

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1023
Committee Substitute Favorable 4/24/03
Senate Commerce Committee Substitute Adopted 6/16/03
Fourth Edition Engrossed 6/17/03

Short Title: Uninsured/Underinsured Motorist Coverage.

(Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

1
2 AN ACT TO ALLOW INTERPOLICY STACKING OF UNINSURED MOTORIST
3 COVERAGE, TO AMEND THE DEFINITION OF UNDERINSURED HIGHWAY
4 VEHICLE, AND TO CLARIFY THE AMOUNT OF UNDERINSURED
5 LIABILITY COVERAGE AVAILABLE WHEN MULTIPLE PARTIES ARE
6 INJURED IN MOTOR VEHICLE ACCIDENTS.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 20-279.21(b)(3) reads as rewritten:

9 "(3) No policy of bodily injury liability insurance, covering liability arising
10 out of the ownership, maintenance, or use of any motor vehicle, shall
11 be delivered or issued for delivery in this State with respect to any
12 motor vehicle registered or principally garaged in this State unless
13 coverage is provided therein or supplemental thereto, under provisions
14 filed with and approved by the Commissioner of Insurance, for the
15 protection of persons insured thereunder who are legally entitled to
16 recover damages from owners or operators of uninsured motor
17 vehicles and hit-and-run motor vehicles because of bodily injury,
18 sickness or disease, including death, resulting therefrom, in an amount
19 not to be less than the financial responsibility amounts for bodily
20 injury liability as set forth in G.S. 20-279.5 nor greater than one
21 million dollars (\$1,000,000), as selected by the policy owner. The
22 provisions shall include coverage for the protection of persons insured
23 thereunder who are legally entitled to recover damages from owners or
24 operators of uninsured motor vehicles because of injury to or
25 destruction of the property of such insured, with a limit in the
26 aggregate for all insureds in any one accident of up to the limits of
27 property damage liability in the owner's policy of liability insurance,

1 and subject, for each insured, to an exclusion of the first one hundred
2 dollars (\$100.00) of such damages. The provision shall further provide
3 that a written statement by the liability insurer, whose name appears on
4 the certification of financial responsibility made by the owner of any
5 vehicle involved in an accident with the insured, that the other motor
6 vehicle was not covered by insurance at the time of the accident with
7 the insured shall operate as a prima facie presumption that the operator
8 of the other motor vehicle was uninsured at the time of the accident
9 with the insured for the purposes of recovery under this provision of
10 the insured's liability insurance policy. The coverage required under
11 this subdivision is not applicable where any insured named in the
12 policy rejects the coverage. An insured named in the policy may select
13 different coverage limits as provided in this subdivision. If the named
14 insured in the policy does not reject uninsured motorist coverage and
15 does not select different coverage limits, the amount of uninsured
16 motorist coverage shall be equal to the highest limit of bodily injury
17 and property damage liability coverage for any one vehicle in the
18 policy. Once the option to reject the uninsured motorist coverage or to
19 select different coverage limits is offered by the insurer, the insurer is
20 not required to offer the option in any renewal, reinstatement,
21 substitute, amended, altered, modified, transfer, or replacement policy
22 unless the named insured makes a written request to exercise a
23 different option. The selection or rejection of uninsured motorist
24 coverage or the failure to select or reject by a named insured is valid
25 and binding on all insureds and vehicles under the policy. Rejection of
26 or selection of different coverage limits for uninsured motorist
27 coverage for policies under the jurisdiction of the North Carolina Rate
28 Bureau shall be made in writing by a named insured on a form
29 promulgated by the Bureau and approved by the Commissioner of
30 Insurance.

