

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH30215-LT-104A (4/2)

Short Title: Underinsured Motorist Coverage.

(Public)

Sponsors: Representative Goodwin.

Referred to:

A BILL TO BE ENTITLED

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

5 The General Assembly of North Carolina enacts:

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

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

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

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

33 An underinsured motorist insurer may at its option, upon a claim
34 pursuant to underinsured motorist coverage, pay moneys without there
35 having first been an exhaustion of the liability insurance policy
36 covering the ownership, use, and maintenance of the underinsured
37 highway vehicle. In the event of payment, the underinsured motorist
38 insurer shall be either: (a) entitled to receive by assignment from the
39 claimant any right or (b) subrogated to the claimant's right regarding
40 any claim the claimant has or had against the owner, operator, or
41 maintainer of the underinsured highway vehicle, provided that the
42 amount of the insurer's right by subrogation or assignment shall not
43 exceed payments made to the claimant by the insurer. No insurer shall
44 exercise any right of subrogation or any right to approve settlement

1 with the original owner, operator, or maintainer of the underinsured
2 highway vehicle under a policy providing coverage against an
3 underinsured motorist where the insurer has been provided with
4 written notice before a settlement between its insured and the
5 underinsured motorist and the insurer fails to advance a payment to the
6 insured in an amount equal to the tentative settlement within 30 days
7 following receipt of that notice. Further, the insurer shall have the
8 right, at its election, to pursue its claim by assignment or subrogation
9 in the name of the claimant, and the insurer shall not be denominated
10 as a party in its own name except upon its own election. Assignment or
11 subrogation as provided in this subdivision shall not, absent contrary
12 agreement, operate to defeat the claimant's right to pursue recovery
13 against the owner, operator, or maintainer of the underinsured highway
14 vehicle for damages beyond those paid by the underinsured motorist
15 insurer. The claimant and the underinsured motorist insurer may join
16 their claims in a single suit without requiring that the insurer be named
17 as a party. Any claimant who intends to pursue recovery against the
18 owner, operator, or maintainer of the underinsured highway vehicle for
19 moneys beyond those paid by the underinsured motorist insurer shall
20 before doing so give notice to the insurer and give the insurer, at its
21 expense, the opportunity to participate in the prosecution of the claim.
22 Upon the entry of judgment in a suit upon any such claim in which the
23 underinsured motorist insurer and claimant are joined, payment upon
24 the judgment, unless otherwise agreed to, shall be applied pro rata to
25 the claimant's claim beyond payment by the insurer of the owner,
26 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
29 vehicle who institutes a suit for the recovery of moneys for those
30 injuries and in such an amount that, if recovered, would support a
31 claim under underinsured motorist coverage shall give notice of the
32 initiation of the suit to the underinsured motorist insurer as well as to
33 the insurer providing primary liability coverage upon the underinsured
34 highway vehicle. Upon receipt of notice, the underinsured motorist
35 insurer shall have the right to appear in defense of the claim without
36 being named as a party therein, and without being named as a party
37 may participate in the suit as fully as if it were a party. The
38 underinsured motorist insurer may elect, but may not be compelled, to
39 appear in the action in its own name and present therein a claim
40 against other parties; provided that application is made to and
41 approved by a presiding superior court judge, in any such suit, any
42 insurer providing primary liability insurance on the underinsured
43 highway vehicle may upon payment of all of its applicable limits of
44 liability be released from further liability or obligation to participate in

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

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

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

41 Rejection of or selection of different coverage limits for
42 underinsured motorist coverage for policies under the jurisdiction of
43 the North Carolina Rate Bureau shall be made in writing by the named

1 insured on a form promulgated by the Bureau and approved by the
2 Commissioner of Insurance."

3 **SECTION 2.** This act becomes effective October 1, 2003, and applies to
4 accidents occurring on or after that date.