

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 749  
PROPOSED COMMITTEE SUBSTITUTE S749-PCS35311-RG-9

Short Title: Revise UM/UIM Liability Coverage Requirements.

(Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CLARIFY THE REQUIREMENTS FOR UNINSURED AND UNDERINSURED MOTORIST COVERAGE IN MOTOR VEHICLE LIABILITY INSURANCE POLICIES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 20-279.21 reads as rewritten:

**"§ 20-279.21. "Motor vehicle liability policy" defined.**

(a) A "motor vehicle liability policy" as ~~said term is~~ used in this Article shall mean an owner's or an operator's policy of liability insurance, certified as provided in G.S. 20-279.19 or 20-279.20 as proof of financial responsibility, and issued, except as otherwise provided in G.S. 20-279.20, by an insurance carrier duly authorized to transact business in this State, to or for the benefit of the person named ~~therein in the policy~~ as insured.

(b) Such owner's policy of liability ~~insurance~~:insurance shall meet the following requirements:

(1) ~~Shall It shall~~ designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be ~~granted~~:granted.

(2) ~~Shall It shall~~ insure the ~~person named therein~~persons named in the policy and any other person, as insured, using any ~~such covered~~ motor vehicle or motor vehicles with the express or implied permission of ~~such a~~ named ~~insured~~:insured or any other persons in lawful possession, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: thirty thousand dollars (\$30,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, sixty thousand dollars (\$60,000) because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars (\$25,000) because of injury to or destruction of property of others in any one ~~accident~~:and accident.

(3) In addition to the coverages set forth in subdivisions (2) and (4) of this subsection, no policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall



\* S 7 4 9 - P C S 3 5 3 1 1 - R G - 9 \*

1 be delivered or issued for delivery in this State with respect to any motor  
2 vehicle registered or principally garaged in this State unless coverage is  
3 provided therein or supplemental thereto, under provisions filed with and  
4 approved by the Commissioner of Insurance, for the protection of persons  
5 insured thereunder who are legally entitled to recover damages from owners  
6 or operators of uninsured motor vehicles and hit-and-run motor vehicles  
7 because of bodily injury, sickness or disease, including death, resulting  
8 ~~therefrom. therefrom, with limits equal to the highest limits of bodily injury~~  
9 ~~liability coverage for any one vehicle insured under the policy. The named~~  
10 ~~insured may purchase uninsured motorist bodily injury coverage with greater~~  
11 ~~limits, subject to the limitation that in no event shall uninsured motorist~~  
12 ~~bodily injury coverage limits exceed one million dollars (\$1,000,000) per~~  
13 ~~person and one million dollars (\$1,000,000) per accident. The limits of such~~  
14 ~~uninsured motorist bodily injury coverage shall be equal to the highest limits~~  
15 ~~of bodily injury liability coverage for any one vehicle insured under the~~  
16 ~~policy; provided, however, that (i) the limits shall not exceed one million~~  
17 ~~dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per~~  
18 ~~accident regardless of whether the highest limits of bodily injury liability~~  
19 ~~coverage for any one vehicle insured under the policy exceed those limits~~  
20 ~~and (ii) a named insured may purchase greater or lesser limits, except that~~  
21 ~~the limits shall not be less than the bodily injury liability limits required~~  
22 ~~pursuant to subdivision (2) of this subsection, and in no event shall an~~  
23 ~~insurer be required by this subdivision to sell uninsured motorist bodily~~  
24 ~~injury coverage at limits that exceed one million dollars (\$1,000,000) per~~  
25 ~~person and one million dollars (\$1,000,000) per accident. The insurer shall~~  
26 ~~notify the named insured of his or her right to purchase uninsured motorist~~  
27 ~~bodily injury coverage with greater limits, when the policy is issued and~~  
28 ~~renewed, as provided in subsection (m) of this section. The provisions shall~~  
29 ~~include coverage for the protection of persons insured thereunder under the~~  
30 ~~policy who are legally entitled to recover damages from owners or operators~~  
31 ~~of uninsured motor vehicles because of injury to or destruction of the~~  
32 ~~property of such insured. insured, with a limit in the aggregate for all~~  
33 ~~insureds in any one accident equal to the highest limits of property damage~~  
34 ~~liability coverage for any one vehicle insured in the owner's policy of~~  
35 ~~liability insurance, and The limits of such uninsured motorist property~~  
36 ~~damage coverage shall be equal to the highest limits of property damage~~  
37 ~~liability coverage for any one vehicle insured under the policy; provided,~~  
38 ~~however, that (i) the limits shall not exceed one million dollars (\$1,000,000)~~  
39 ~~per accident regardless of whether the highest limits of property damage~~  
40 ~~liability coverage for any one vehicle insured under the policy exceed those~~  
41 ~~limits and (ii) a named insured may purchase lesser limits, except that the~~  
42 ~~limits shall not be less than the property damage liability limits required~~  
43 ~~pursuant to subdivision (2) of this subsection. For uninsured motorist~~  
44 ~~property damage coverage, the limits purchased by the named insured shall~~  
45 ~~be subject, for each insured, to an exclusion of the first one hundred dollars~~  
46 ~~(\$100.00) of such damages. The provision shall further provide that a written~~  
47 ~~statement by the liability insurer, whose name appears on the certification of~~  
48 ~~financial responsibility made by the owner of any vehicle involved in an~~  
49 ~~accident with the insured, that the other motor vehicle was not covered by~~  
50 ~~insurance at the time of the accident with the insured shall operate as a prima~~  
51 ~~facie presumption that the operator of the other motor vehicle was uninsured~~

