

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 749  
Commerce Committee Substitute Adopted 5/7/09  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S749-PCS35357-RC-46

Short Title: Revise UM/UIM Liability Coverage Requirements.

(Public)

Sponsors:

Referred to:

March 24, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO REVISE AND CLARIFY THE REQUIREMENTS FOR UNINSURED AND  
3 UNDERINSURED MOTORIST COVERAGE IN MOTOR VEHICLE LIABILITY  
4 INSURANCE POLICIES.

5 The General Assembly of North Carolina enacts:

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

7 "§ 20-279.21. "Motor vehicle liability policy" defined.

8 (a) A "motor vehicle liability policy" as said term is used in this Article shall mean an  
9 owner's or an operator's policy of liability insurance, certified as provided in G.S. 20-279.19 or  
10 20-279.20 as proof of financial responsibility, and issued, except as otherwise provided in  
11 G.S. 20-279.20, by an insurance carrier duly authorized to transact business in this State, to or  
12 for the benefit of the person named therein as insured.

13 (b) Such owner's policy of liability insurance:

- 14 (1) Shall designate by explicit description or by appropriate reference all motor  
15 vehicles with respect to which coverage is thereby to be granted;
- 16 (2) Shall insure the person named therein and any other person, as insured, using  
17 any such motor vehicle or motor vehicles with the express or implied  
18 permission of such named insured, or any other persons in lawful  
19 possession, against loss from the liability imposed by law for damages  
20 arising out of the ownership, maintenance or use of such motor vehicle or  
21 motor vehicles within the United States of America or the Dominion of  
22 Canada subject to limits exclusive of interest and costs, with respect to each  
23 such motor vehicle, as follows: thirty thousand dollars (\$30,000) because of  
24 bodily injury to or death of one person in any one accident and, subject to  
25 said limit for one person, sixty thousand dollars (\$60,000) because of bodily  
26 injury to or death of two or more persons in any one accident, and  
27 twenty-five thousand dollars (\$25,000) because of injury to or destruction of  
28 property of others in any one accident; and
- 29 (3) No policy of bodily injury liability insurance, covering liability arising out of  
30 the ownership, maintenance, or use of any motor vehicle, shall be delivered  
31 or issued for delivery in this State with respect to any motor vehicle  
32 registered or principally garaged in this State unless coverage is provided  
33 therein or supplemental thereto, under provisions filed with and approved by



