

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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HOUSE BILL 1023

Short Title: Underinsured Motorist Coverage.

(Public)

Sponsors: Representatives Goodwin; and Hackney.

Referred to: Judiciary II.

April 10, 2003

A BILL TO BE ENTITLED
AN ACT TO AMEND THE DEFINITION OF UNDERINSURED HIGHWAY
VEHICLE TO PROVIDE GREATER PROTECTION TO CONSUMERS
INJURED IN MOTOR VEHICLE ACCIDENTS.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

26 A party injured by the operation of an underinsured highway
27 vehicle who institutes a suit for the recovery of moneys for those
28 injuries and in such an amount that, if recovered, would support a
29 claim under underinsured motorist coverage shall give notice of the
30 initiation of the suit to the underinsured motorist insurer as well as to
31 the insurer providing primary liability coverage upon the underinsured
32 highway vehicle. Upon receipt of notice, the underinsured motorist
33 insurer shall have the right to appear in defense of the claim without
34 being named as a party therein, and without being named as a party
35 may participate in the suit as fully as if it were a party. The
36 underinsured motorist insurer may elect, but may not be compelled, to
37 appear in the action in its own name and present therein a claim
38 against other parties; provided that application is made to and
39 approved by a presiding superior court judge, in any such suit, any
40 insurer providing primary liability insurance on the underinsured
41 highway vehicle may upon payment of all of its applicable limits of
42 liability be released from further liability or obligation to participate in
43 the defense of such proceeding. However, before approving any such
44 application, the court shall be persuaded that the owner, operator, or

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

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

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

39 Rejection of or selection of different coverage limits for
40 underinsured motorist coverage for policies under the jurisdiction of
41 the North Carolina Rate Bureau shall be made in writing by the named
42 insured on a form promulgated by the Bureau and approved by the
43 Commissioner of Insurance."

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