1 at the time of the accident with the insured for the purposes of recovery  
2 under this provision of the insured's liability insurance policy.

3 If a person who is legally entitled to recover damages from the owner or  
4 operator of an uninsured motor vehicle is an insured under the uninsured  
5 motorist coverage of a policy that insures more than one motor vehicle, that  
6 person shall not be permitted to combine the uninsured motorist limit  
7 applicable to any one motor vehicle with the uninsured motorist limit  
8 applicable to any other motor vehicle to determine the total amount of  
9 uninsured motorist coverage available to that person. If a person who is  
10 legally entitled to recover damages from the owner or operator of an  
11 uninsured motor vehicle is an insured under the uninsured motorist coverage  
12 of more than one policy, that person may combine the highest applicable  
13 uninsured motorist limit available under each policy to determine the total  
14 amount of uninsured motorist coverage available to that person. The  
15 previous sentence shall apply only to insurance on nonfleet private passenger  
16 motor vehicles as described in G.S. 58-40-10(1) and (2).

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

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

50 b. Where the insured, under the uninsured motorist coverage, claims  
51 that he has sustained bodily injury as the result of collision between

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

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

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

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

44 For the purpose of this section, an "uninsured motor vehicle" shall be a  
45 motor vehicle as to which there is no bodily injury liability insurance and  
46 property damage liability insurance in at least the amounts specified in  
47 subsection (c) of G.S. 20-279.5, or there is that insurance but the insurance  
48 company writing the insurance denies coverage ~~thereunder~~ under the  
49 insurance policy, or has become bankrupt, or there is no bond or deposit of  
50 money or securities as provided in G.S. 20-279.24 or 20-279.25 in lieu of the  
51 bodily injury and property damage liability insurance, or the owner of the

1 motor vehicle has not qualified as a self-insurer under the provisions of  
 2 G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor  
 3 Vehicle Safety and Financial Responsibility Act; but the term "uninsured  
 4 motor vehicle" shall not include:

- 5 a. A motor vehicle owned by the named insured;
- 6 b. A motor vehicle that is owned or operated by a self-insurer within the  
 7 meaning of any motor vehicle financial responsibility law, motor  
 8 carrier law or any similar law;
- 9 c. A motor vehicle that is owned by the United States of America,  
 10 Canada, a state, or any agency of any of the foregoing (excluding,  
 11 however, political subdivisions thereof);
- 12 d. A land motor vehicle or trailer, if operated on rails or crawler-treads  
 13 or while located for use as a residence or premises and not as a  
 14 vehicle; or
- 15 e. A farm-type tractor or equipment designed for use principally off  
 16 public roads, except while actually upon public roads.