\* S 7 4 9 - P C S 3 5 3 5 7 - R C - 4 6 \*

1 the Commissioner of Insurance, for the protection of persons insured  
2 thereunder who are legally entitled to recover damages from owners or  
3 operators of uninsured motor vehicles and hit-and-run motor vehicles  
4 because of bodily injury, sickness or disease, including death, resulting  
5 ~~therefrom. therefrom, with limits equal to the highest limits of bodily injury~~  
6 ~~liability coverage for any one vehicle insured under the policy. The named~~  
7 ~~insured may purchase uninsured motorist bodily injury coverage with greater~~  
8 ~~limits, subject to the limitation that in no event shall uninsured motorist~~  
9 ~~bodily injury coverage limits exceed one million dollars (\$1,000,000) per~~  
10 ~~person and one million dollars (\$1,000,000) per accident. The limits of such~~  
11 ~~uninsured motorist bodily injury coverage shall be equal to the highest limits~~  
12 ~~of bodily injury liability coverage for any one vehicle insured under the~~  
13 ~~policy; provided, however, that (i) the limits shall not exceed one million~~  
14 ~~dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per~~  
15 ~~accident regardless of whether the highest limits of bodily injury liability~~  
16 ~~coverage for any one vehicle insured under the policy exceed those limits~~  
17 ~~and (ii) a named insured may purchase greater or lesser limits, except that~~  
18 ~~the limits shall not be less than the bodily injury liability limits required~~  
19 ~~pursuant to subdivision (2) of this subsection, and in no event shall an~~  
20 ~~insurer be required by this subdivision to sell uninsured motorist bodily~~  
21 ~~injury coverage at limits that exceed one million dollars (\$1,000,000) per~~  
22 ~~person and one million dollars (\$1,000,000) per accident. The~~  
23 ~~When the policy is issued or renewed, the insurer shall notify the named insured as~~  
24 ~~provided in subsection (m) of this section. of his or her right to purchase~~  
25 ~~uninsured motorist bodily injury coverage with greater limits, when the~~  
26 ~~policy is issued and renewed, as provided in subsection (m) of this section.~~  
27 The provisions shall include coverage for the protection of persons insured  
28 ~~thereunder under the policy~~ who are legally entitled to recover damages  
29 from owners or operators of uninsured motor vehicles because of injury to or  
30 destruction of the property of such ~~insured. insured, with a limit in the~~  
31 ~~aggregate for all insureds in any one accident equal to the highest limits of~~  
32 ~~property damage liability coverage for any one vehicle insured in the~~  
33 ~~owner's policy of liability insurance, and~~ The limits of such uninsured  
34 ~~motorist property damage coverage shall be equal to the highest limits of~~  
35 ~~property damage liability coverage for any one vehicle insured under the~~  
36 ~~policy; provided, however, that (i) the limits shall not exceed one million~~  
37 ~~dollars (\$1,000,000) per accident regardless of whether the highest limits of~~  
38 ~~property damage liability coverage for any one vehicle insured under the~~  
39 ~~policy exceed those limits and (ii) a named insured may purchase lesser~~  
40 ~~limits, except that the limits shall not be less than the property damage~~  
41 ~~liability limits required pursuant to subdivision (2) of this subsection. When~~  
42 ~~the policy is issued or renewed, the insurer shall notify the named insured as~~  
43 ~~provided in subsection (m) of this section. For uninsured motorist property~~  
44 ~~damage coverage, the limits purchased by the named insured shall be~~  
45 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 is unable to make payment with respect to the legal liability  
28 within the limits specified therein because of insolvency.

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

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

42 For the purpose of this section, an "uninsured motor vehicle" shall be a  
43 motor vehicle as to which there is no bodily injury liability insurance and  
44 property damage liability insurance in at least the amounts specified in  
45 subsection (c) of G.S. 20-279.5, or there is that insurance but the insurance  
46 company writing the insurance denies coverage thereunder, or has become  
47 bankrupt, or there is no bond or deposit of money or securities as provided in  
48 G.S. 20-279.24 or 20-279.25 in lieu of the bodily injury and property  
49 damage liability insurance, or the owner of the motor vehicle has not  
50 qualified as a self-insurer under the provisions of G.S. 20-279.33, or a  
51 vehicle that is not subject to the provisions of the Motor Vehicle Safety and

1 Financial Responsibility Act; but the term "uninsured motor vehicle" shall  
2 not include:

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

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

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

- 47 (4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this  
48 subsection, provide underinsured motorist coverage, to be used only with a  
49 policy that is written at limits that exceed those prescribed by subdivision (2)  
50 of this subsection, ~~section, with limits equal to the highest limits of bodily~~  
51 ~~injury liability coverage for any one vehicle insured under the policy. The~~