31 ~~Where coverage is provided on more than one vehicle insured on~~
32 ~~the same policy or where the owner or the named insured has more~~
33 ~~than one policy with coverage under this subdivision, there shall not be~~
34 ~~permitted any combination of coverage within a policy or where more~~
35 ~~than one policy may apply to determine the total amount of coverage~~
36 ~~available.~~

37 If a person who is legally entitled to recover damages from the
38 owner or operator of an uninsured motor vehicle is an insured under
39 the uninsured motorist coverage of a policy that insures more than one
40 motor vehicle, that person shall not be permitted to combine the
41 uninsured motorist limit applicable to any one motor vehicle with the
42 uninsured motorist limit applicable to any other motor vehicle to
43 determine the total amount of uninsured motorist coverage available to
44 that person. If a person who is legally entitled to recover damages from

1 the owner or operator of an uninsured motor vehicle is an insured
2 under the uninsured motorist coverage of more than one policy, that
3 person may combine the highest applicable uninsured motorist limit
4 available under each policy to determine the total amount of uninsured
5 motorist coverage available to that person. The previous sentence shall
6 apply only to insurance on nonfleet private passenger motor vehicles
7 as described in G.S. 58-40-10(1) and (2).

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

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

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

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

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

40 In the event of payment to any person under the coverage required
41 by this section and subject to the terms and conditions of coverage, the
42 insurer making payment shall, to the extent thereof, be entitled to the
43 proceeds of any settlement for judgment resulting from the exercise of
44 any limits of recovery of that person against any person or

1 organization legally responsible for the bodily injury for which the
2 payment is made, including the proceeds recoverable from the assets
3 of the insolvent insurer.

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

- 17 a. A motor vehicle owned by the named insured;
- 18 b. A motor vehicle that is owned or operated by a self-insurer
19 within the meaning of any motor vehicle financial responsibility
20 law, motor carrier law or any similar law;
- 21 c. A motor vehicle that is owned by the United States of America,
22 Canada, a state, or any agency of any of the foregoing
23 (excluding, however, political subdivisions thereof);
- 24 d. A land motor vehicle or trailer, if operated on rails or
25 crawler-treads or while located for use as a residence or
26 premises and not as a vehicle; or
- 27 e. A farm-type tractor or equipment designed for use principally
28 off public roads, except while actually upon public roads.

29 For purposes of this section "persons insured" means the named
30 insured and, while resident of the same household, the spouse
31 of any named insured and relatives of either, while in a motor
32 vehicle or otherwise, and any person who uses with the consent,
33 expressed or implied, of the named insured, the motor vehicle
34 to which the policy applies and a guest in the motor vehicle to
35 which the policy applies or the personal representative of any of
36 the above or any other person or persons in lawful possession of
37 the motor vehicle."

38 **SECTION 2.** G.S. 20-279.21(b)(4) reads as rewritten:

- 39 "(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3)
40 of this subsection, provide underinsured motorist coverage, to be used
41 only with a policy that is written at limits that exceed those prescribed
42 by subdivision (2) of this section and that afford uninsured motorist
43 coverage as provided by subdivision (3) of this subsection, in an
44 amount not to be less than the financial responsibility amounts for