17 For purposes of this section "persons insured" means the named insured and,  
 18 while resident of the same household, the spouse of any named insured and  
 19 relatives of either, while in a motor vehicle or otherwise, and any person  
 20 who uses with the consent, expressed or implied, of the named insured, the  
 21 motor vehicle to which the policy applies and a guest in the motor vehicle to  
 22 which the policy applies or the personal representative of any of the above or  
 23 any other person or persons in lawful possession of the motor vehicle.

24 Notwithstanding any language or provision to the contrary, no motor  
 25 vehicle other than a motor vehicle covered under a personal auto policy, the  
 26 form for which is promulgated by the North Carolina Rate Bureau pursuant  
 27 to Article 36 of Chapter 58 of the General Statutes and approved by the  
 28 Commissioner, shall be required by this subdivision to be covered by  
 29 uninsured motorist coverage or in any way be subject to the requirements of  
 30 this subdivision. For the purposes of this subdivision, a personal auto policy  
 31 shall not include any endorsement to any policy other than a personal auto  
 32 policy, even if the form for such endorsement is promulgated by the North  
 33 Carolina Rate Bureau and approved by the Commissioner.~~the provisions of~~  
 34 ~~this subsection, no policy of motor vehicle liability insurance applicable~~  
 35 ~~solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or~~  
 36 ~~applicable solely to fleet vehicles shall be required to provide uninsured~~  
 37 ~~motorist coverage. Any motor vehicle liability policy that insures both~~  
 38 ~~commercial motor vehicles as defined in G.S. 20-4.01(3d) and~~  
 39 ~~noncommercial motor vehicles shall provide uninsured motorist coverage in~~  
 40 ~~accordance with the provisions of this subsection in amounts equal to the~~  
 41 ~~highest limits of bodily injury and property damage liability coverage for~~  
 42 ~~any one noncommercial motor vehicle insured under the policy, subject to~~  
 43 ~~the right of the insured to purchase higher uninsured motorist bodily injury~~  
 44 ~~liability coverage limits as set forth in this subsection. For the purpose of the~~  
 45 ~~immediately preceding sentence, noncommercial motor vehicle shall mean~~  
 46 ~~any motor vehicle that is not a commercial motor vehicle as defined in~~  
 47 ~~G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this~~  
 48 ~~subsection.~~

- 49 (4) ~~Shall~~It shall, in addition to the coverages set forth in subdivisions (2) and (3)  
 50 of this subsection, provide underinsured motorist bodily injury coverage, to  
 51 be used only with a policy that is written at bodily injury liability limits that

