

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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**HOUSE BILL 1023
Committee Substitute Favorable 4/24/03**

Short Title: Underinsured Motorist Coverage.

(Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

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

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 is less than the applicable limits of underinsured motorist
21 coverage for the vehicle involved in the accident and insured under the
22 owner's policy. For purposes of an underinsured motorist claim
23 asserted by a person injured in an accident where more than one
24 person is injured, a highway vehicle will also be an "underinsured
25 highway vehicle" if the total amount actually paid to that person under
26 all bodily injury liability bonds and insurance policies applicable at the
27 time of the accident is less than the applicable limits of underinsured
28 motorist coverage for the vehicle involved in the accident and the
29 insured under the owner's policy. For the purposes of this subdivision,

1 the term "highway vehicle" means a land motor vehicle or trailer other
2 than (i) a farm-type tractor or other vehicle designed for use
3 principally off public roads and while not upon public roads, (ii) a
4 vehicle operated on rails or crawler-treads, or (iii) a vehicle while
5 located for use as a residence or premises. The provisions of
6 subdivision (3) of this subsection shall apply to the coverage required
7 by this subdivision. Underinsured motorist coverage is deemed to
8 apply when, by reason of payment of judgment or settlement, all
9 liability bonds or insurance policies providing coverage for bodily
10 injury caused by the ownership, maintenance, or use of the
11 underinsured highway vehicle have been exhausted. Exhaustion of that
12 liability coverage for the purpose of any single liability claim
13 presented for underinsured motorist coverage is deemed to occur when
14 either (a) the limits of liability per claim have been paid upon the
15 claim, or (b) by reason of multiple claims, the aggregate per
16 occurrence limit of liability has been paid. Underinsured motorist
17 coverage is deemed to apply to the first dollar of an underinsured
18 motorist coverage claim beyond amounts paid to the claimant under
19 the exhausted liability policy.

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

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

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

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

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

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

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

1 Rejection of or selection of different coverage limits for
2 underinsured motorist coverage for policies under the jurisdiction of
3 the North Carolina Rate Bureau shall be made in writing by the named
4 insured on a form promulgated by the Bureau and approved by the
5 Commissioner of Insurance."

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