1 ~~named insured may purchase underinsured motorist coverage with greater~~  
2 ~~limits, subject to the limitation that in no event shall the underinsured~~  
3 ~~motorist coverage limits exceed one million dollars (\$1,000,000) per person~~  
4 ~~and one million dollars (\$1,000,000) per accident. The limits of such~~  
5 ~~underinsured motorist bodily injury coverage shall be equal to the highest~~  
6 ~~limits of bodily injury liability coverage for any one vehicle insured under~~  
7 ~~the policy; provided, however, that (i) the limits shall not exceed one million~~  
8 ~~dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per~~  
9 ~~accident regardless of whether the highest limits of bodily injury liability~~  
10 ~~coverage for any one vehicle insured under the policy exceed those limits,~~  
11 ~~(ii) a named insured may purchase greater or lesser limits, except that the~~  
12 ~~limits shall exceed the bodily injury liability limits required pursuant to~~  
13 ~~subdivision (2) of this subsection, and in no event shall an insurer be~~  
14 ~~required by this subdivision to sell underinsured motorist bodily injury~~  
15 ~~coverage at limits that exceed one million dollars (\$1,000,000) per person~~  
16 ~~and one million dollars (\$1,000,000) per accident, and (iii) the limits shall be~~  
17 ~~equal to the limits of uninsured motorist bodily injury coverage purchased~~  
18 ~~pursuant to subdivision (3) of this subsection. When the policy is issued or~~  
19 ~~renewed, the~~ The insurer shall notify the named insured as provided in  
20 subsection (m) of this section. his or her right to purchase underinsured  
21 motorist coverage with greater limits, when the policy is issued and  
22 renewed, as provided in subsection (m) of this section. An "uninsured motor  
23 vehicle," as described in subdivision (3) of this subsection, includes an  
24 "underinsured highway vehicle," which means a highway vehicle with  
25 respect to the ownership, maintenance, or use of which, the sum of the limits  
26 of liability under all bodily injury liability bonds and insurance policies  
27 applicable at the time of the accident is less than the applicable limits of  
28 underinsured motorist coverage for the vehicle involved in the accident and  
29 insured under the owner's policy. For purposes of an underinsured motorist  
30 claim asserted by a person injured in an accident where more than one  
31 person is injured, a highway vehicle will also be an "underinsured highway  
32 vehicle" if the total amount actually paid to that person under all bodily  
33 injury liability bonds and insurance policies applicable at the time of the  
34 accident is less than the applicable limits of underinsured motorist coverage  
35 for the vehicle involved in the accident and insured under the owner's policy.  
36 Notwithstanding the immediately preceding sentence, a highway vehicle  
37 shall not be an "underinsured motor vehicle" for purposes of an underinsured  
38 motorist claim under an owner's policy insuring that vehicle unless the  
39 owner's policy insuring that vehicle provides underinsured motorist coverage  
40 with limits that are greater than that policy's bodily injury liability limits. For  
41 the purposes of this subdivision, the term "highway vehicle" means a land  
42 motor vehicle or trailer other than (i) a farm-type tractor or other vehicle  
43 designed for use principally off public roads and while not upon public  
44 roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a vehicle  
45 while located for use as a residence or premises. The provisions of  
46 subdivision (3) of this subsection shall apply to the coverage required by this  
47 subdivision. Underinsured motorist coverage is deemed to apply when, by  
48 reason of payment of judgment or settlement, all liability bonds or insurance  
49 policies providing coverage for bodily injury caused by the ownership,  
50 maintenance, or use of the underinsured highway vehicle have been  
51 exhausted. Exhaustion of that liability coverage for the purpose of any single

1 liability claim presented for underinsured motorist coverage is deemed to  
2 occur when either (a) the limits of liability per claim have been paid upon  
3 the claim, or (b) by reason of multiple claims, the aggregate per occurrence  
4 limit of liability has been paid. Underinsured motorist coverage is deemed to  
5 apply to the first dollar of an underinsured motorist coverage claim beyond  
6 amounts paid to the claimant under the exhausted liability policy.

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

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

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

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

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

47 Notwithstanding any language or provision to the contrary, no motor  
48 vehicle other than a motor vehicle covered under a personal auto policy, the  
49 form for which is promulgated by the North Carolina Rate Bureau pursuant  
50 to Article 36 of Chapter 58 of the General Statutes and approved by the  
51 Commissioner, shall be required by this subdivision to be covered by



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

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

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

32           (e) Uninsured or underinsured motorist coverage that is provided as part of a motor  
33           vehicle liability policy shall insure that portion of a loss uncompensated by any workers'  
34           compensation law and the amount of an employer's lien determined pursuant to G.S. 97-10.2(h)  
35           or (j). In no event shall this subsection be construed to require that coverage exceed the  
36           applicable uninsured or underinsured coverage limits of the motor vehicle policy or allow a  
37           recovery for damages already paid by workers' compensation. The policy need not insure a loss  
38           from any liability for damage to property owned by, rented to, in charge of or transported by  
39           the insured.