1 exceed those prescribed by subdivision (2) of this ~~subsection.~~ ~~section,~~ with  
2 ~~limits equal to the highest limits of bodily injury liability coverage for any~~  
3 ~~one vehicle insured under the policy. The named insured may purchase~~  
4 ~~underinsured motorist coverage with greater limits, subject to the limitation~~  
5 ~~that in no event shall the underinsured motorist coverage limits exceed one~~  
6 ~~million dollars (\$1,000,000) per person and one million dollars (\$1,000,000)~~  
7 ~~per accident. The limits of such underinsured motorist bodily injury~~  
8 ~~coverage shall be equal to the highest limits of bodily injury liability~~  
9 ~~coverage for any one vehicle insured under the policy; provided, however,~~  
10 ~~that (i) the limits shall not exceed one million dollars (\$1,000,000) per~~  
11 ~~person and one million dollars (\$1,000,000) per accident regardless of~~  
12 ~~whether the highest limits of bodily injury liability coverage for any one~~  
13 ~~vehicle insured under the policy exceed those limits, (ii) a named insured~~  
14 ~~may purchase greater or lesser limits, except that the limits shall exceed the~~  
15 ~~bodily injury liability limits required pursuant to subdivision (2) of this~~  
16 ~~subsection, and in no event shall an insurer be required by this subdivision to~~  
17 ~~sell underinsured motorist bodily injury coverage at limits that exceed one~~  
18 ~~million dollars (\$1,000,000) per person and one million dollars (\$1,000,000)~~  
19 ~~per accident, and (iii) the limits shall be equal to the limits of uninsured~~  
20 ~~motorist bodily injury coverage purchased pursuant to subdivision (3) of this~~  
21 ~~subsection. The insurer shall notify the named insured of his or her right to~~  
22 ~~purchase underinsured motorist coverage with greater limits, when the~~  
23 ~~policy is issued and renewed, as provided in subsection (m) of this section.~~  
24 ~~An "uninsured motor vehicle," as described in subdivision (3) of this~~  
25 ~~subsection, includes an "underinsured highway vehicle," which means a~~  
26 ~~highway vehicle with respect to the ownership, maintenance, or use of~~  
27 ~~which, the sum of the limits of liability under all bodily injury liability bonds~~  
28 ~~and insurance policies applicable at the time of the accident is less than the~~  
29 ~~applicable limits of underinsured motorist coverage for the vehicle involved~~  
30 ~~in the accident and insured under the owner's policy. For purposes of an~~  
31 ~~underinsured motorist claim asserted by a person injured in an accident~~  
32 ~~where more than one person is injured, a highway vehicle will also be an~~  
33 ~~"underinsured highway vehicle" if the total amount actually paid to that~~  
34 ~~person under all bodily injury liability bonds and insurance policies~~  
35 ~~applicable at the time of the accident is less than the applicable limits of~~  
36 ~~underinsured motorist coverage for the vehicle involved in the accident and~~  
37 ~~insured under the owner's policy. Notwithstanding the immediately~~  
38 ~~preceding sentence, a highway vehicle shall not be an "underinsured motor~~  
39 ~~vehicle" for purposes of an underinsured motorist claim under an owner's~~  
40 ~~policy insuring that vehicle unless the owner's policy insuring that vehicle~~  
41 ~~provides underinsured motorist coverage with limits that are greater than that~~  
42 ~~policy's bodily injury liability limits. For the purposes of this subdivision,~~  
43 ~~the term "highway vehicle" means a land motor vehicle or ~~trailer other~~~~  
44 ~~than trailer, but shall not include:~~

45 ~~(i)a.~~ A farm-type tractor or other vehicle designed for use principally off  
46 public roads and while not upon public roads;  
47 ~~(ii)b.~~ A vehicle operated on rails or ~~crawler-treads,~~ crawler-treads; or

48 ~~(iii)c.~~ A vehicle while located for use as a residence or premises.

49 The provisions of subdivision (3) of this subsection shall apply to the  
50 coverage required by this subdivision. Underinsured motorist coverage is  
51 deemed to apply when, by reason of payment of judgment or settlement, all

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

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

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

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

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

41 As consideration for payment of policy limits by a liability insurer on  
42 behalf of the owner, operator, or maintainer of an underinsured motor  
43 vehicle, a party injured by an underinsured motor vehicle may execute a  
44 contractual covenant not to enforce against the owner, operator, or  
45 maintainer of the vehicle any judgment that exceeds the policy limits. A  
46 covenant not to enforce judgment shall not preclude the injured party from  
47 pursuing available underinsured motorist benefits, unless the terms of the  
48 covenant expressly provide otherwise, and shall not preclude an insurer  
49 providing underinsured motorist coverage from pursuing any right of  
50 subrogation.



