

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 749
Commerce Committee Substitute Adopted 5/7/09
House Committee Substitute Favorable 7/6/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S749-PCS55506-RC-63

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



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

1 facie presumption that the operator of the other motor vehicle was uninsured
2 at the time of the accident with the insured for the purposes of recovery
3 under this provision of the insured's liability insurance policy.

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

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

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

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

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

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

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, be entitled to the proceeds of
40 any settlement for judgment resulting from the exercise of any limits of
41 recovery of that person against any person or organization legally
42 responsible for the bodily injury for which the payment is made, including
43 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, or has become
49 bankrupt, or there is no bond or deposit of money or securities as provided in
50 G.S. 20-279.24 or 20-279.25 in lieu of the bodily injury and property
51 damage liability insurance, or the owner of the motor vehicle has not

1 qualified as a self-insurer under the provisions of G.S. 20-279.33, or a
2 vehicle that is not subject to the provisions of the Motor Vehicle Safety and
3 Financial Responsibility Act; but the term "uninsured motor vehicle" shall
4 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 the provisions of this subsection, no policy of motor
25 vehicle liability insurance applicable solely to commercial motor vehicles as
26 defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be
27 required to provide uninsured motorist coverage. When determining whether
28 a policy is applicable solely to fleet vehicles, the insurer may rely upon the
29 number of vehicles reported by the insured at the time of the issuance of the
30 policy for the policy term in question. In the event of a renewal of the policy,
31 when determining whether a policy is applicable solely to fleet vehicles, the
32 insurer may rely upon the number of vehicles reported by the insured at the
33 time of the renewal of the policy for the policy term in question. Any motor
34 vehicle liability policy that insures both commercial motor vehicles as
35 defined in G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide
36 uninsured motorist coverage in accordance with the provisions of this
37 subsection in amounts equal to the highest limits of bodily injury and
38 property damage liability coverage for any one noncommercial motor
39 vehicle insured under the policy, subject to the right of the insured to
40 purchase ~~higher-greater or lesser~~ uninsured motorist bodily injury liability
41 coverage limits and lesser uninsured motorist property damage coverage
42 limits as set forth in this subsection. For the purpose of the immediately
43 preceding sentence, noncommercial motor vehicle shall mean any motor
44 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 and
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 the provisions of this subsection, no policy of motor
48 vehicle liability insurance applicable solely to commercial motor vehicles as
49 defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be
50 required to provide underinsured motorist coverage. When determining
51 whether a policy is applicable solely to fleet vehicles, the insurer may rely

1 upon the number of vehicles reported by the insured at the time of the
2 issuance of the policy for the policy term in question. In the event of a
3 renewal of the policy, when determining whether a policy is applicable
4 solely to fleet vehicles, the insurer may rely upon the number of vehicles
5 reported by the insured at the time of the renewal of the policy for the policy
6 term in question. Any motor vehicle liability policy that insures both
7 commercial motor vehicles as defined in G.S. 20-4.01(3d) and
8 noncommercial motor vehicles shall provide underinsured motorist coverage
9 in accordance with the provisions of this subsection in an amount equal to
10 the highest limits of bodily injury liability coverage for any one
11 noncommercial motor vehicle insured under the policy, subject to the right
12 of the insured to purchase ~~higher~~ greater or lesser underinsured motorist
13 bodily injury liability coverage limits as set forth in this subsection. For the
14 purpose of the immediately preceding sentence, noncommercial motor
15 vehicle shall mean any motor vehicle that is not a commercial motor vehicle
16 as defined in G.S. 20-4.01(3d), but that is otherwise subject to the
17 requirements of this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49 (4) The named insured's underinsured motorist bodily injury coverage limits, if
50 applicable, shall be equal to the highest limits of bodily injury liability
51 coverage for any one vehicle insured under the policy unless the insured

1 elects to purchase greater or lesser limits for underinsured motorist bodily
2 injury coverage.

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

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

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

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

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

1 **SECTION 2.** This act becomes effective February 1, 2010, and applies to motor
2 vehicle liability insurance policies issued or renewed on or after that date.