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

- 42           (1) Except as hereinafter provided, the liability of the insurance carrier with  
43           respect to the insurance required by this Article shall become absolute  
44           whenever injury or damage covered by said motor vehicle liability policy  
45           occurs; said policy may not be canceled or annulled as to such liability by  
46           any agreement between the insurance carrier and the insured after the  
47           occurrence of the injury or damage; no statement made by the insured or on  
48           his behalf and no violation of said policy shall defeat or void said policy. As  
49           to policies issued to insureds in this State under the assigned risk plan or  
50           through the North Carolina Motor Vehicle Reinsurance Facility, a default  
51           judgment taken against such an insured shall not be used as a basis for

1 obtaining judgment against the insurer unless counsel for the plaintiff has  
2 forwarded to the insurer, or to one of its agents, by registered or certified  
3 mail with return receipt requested, or served by any other method of service  
4 provided by law, a copy of summons, complaint, or other pleadings, filed in  
5 the action. The return receipt shall, upon its return to plaintiff's counsel, be  
6 filed with the clerk of court wherein the action is pending against the insured  
7 and shall be admissible in evidence as proof of notice to the insurer. The  
8 refusal of insurer or its agent to accept delivery of the registered mail, as  
9 provided in this section, shall not affect the validity of such notice and any  
10 insurer or agent of an insurer refusing to accept such registered mail shall be  
11 charged with the knowledge of the contents of such notice. When notice has  
12 been sent to an agent of the insurer such notice shall be notice to the insurer.  
13 The word "agent" as used in this subsection shall include, but shall not be  
14 limited to, any person designated by the insurer as its agent for the service of  
15 process, any person duly licensed by the insurer in the State as insurance  
16 agent, any general agent of the company in the State of North Carolina, and  
17 any employee of the company in a managerial or other responsible position,  
18 or the North Carolina Commissioner of Insurance; provided, where the  
19 return receipt is signed by an employee of the insurer or an employee of an  
20 agent for the insurer, shall be deemed for the purposes of this subsection to  
21 have been received. The term "agent" as used in this subsection shall not  
22 include a producer of record or broker, who forwards an application for  
23 insurance to the North Carolina Motor Vehicle Reinsurance Facility.

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

41 If the plaintiff initiating an action against the insured has complied with  
42 the provisions of this subsection, then, in such event, the insurer may not  
43 cancel or annul the policy as to such liability and the defense of  
44 noncooperation shall not be available to the insurer: Provided, however,  
45 nothing in this section shall be construed as depriving an insurer of its  
46 defenses that the policy was not in force at the time in question, that the  
47 operator was not an "insured" under policy provisions, or that the policy had  
48 been lawfully canceled at the time of the accident giving rise to the cause of  
49 action.

50 Provided further that the provisions of this subdivision shall not apply  
51 when the insured has delivered a copy of the summons, complaint or other

1 pleadings served on him to his insurance carrier within the time provided by  
2 law for filing answer, demurrer or other pleadings.

3 (2) The satisfaction by the insured of a judgment for such injury or damage shall  
4 not be a condition precedent to the right or duty of the insurance carrier to  
5 make payment on account of such injury or damage;

6 (3) The insurance carrier shall have the right to settle any claim covered by the  
7 policy, and if such settlement is made in good faith, the amount thereof shall  
8 be deductible from the limits of liability specified in subdivision (2) of  
9 subsection (b) of this section;

10 (4) The policy, the written application therefor, if any, and any rider or  
11 endorsement which does not conflict with the provisions of the Article shall  
12 constitute the entire contract between the parties.

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

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

22 (i) Any motor vehicle liability policy may provide for the prorating of the insurance  
23 thereunder with other valid and collectible insurance.

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

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

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

36 (m) Every insurer that sells motor vehicle liability policies subject to the requirements of  
37 subdivisions (b)(3) and (b)(4) of this section ~~shall~~ shall, when issuing or renewing a policy,  
38 give reasonable notice to the named insured, when the policy is issued and renewed, insured of  
39 all of the following:

40 (1) The named insured is required to purchase uninsured motorist bodily injury  
41 coverage, uninsured motorist property damage coverage, and, if applicable,  
42 underinsured motorist bodily injury coverage.