1           Notwithstanding any language or provision to the contrary, no motor  
2 vehicle other than a motor vehicle covered under a personal auto policy, the  
3 form for which is promulgated by the North Carolina Rate Bureau pursuant  
4 to Article 36 of Chapter 58 of the General Statutes and approved by the  
5 Commissioner, shall be required by this subdivision to be covered by  
6 underinsured motorist coverage or in any way be subject to the requirements  
7 of this subdivision. For the purposes of this subdivision, a personal auto  
8 policy shall not include any endorsement to any policy other than a personal  
9 auto policy, even if the form for such endorsement is promulgated by the  
10 North Carolina Rate Bureau and approved by the Commissioner.~~the~~  
11 ~~provisions of this subsection, no policy of motor vehicle liability insurance~~  
12 ~~applicable solely to commercial motor vehicles as defined in~~  
13 ~~G.S. 20 4.01(3d) or applicable solely to fleet vehicles shall be required to~~  
14 ~~provide underinsured motorist coverage. Any motor vehicle liability policy~~  
15 ~~that insures both commercial motor vehicles as defined in G.S. 20 4.01(3d)~~  
16 ~~and noncommercial motor vehicles shall provide underinsured motorist~~  
17 ~~coverage in accordance with the provisions of this subsection in an amount~~  
18 ~~equal to the highest limits of bodily injury liability coverage for any one~~  
19 ~~noncommercial motor vehicle insured under the policy, subject to the right~~  
20 ~~of the insured to purchase higher underinsured motorist bodily injury~~  
21 ~~liability coverage limits as set forth in this subsection. For the purpose of the~~  
22 ~~immediately preceding sentence, noncommercial motor vehicle shall mean~~  
23 ~~any motor vehicle that is not a commercial motor vehicle as defined in~~  
24 ~~G.S. 20 4.01(3d), but that is otherwise subject to the requirements of this~~  
25 ~~subsection.~~

26           (c) Such operator's policy of liability insurance shall insure the person named as insured  
27 therein against loss from the liability imposed upon him by law for damages arising out of the  
28 use by him of any motor vehicle not owned by him, and within 30 days following the date of its  
29 delivery to him of any motor vehicle owned by him, within the same territorial limits and  
30 subject to the same limits of liability as are set forth above with respect to an owner's policy of  
31 liability insurance.

32           (d) Such motor vehicle liability policy shall state the name and address of the named  
33 insured, the coverage afforded by the policy, the premium charged ~~therefor~~for the policy, the  
34 policy period and the limits of liability, and shall contain an agreement or be endorsed that  
35 insurance is provided ~~thereunder~~under the policy in accordance with the coverage defined in  
36 this Article as respects bodily injury and death or property damage, or both, and is subject to all  
37 the provisions of this Article.

38           (e) Uninsured or underinsured motorist coverage that is provided as part of a ~~motor~~  
39 ~~vehicle liability policy~~personal auto policy, the form for which is promulgated by the North  
40 Carolina Rate Bureau pursuant to Article 36 of Chapter 58 of the General Statutes and  
41 approved by the Commissioner, shall insure that portion of a loss uncompensated by any  
42 workers' compensation law and the amount of an employer's lien determined pursuant to  
43 G.S. 97-10.2(h) or (j). In no event shall this subsection be construed to require that coverage  
44 exceed the applicable uninsured or underinsured coverage limits of the motor vehicle policy or  
45 allow a recovery for damages already paid by workers' compensation. The policy need not  
46 insure a loss from any liability for damage to property owned by, rented to, in charge of or  
47 transported by the insured. For the purposes of this subsection, a personal auto policy shall not  
48 include any endorsement to any policy other than a personal auto policy, even if the form for  
49 such endorsement is promulgated by the North Carolina Rate Bureau and approved by the  
50 Commissioner.

1 (f) Every motor vehicle liability policy shall be subject to the following provisions  
2 which need not be contained therein:

3 (1) Except as hereinafter provided, the liability of the insurance carrier with  
4 respect to the insurance required by this Article shall become absolute  
5 whenever injury or damage covered by said motor vehicle liability policy  
6 occurs; said policy may not be canceled or annulled as to such liability by  
7 any agreement between the insurance carrier and the insured after the  
8 occurrence of the injury or damage; no statement made by the insured or on  
9 his behalf and no violation of said policy shall defeat or void said policy. As  
10 to policies issued to insureds in this State under the assigned risk plan or  
11 through the North Carolina Motor Vehicle Reinsurance Facility, a default  
12 judgment taken against such an insured shall not be used as a basis for  
13 obtaining judgment against the insurer unless counsel for the plaintiff has  
14 forwarded to the insurer, or to one of its agents, by registered or certified  
15 mail with return receipt requested, or served by any other method of service  
16 provided by law, a copy of summons, complaint, or other pleadings, filed in  
17 the action. The return receipt shall, upon its return to plaintiff's counsel, be  
18 filed with the clerk of court wherein the action is pending against the insured  
19 and shall be admissible in evidence as proof of notice to the insurer. The  
20 refusal of insurer or its agent to accept delivery of the registered mail, as  
21 provided in this section, shall not affect the validity of such notice and any  
22 insurer or agent of an insurer refusing to accept such registered mail shall be  
23 charged with the knowledge of the contents of such notice. When notice has  
24 been sent to an agent of the insurer such notice shall be notice to the insurer.  
25 The word "agent" as used in this subsection shall include, but shall not be  
26 limited to, any person designated by the insurer as its agent for the service of  
27 process, any person duly licensed by the insurer in the State as insurance  
28 agent, any general agent of the company in the State of North Carolina, and  
29 any employee of the company in a managerial or other responsible position,  
30 or the North Carolina Commissioner of Insurance; provided, where the  
31 return receipt is signed by an employee of the insurer or an employee of an  
32 agent for the insurer, shall be deemed for the purposes of this subsection to  
33 have been received. The term "agent" as used in this subsection shall not  
34 include a producer of record or broker, who forwards an application for  
35 insurance to the North Carolina Motor Vehicle Reinsurance Facility.

36 The insurer, upon receipt of summons, complaint or other process, shall  
37 be entitled, upon its motion, to intervene in the suit against its insured as a  
38 party defendant and to defend the same in the name of its insured. In the  
39 event of such intervention by an insurer it shall become a named party  
40 defendant. The insurer shall have 30 days from the signing of the return  
41 receipt acknowledging receipt of the summons, complaint or other pleading  
42 in which to file a motion to intervene, along with any responsive pleading,  
43 whether verified or not, which it may deem necessary to protect its interest:  
44 Provided, the court having jurisdiction over the matter may, upon motion  
45 duly made, extend the time for the filing of responsive pleading or continue  
46 the trial of the matter for the purpose of affording the insurer a reasonable  
47 time in which to file responsive pleading or defend the action. If, after  
48 receiving copy of the summons, complaint or other pleading, the insurer  
49 elects not to defend the action, if coverage is in fact provided by the policy,  
50 the insurer shall be bound to the extent of its policy limits to the judgment

1 taken by default against the insured, and noncooperation of the insured shall  
2 not be a defense.

3 If the plaintiff initiating an action against the insured has complied with  
4 the provisions of this subsection, then, in such event, the insurer may not  
5 cancel or annul the policy as to such liability and the defense of  
6 noncooperation shall not be available to the insurer: Provided, however,  
7 nothing in this section shall be construed as depriving an insurer of its  
8 defenses that the policy was not in force at the time in question, that the  
9 operator was not an "insured" under policy provisions, or that the policy had  
10 been lawfully canceled at the time of the accident giving rise to the cause of  
11 action.

12 Provided further that the provisions of this subdivision shall not apply  
13 when the insured has delivered a copy of the summons, complaint or other  
14 pleadings served on him to his insurance carrier within the time provided by  
15 law for filing answer, demurrer or other pleadings.

- 16 (2) The satisfaction by the insured of a judgment for such injury or damage shall  
17 not be a condition precedent to the right or duty of the insurance carrier to  
18 make payment on account of such injury or damage;
- 19 (3) The insurance carrier shall have the right to settle any claim covered by the  
20 policy, and if such settlement is made in good faith, the amount thereof shall  
21 be deductible from the limits of liability specified in subdivision (2) of  
22 subsection (b) of this section;
- 23 (4) The policy, the written application ~~therefor~~ therefor for the policy, if any, and any  
24 rider or endorsement which does not conflict with the provisions of the  
25 Article shall constitute the entire contract between the parties.

26 (g) Any policy which grants the coverage required for a motor vehicle liability policy  
27 may also grant any lawful coverage in excess of or in addition to the coverage specified for a  
28 motor vehicle liability policy and such excess or additional coverage shall not be subject to the  
29 provisions of this Article. With respect to a policy which grants such excess or additional  
30 coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage  
31 which is required by this section.

