

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE DRH70422-LT-134 (04/10)

Short Title: Uninsured and Underinsured Motorist Coverage. (Public)

Sponsors: Representative Faison.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE UNINSURED AND UNDERINSURED MOTORIST  
COVERED AND TO INCREASE THE LIMITS FOR UNINSURED AND  
UNDERINSURED MOTORIST COVERAGE.

The General Assembly of North Carolina enacts:

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

"(3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom, 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~~ seventy-five thousand dollars (\$75,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than one hundred fifty thousand dollars (\$150,000) because of bodily injury to or death of two or more persons in any one accident, and in the amount of fifty thousand dollars (\$50,000) because of injury to or destruction of property of others in any one accident, nor greater than one million dollars (\$1,000,000), as selected by the policy owner. The provisions shall include coverage for the protection of persons insured thereunder who are legally entitled to recover damages from

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

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

1 person may combine the highest applicable uninsured motorist limit  
2 available under each policy to determine the total amount of uninsured  
3 motorist coverage available to that person. The previous sentence shall  
4 apply only to insurance on nonfleet private passenger motor vehicles  
5 as described in G.S. 58-40-10(1) and (2).

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

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

43 b. Where the insured, under the uninsured motorist coverage,  
44 claims that he has sustained bodily injury as the result of

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

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

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

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

1 payment is made, including the proceeds recoverable from the assets  
2 of the insolvent insurer.

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

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

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

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

- 37 "(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3)  
38 of this subsection, provide underinsured motorist coverage, to be used  
39 only with a policy that is written at limits that exceed those prescribed  
40 by subdivision (2) of this section and that afford uninsured motorist  
41 coverage as provided by subdivision (3) of this subsection, in an  
42 amount not to be less than seventy-five thousand dollars (\$75,000)  
43 because of bodily injury to or death of one person in any one accident  
44 and, subject to said limit for one person, to a limit of not less than one

1            hundred fifty thousand dollars (\$150,000) because of bodily injury to  
2            or death of two or more persons in any one accident and in the amount  
3            of fifty thousand dollars (\$50,000) because of injury to or destruction  
4            of property of others in any one accident, the financial responsibility  
5            amounts for bodily injury liability as set forth in G.S. 20-279.5 nor  
6            greater than one million dollars (\$1,000,000) (\$1,000,000), as selected  
7            by the policy owner. An "uninsured motor vehicle," as described in  
8            subdivision (3) of this subsection, includes an "underinsured highway  
9            vehicle," which means a highway vehicle with respect to the  
10           ownership, maintenance, or use of which, the sum of the limits of  
11           liability under all bodily injury liability bonds and insurance policies  
12           applicable at the time of the accident is less than the applicable limits  
13           of underinsured motorist coverage for the vehicle involved in the  
14           accident and insured under the owner's policy. For purposes of an  
15           underinsured motorist claim asserted by a person injured in an accident  
16           where more than one person is injured, a highway vehicle will also be  
17           an "underinsured highway vehicle" if the total amount actually paid to  
18           that person under all bodily injury liability bonds and insurance  
19           policies applicable at the time of the accident is less than the  
20           applicable limits of underinsured motorist coverage for the vehicle  
21           involved in the accident and insured under the owner's policy.  
22           Notwithstanding the immediately preceding sentence, a highway  
23           vehicle shall not be an "underinsured motor vehicle" for purposes of an  
24           underinsured motorist claim under an owner's policy insuring that  
25           vehicle if the owner's policy insuring that vehicle provides  
26           underinsured motorist coverage with limits that are less than or equal  
27           to that policy's bodily injury liability limits. For the purposes of this  
28           subdivision, the term "highway vehicle" means a land motor vehicle or  
29           trailer other than (i) a farm-type tractor or other vehicle designed for  
30           use principally off public roads and while not upon public roads, (ii) a  
31           vehicle operated on rails or crawler-treads, or (iii) a vehicle while  
32           located for use as a residence or premises. The provisions of  
33           subdivision (3) of this subsection shall apply to the coverage required  
34           by this subdivision. Underinsured motorist coverage is deemed to  
35           apply when, by reason of payment of judgment or settlement, all  
36           liability bonds or insurance policies providing coverage for bodily  
37           injury caused by the ownership, maintenance, or use of the  
38           underinsured highway vehicle have been exhausted. Exhaustion of that  
39           liability coverage for the purpose of any single liability claim  
40           presented for underinsured motorist coverage is deemed to occur when  
41           either (a) the limits of liability per claim have been paid upon the  
42           claim, or (b) by reason of multiple claims, the aggregate per  
43           occurrence limit of liability has been paid. Underinsured motorist  
44           coverage is deemed to apply to the first dollar of an underinsured

1 motorist coverage claim beyond amounts paid to the claimant under  
2 the exhausted liability policy.