43 (2) The named insured's uninsured motorist bodily injury coverage limits shall  
44 be equal to the highest limits of bodily injury liability coverage for any one  
45 vehicle insured under the policy unless the insured elects to purchase greater  
46 or lesser limits for uninsured motorist bodily injury coverage.

47 (3) The named insured's uninsured motorist property damage coverage limits  
48 shall be equal to the highest limits of property damage liability coverage for  
49 any one vehicle insured under the policy unless the insured elects to  
50 purchase greater or lesser limits for uninsured motorist property damage  
51 coverage.

1           (4) The named insured's underinsured motorist bodily injury coverage limits, if  
2 applicable, shall be equal to the highest limits of bodily injury liability  
3 coverage for any one vehicle insured under the policy unless the insured  
4 elects to purchase greater or lesser limits for underinsured motorist bodily  
5 injury coverage.

6           (5) ~~that the~~ The named insured may purchase uninsured motorist bodily injury  
7 coverage and, if applicable, underinsured motorist coverage with limits up to  
8 one million dollars (\$1,000,000) per person and one million dollars  
9 (\$1,000,000) per accident.

10           An insurer shall be deemed to have given reasonable notice if it includes the following or  
11 substantially similar language on the policy's original and renewal declarations pages or in a  
12 separate notice accompanying the original and renewal declarations pages in at least 10 point  
13 type:

14           "NOTICE: YOU ARE REQUIRED TO PURCHASE UNINSURED MOTORIST BODILY  
15 INJURY COVERAGE, UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE  
16 AND, IN SOME CASES, UNDERINSURED MOTORIST BODILY INJURY COVERAGE.  
17 THIS INSURANCE PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES AND  
18 PROPERTY DAMAGE CAUSED BY THE NEGLIGENCE OF OTHER DRIVERS WHO  
19 MAY HAVE LIMITED OR ONLY MINIMUM COVERAGE OR EVEN NO LIABILITY  
20 INSURANCE. YOU MAY PURCHASE UNINSURED MOTORIST BODILY INJURY  
21 COVERAGE, UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE AND, IF  
22 APPLICABLE, UNDERINSURED MOTORIST COVERAGE WITH LIMITS UP TO ONE  
23 MILLION DOLLARS (\$1,000,000) PER PERSON AND ONE MILLION DOLLARS  
24 (\$1,000,000) PER ACCIDENT. ACCIDENT OR AT SUCH LESSER LIMITS YOU  
25 CHOOSE, BUT IN NO CASE LESS THAN THE MINIMUM LIMITS FOR THE BODILY  
26 INJURY AND PROPERTY DAMAGE COVERAGE THAT ARE REQUIRED FOR YOUR  
27 OWN VEHICLE. IF YOU DO NOT CHOOSE A GREATER OR LESSER LIMIT FOR  
28 UNINSURED MOTORIST (BODILY INJURY AND PROPERTY DAMAGE) AND/OR  
29 UNDERINSURED MOTORIST COVERAGE (BODILY INJURY), THEN THE LIMITS  
30 FOR EACH TYPE OF COVERAGE IN YOUR POLICY WILL BE THE SAME AS  
31 THE HIGHEST LIMITS FOR THAT TYPE OF COVERAGE FOR ANY ONE OF  
32 YOUR OWN VEHICLES INSURED UNDER YOUR POLICY. IF YOU WISH TO  
33 PURCHASE UNINSURED MOTORIST AND, IF APPLICABLE, UNDERINSURED  
34 MOTORIST COVERAGE AT DIFFERENT LIMITS THAN THE LIMITS FOR YOUR OWN  
35 VEHICLE INSURED UNDER THE POLICY, THEN YOU SHOULD THIS INSURANCE  
36 PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES CAUSED BY THE  
37 NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE LIMITED OR ONLY MINIMUM  
38 COVERAGE OR EVEN NO LIABILITY INSURANCE. YOU SHOULD CONTACT YOUR  
39 INSURANCE COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING  
40 THIS ADDITIONAL COVERAGE. DIFFERENT COVERAGE LIMITS. YOU SHOULD  
41 ALSO READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED UNDER  
42 UNINSURED AND UNDERINSURED MOTORIST COVERAGES."

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

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

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