32 (h) Any motor vehicle liability policy may provide that the insured shall reimburse the  
33 insurance carrier for any payment the insurance carrier would not have been obligated to make  
34 under the terms of the policy except for the provisions of this Article.

35 (i) Any motor vehicle liability policy may provide for the prorating of the insurance  
36 ~~thereunder~~ coverage provided by the policy with other valid and collectible insurance.

37 (j) The requirements for a motor vehicle liability policy may be fulfilled by the policies  
38 of one or more insurance carriers which policies together meet such requirements.

39 (k) Any binder issued pending the issuance of a motor vehicle liability policy shall be  
40 deemed to fulfill the requirements for such a policy.

41 (l) A party injured by an uninsured motor vehicle covered under a policy in amounts  
42 less than those set forth in G.S. 20-279.5, may execute a contractual covenant not to enforce  
43 against the owner, operator, or maintainer of the uninsured vehicle any judgment that exceeds  
44 the liability policy limits, as consideration for payment of any applicable policy limits by the  
45 insurer where judgment exceeds the policy limits. A covenant not to enforce judgment shall not  
46 preclude the injured party from pursuing available uninsured motorist benefits, unless the terms  
47 of the covenant expressly provide otherwise, and shall not preclude an insurer providing  
48 uninsured motorist coverage from pursuing any right of subrogation.

49 (m) Every insurer that sells motor vehicle liability policies subject to the requirements of  
50 subdivisions (b)(3) and (b)(4) of this section shall give reasonable notice to ~~the~~ the named insured,  
51 when the policy is issued and renewed, that ~~the~~ the named insured may purchase uninsured

1 motorist bodily injury coverage and, if applicable, underinsured motorist coverage with limits  
2 up to one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per  
3 accident. An insurer shall be deemed to have given reasonable notice if it includes the  
4 following or substantially similar language on the policy's original and renewal declarations  
5 pages or in a separate notice accompanying the original and renewal declarations pages in at  
6 least 10 point type:

7 "NOTICE: YOU MAY PURCHASE UNINSURED MOTORIST BODILY INJURY  
8 COVERAGE AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE WITH  
9 LIMITS UP TO ONE MILLION DOLLARS (\$1,000,000) PER PERSON AND ONE  
10 MILLION DOLLARS (\$1,000,000) PER ACCIDENT. THIS INSURANCE PROTECTS YOU  
11 AND YOUR FAMILY AGAINST INJURIES CAUSED BY THE NEGLIGENCE OF OTHER  
12 DRIVERS WHO MAY HAVE LIMITED OR ONLY MINIMUM COVERAGE OR EVEN  
13 NO LIABILITY INSURANCE. YOU SHOULD CONTACT YOUR INSURANCE  
14 COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING THIS  
15 ADDITIONAL COVERAGE. YOU SHOULD ALSO READ YOUR ENTIRE POLICY TO  
16 UNDERSTAND WHAT IS COVERED UNDER UNINSURED AND UNDERINSURED  
17 MOTORIST COVERAGES."

18 Payment of premium for the cost of uninsured or underinsured motorist coverage by or on  
19 behalf of a named insured shall create an irrebuttable presumption that the reasonable notice  
20 required by this subsection has been given to the named insured. In addition, evidence of the  
21 coverage limits stated in the policy for uninsured or underinsured motorist coverage shall  
22 constitute irrebuttable proof of the amount of uninsured and underinsured motorist coverage  
23 provided by the policy.

24 (n) Nothing in this section shall be construed to provide greater amounts of uninsured  
25 or underinsured motorist coverage in a liability policy than the insured has purchased from the  
26 insurer under this section.

27 (o) An insurer that fails to comply with subsection (m) of this section is subject to a  
28 civil penalty under G.S. 58-2-70."

29 **SECTION 2.** This act becomes effective October 1, 2009, and applies to motor  
30 vehicle liability insurance policies issued or renewed after that date.