1 bodily injury liability as set forth in G.S. 20-279.5 nor greater than one
2 million dollars (\$1,000,000) as selected by the policy owner. An
3 "uninsured motor vehicle," as described in subdivision (3) of this
4 subsection, includes an "underinsured highway vehicle," which means
5 a highway vehicle with respect to the ownership, maintenance, or use
6 of which, the sum of the limits of liability under all bodily injury
7 liability bonds and insurance policies applicable at the time of the
8 accident is less than the applicable limits of underinsured motorist
9 coverage for the vehicle involved in the accident and insured under the
10 owner's policy. For purposes of an underinsured motorist claim
11 asserted by a person injured in an accident where more than one
12 person is injured, a highway vehicle will also be an "underinsured
13 highway vehicle" if the total amount actually paid to that person under
14 all bodily injury liability bonds and insurance policies applicable at the
15 time of the accident is less than the applicable limits of underinsured
16 motorist coverage for the vehicle involved in the accident and insured
17 under the owner's policy. Notwithstanding the immediately preceding
18 sentence, a highway vehicle shall not be an 'underinsured motor
19 vehicle' for purposes of an underinsured motorist claim under an
20 owner's policy insuring that vehicle if the owner's policy insuring that
21 vehicle provides underinsured motorist coverage with limits that are
22 less than or equal to that policy's bodily injury liability limits. For the
23 purposes of this subdivision, the term "highway vehicle" means a land
24 motor vehicle or trailer other than (i) a farm-type tractor or other
25 vehicle designed for use principally off public roads and while not
26 upon public roads, (ii) a vehicle operated on rails or crawler-treads, or
27 (iii) a vehicle while located for use as a residence or premises. The
28 provisions of subdivision (3) of this subsection shall apply to the
29 coverage required by this subdivision. Underinsured motorist coverage
30 is deemed to apply when, by reason of payment of judgment or
31 settlement, all liability bonds or insurance policies providing coverage
32 for bodily injury caused by the ownership, maintenance, or use of the
33 underinsured highway vehicle have been exhausted. Exhaustion of that
34 liability coverage for the purpose of any single liability claim
35 presented for underinsured motorist coverage is deemed to occur when
36 either (a) the limits of liability per claim have been paid upon the
37 claim, or (b) by reason of multiple claims, the aggregate per
38 occurrence limit of liability has been paid. Underinsured motorist
39 coverage is deemed to apply to the first dollar of an underinsured
40 motorist coverage claim beyond amounts paid to the claimant under
41 the exhausted liability policy.

42 In any event, the limit of underinsured motorist coverage
43 applicable to any claim is determined to be the difference between the
44 amount paid to the claimant under the exhausted liability policy or

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

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

1 before doing so give notice to the insurer and give the insurer, at its
2 expense, the opportunity to participate in the prosecution of the claim.
3 Upon the entry of judgment in a suit upon any such claim in which the
4 underinsured motorist insurer and claimant are joined, payment upon
5 the judgment, unless otherwise agreed to, shall be applied pro rata to
6 the claimant's claim beyond payment by the insurer of the owner,
7 operator or maintainer of the underinsured highway vehicle and the
8 claim of the underinsured motorist insurer.

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

41 As consideration for payment of policy limits by a liability insurer
42 on behalf of the owner, operator, or maintainer of an underinsured
43 motor vehicle, a party injured by an underinsured motor vehicle may
44 execute a contractual covenant not to enforce against the owner,

1 operator, or maintainer of the vehicle any judgment that exceeds the
2 policy limits. A covenant not to enforce judgment shall not preclude
3 the injured party from pursuing available underinsured motorist
4 benefits, unless the terms of the covenant expressly provide otherwise,
5 and shall not preclude an insurer providing underinsured motorist
6 coverage from pursuing any right of subrogation.

7 The coverage required under this subdivision shall not be
8 applicable where any insured named in the policy rejects the coverage.
9 An insured named in the policy may select different coverage limits as
10 provided in this subdivision. If the named insured does not reject
11 underinsured motorist coverage and does not select different coverage
12 limits, the amount of underinsured motorist coverage shall be equal to
13 the highest limit of bodily injury liability coverage for any one vehicle
14 in the policy. Once the option to reject underinsured motorist coverage
15 or to select different coverage limits is offered by the insurer, the
16 insurer is not required to offer the option in any renewal,
17 reinstatement, substitute, amended, altered, modified, transfer, or
18 replacement policy unless a named insured makes a written request to
19 exercise a different option. The selection or rejection of underinsured
20 motorist coverage by a named insured or the failure to select or reject
21 is valid and binding on all insureds and vehicles under the policy.

22 Rejection of or selection of different coverage limits for
23 underinsured motorist coverage for policies under the jurisdiction of
24 the North Carolina Rate Bureau shall be made in writing by the named
25 insured on a form promulgated by the Bureau and approved by the
26 Commissioner of Insurance."

27 **SECTION 3.** This act becomes effective January 1, 2004, and applies to
28 accidents occurring on or after that date.