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

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

1 insurer. The claimant and the underinsured motorist insurer may join  
2 their claims in a single suit without requiring that the insurer be named  
3 as a party. Any claimant who intends to pursue recovery against the  
4 owner, operator, or maintainer of the underinsured highway vehicle for  
5 moneys beyond those paid by the underinsured motorist insurer shall  
6 before doing so give notice to the insurer and give the insurer, at its  
7 expense, the opportunity to participate in the prosecution of the claim.  
8 Upon the entry of judgment in a suit upon any such claim in which the  
9 underinsured motorist insurer and claimant are joined, payment upon  
10 the judgment, unless otherwise agreed to, shall be applied pro rata to  
11 the claimant's claim beyond payment by the insurer of the owner,  
12 operator or maintainer of the underinsured highway vehicle and the  
13 claim of the underinsured motorist insurer.

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



1           judicata between the underinsured motorist insurer and the owner,  
2           operator, or maintainer of underinsured highway vehicle.

3           As consideration for payment of policy limits by a liability insurer  
4           on behalf of the owner, operator, or maintainer of an underinsured  
5           motor vehicle, a party injured by an underinsured motor vehicle may  
6           execute a contractual covenant not to enforce against the owner,  
7           operator, or maintainer of the vehicle any judgment that exceeds the  
8           policy limits. A covenant not to enforce judgment shall not preclude  
9           the injured party from pursuing available underinsured motorist  
10          benefits, unless the terms of the covenant expressly provide otherwise,  
11          and shall not preclude an insurer providing underinsured motorist  
12          coverage from pursuing any right of subrogation.

13          ~~The coverage required under this subdivision shall not be  
14          applicable where any insured named in the policy rejects the coverage.  
15          An insured named in the policy may select different coverage limits as  
16          provided in this subdivision. If the named insured does not reject  
17          underinsured motorist coverage and does not select different coverage  
18          limits, the amount of underinsured motorist coverage shall be equal to  
19          the highest limit of bodily injury liability coverage for any one vehicle  
20          in the policy. Once the option to reject underinsured motorist coverage  
21          or to select different coverage limits is offered by the insurer, the  
22          insurer is not required to offer the option in any renewal,  
23          reinstatement, substitute, amended, altered, modified, transfer, or  
24          replacement policy unless a named insured makes a written request to  
25          exercise a different option. The selection or rejection of underinsured  
26          motorist coverage by a named insured or the failure to select or reject  
27          is valid and binding on all insureds and vehicles under the policy.  
28          Rejection of or selection of different coverage limits for underinsured  
29          motorist coverage for policies under the jurisdiction of the North  
30          Carolina Rate Bureau shall be made in writing by the named insured  
31          on a form promulgated by the Bureau and approved by the  
32          Commissioner of Insurance."~~

33          **SECTION 3.** G.S. 58-37-35(b)(1) reads as rewritten:

- 34          "(1) For the following coverages of motor vehicle insurance and in at least  
35          the following amounts of insurance:
- 36           a. Bodily injury liability: thirty thousand dollars (\$30,000) each  
37           person, sixty thousand dollars (\$60,000) each accident;
  - 38           b. Property damage liability: twenty-five thousand dollars  
39           (\$25,000) each accident;
  - 40           c. Medical payments: one thousand dollars (\$1,000) each person;  
41           except that this coverage shall not be available for motorcycles;
  - 42           d. Uninsured motorist: thirty thousand dollars (\$30,000)  
43           seventy-five thousand dollars (\$75,000) each person; sixty  
44           thousand dollars (\$60,000) one hundred fifty thousand dollars

1                   (\$150,000) each accident for bodily injury; ~~twenty-five~~  
2                   ~~thousand dollars (\$25,000)–~~ fifty thousand dollars (\$50,000)  
3                   each accident property damage (one hundred dollars (\$100.00)  
4                   deductible);  
5                   e.     Any other motor vehicle insurance or financial responsibility  
6                   limits in the amounts required by any federal law or federal  
7                   agency regulation; by any law of this State; or by any rule duly  
8                   adopted under Chapter 150B of the General Statutes or by the  
9                   North Carolina Utilities Commission."

10                   **SECTION 4.** This act becomes effective January 1, 2008, and applies to  
11                   policies issued or renewed on or after that date.