdivision, the amount of  
17 underinsured motorist coverage shall be equal to the highest limit of bodily  
18 injury liability coverage for any one vehicle in the policy. Once the option to  
19 reject underinsured motorist coverage or to select different coverage limits is  
20 offered by the insurer, the insurer is not required to offer the option in any  
21 renewal, reinstatement, substitute, amended, altered, modified, transfer, or  
22 replacement policy unless a named insured makes a written request to  
23 exercise a different option. The selection or rejection of underinsured  
24 motorist coverage by a named insured or the failure to select or reject is  
25 valid and binding on all insureds and vehicles under the policy.

26 a. Rejection of coverage by the insured. – The coverage required under  
27 this subdivision shall not be applicable where any insured named in  
28 the policy rejects the coverage. An insured named in the policy may  
29 select different coverage limits as provided in sub-subdivision b. of  
30 this subdivision. Rejection of coverage limits for underinsured  
31 motorist coverage for policies under the jurisdiction of the North  
32 Carolina Rate Bureau shall be made in writing by the named insured  
33 on a form promulgated by the Bureau and approved by the  
34 Commissioner of Insurance.

35 b. Selection of different coverage limits by the insured. – The named  
36 insured may purchase underinsured motorist coverage with greater  
37 limits, subject to the limitation that in no event shall the underinsured  
38 motorist coverage limits exceed one million dollars (\$1,000,000) per  
39 person and one million dollars (\$1,000,000) per accident. The insurer  
40 shall notify the named insured of his or her right to purchase  
41 underinsured motorist coverage with greater limits, when the policy  
42 is issued and renewed, as provided in subsection (m) of this section.  
43 Selection of different coverage limits for underinsured motorist  
44 coverage for policies under the jurisdiction of the North Carolina  
45 Rate Bureau shall be made in writing by the named insured on a form  
46 promulgated by the Bureau and approved by the Commissioner of  
47 Insurance.

48 c. Definitions. – An "uninsured motor vehicle," as described in  
49 subdivision (3) of this subsection, includes an "underinsured highway  
50 vehicle," which means a highway vehicle with respect to the  
51 ownership, maintenance, or use of which, the sum of the limits of

1 liability under all bodily injury liability bonds and insurance policies  
2 applicable at the time of the accident is less than the applicable limits  
3 of underinsured motorist coverage for the vehicle involved in the  
4 accident and insured under the owner's policy. For purposes of an  
5 underinsured motorist claim asserted by a person injured in an  
6 accident where more than one person is injured, a highway vehicle  
7 will also be an "underinsured highway vehicle" if the total amount  
8 actually paid to that person under all bodily injury liability bonds and  
9 insurance policies applicable at the time of the accident is less than  
10 the applicable limits of underinsured motorist coverage for the  
11 vehicle involved in the accident and insured under the owner's  
12 policy. Notwithstanding the immediately preceding sentence, a  
13 highway vehicle shall not be an "underinsured motor vehicle" for  
14 purposes of an underinsured motorist claim under an owner's policy  
15 insuring that vehicle unless the owner's policy insuring that vehicle  
16 provides underinsured motorist coverage with limits that are greater  
17 than that policy's bodily injury liability limits. For the purposes of  
18 this subdivision, the term "highway vehicle" means a land motor  
19 vehicle or trailer other than (i) a farm-type tractor or other vehicle  
20 designed for use principally off public roads and while not upon  
21 public roads, (ii) a vehicle operated on rails or crawler-treads, or (iii)  
22 a vehicle while located for use as a residence or premises.

23 d. Scope and limits of underinsured motorist coverage. – The provisions  
24 of subdivision (3) of this subsection shall apply to the coverage  
25 required by this subdivision. Underinsured motorist coverage is  
26 deemed to apply when, by reason of payment of judgment or  
27 settlement, all liability bonds or insurance policies providing  
28 coverage for bodily injury caused by the ownership, maintenance, or  
29 use of the underinsured highway vehicle have been exhausted.  
30 Exhaustion of that liability coverage for the purpose of any single  
31 liability claim presented for underinsured motorist coverage is  
32 deemed to occur when either (a) the limits of liability per claim have  
33 been paid upon the claim, or (b) by reason of multiple claims, the  
34 aggregate per occurrence limit of liability has been paid.  
35 Underinsured motorist coverage is deemed to apply to the first dollar  
36 of an underinsured motorist coverage claim beyond amounts paid to  
37 the claimant under the exhausted liability policy.

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

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

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

45 A party injured by the operation of an underinsured highway  
46 vehicle who institutes a suit for the recovery of moneys for those  
47 injuries and in such an amount that, if recovered, would support a  
48 claim under underinsured motorist coverage shall give notice of the  
49 initiation of the suit to the underinsured motorist insurer as well as to  
50 the insurer providing primary liability coverage upon the  
51 underinsured highway vehicle. Upon receipt of notice, the



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

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

37 ~~Notwithstanding the provisions of this subsection, no policy of motor~~  
38 ~~vehicle liability insurance applicable solely to commercial motor vehicles as~~  
39 ~~defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be~~  
40 ~~required to provide underinsured motorist coverage. Any motor vehicle~~  
41 ~~liability policy that insures both commercial motor vehicles as defined in~~  
42 ~~G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide~~  
43 ~~underinsured motorist coverage in accordance with the provisions of this~~  
44 ~~subsection in an amount equal to the highest limits of bodily injury liability~~  
45 ~~coverage for any one noncommercial motor vehicle insured under the policy,~~  
46 ~~subject to the right of the insured to purchase higher underinsured motorist~~  
47 ~~bodily injury liability coverage limits as set forth in this subsection. For the~~  
48 ~~purpose of the immediately preceding sentence, noncommercial motor~~  
49 ~~vehicle shall mean any motor vehicle that is not a commercial motor vehicle~~  
50 ~~as defined in G.S. 20-4.01(3d), but that is otherwise subject to the~~  
51 ~~requirements of this subsection."~~

1                   **SECTION 2.** This act becomes effective January 1, 2009, and applies to policies  
2 issued or renewed on or after that date.