

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1040

Short Title: Noncollision MV Accidents.

(Public)

Sponsors: Senator Miller.

Referred to: Judiciary.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PERMIT AN INSURED TO SEEK DAMAGES UNDER UNINSURED
MOTORIST COVERAGE WHEN A NONCOLLISION ACCIDENT IS CAUSED
BY THE ACTIONS OF ANOTHER VEHICLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-279.21(b) reads as rewritten:

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

(1) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted;

(2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named 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: twenty-five thousand dollars (\$25,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, fifty thousand dollars (\$50,000) because of bodily injury to or death of two

1 or more persons in any one accident, and fifteen thousand dollars
2 (\$15,000) because of injury to or destruction of property of others in any
3 one accident; and

- 4 (3) No policy of bodily injury liability insurance, covering liability arising
5 out of the ownership, maintenance, or use of any motor vehicle, shall be
6 delivered or issued for delivery in this State with respect to any motor
7 vehicle registered or principally garaged in this State unless coverage is
8 provided therein or supplemental thereto, under provisions filed with
9 and approved by the Commissioner of Insurance, for the protection of
10 persons insured thereunder who are legally entitled to recover damages
11 from owners or operators of uninsured motor vehicles and hit-and-run
12 motor vehicles because of bodily injury, sickness or disease, including
13 death, resulting therefrom, in an amount not to be less than the financial
14 responsibility amounts for bodily injury liability as set forth in G.S. 20-
15 279.5 nor greater than one million dollars (\$1,000,000), as selected by
16 the policy owner. The provisions shall include coverage for the
17 protection of persons insured thereunder who are legally entitled to
18 recover damages from owners or operators of uninsured motor vehicles
19 because of injury to or destruction of the property of such insured, with
20 a limit in the aggregate for all insureds in any one accident of up to the
21 limits of property damage liability in the owner's policy of liability
22 insurance, and subject, for each insured, to an exclusion of the first one
23 hundred dollars (\$100.00) of such damages. The provision shall further
24 provide that a written statement by the liability insurer, whose name
25 appears on the certification of financial responsibility made by the
26 owner of any vehicle involved in an accident with the insured, that the
27 other motor vehicle was not covered by insurance at the time of the
28 accident with the insured shall operate as a prima facie presumption that
29 the operator of the other motor vehicle was uninsured at the time of the
30 accident with the insured for the purposes of recovery under this
31 provision of the insured's liability insurance policy. The coverage
32 required under this subdivision is not applicable where any insured
33 named in the policy rejects the coverage. An insured named in the
34 policy may select different coverage limits as provided in this
35 subdivision. If the named insured in the policy does not reject uninsured
36 motorist coverage and does not select different coverage limits, the
37 amount of uninsured motorist coverage shall be equal to the highest
38 limit of bodily injury and property damage liability coverage for any
39 one vehicle in the policy. Once the option to reject the uninsured
40 motorist coverage or to select different coverage limits is offered by the
41 insurer, the insurer is not required to offer the option in any renewal,
42 reinstatement, substitute, amended, altered, modified, transfer, or
43 replacement policy unless the named insured makes a written request to

1 exercise a different option. The selection or rejection of uninsured
2 motorist coverage or the failure to select or reject by a named insured is
3 valid and binding on all insureds and vehicles under the policy.
4 Rejection of or selection of different coverage limits for uninsured
5 motorist coverage for policies under the jurisdiction of the North
6 Carolina Rate Bureau shall be made in writing by a named insured on a
7 form promulgated by the Bureau and approved by the Commissioner of
8 Insurance.

9 Where coverage is provided on more than one vehicle insured on the
10 same policy or where the owner or the named insured has more than one
11 policy with coverage under this subdivision, there shall not be permitted
12 any combination of coverage within a policy or where more than one
13 policy may apply to determine the total amount of coverage available.

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

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

1 answer or other pleading as required by law. The failure to post
2 notice to the insurer 60 days in advance of the initiation of suit
3 shall not be grounds for dismissal of the action, but shall
4 automatically extend the time for the filing of an answer or other
5 pleadings to 60 days after the time of service of the summons,
6 complaint, or other process on the insurer.

- 7 b. Where the insured, under the uninsured motorist coverage,
8 claims that he has sustained bodily injury as the result of the
9 negligence of the operator of another motor vehicle or a collision
10 between motor vehicles and asserts that the identity of the
11 operator or owner of a vehicle (other than a vehicle in which the
12 insured is a passenger) cannot be ascertained, the insured may
13 institute an action directly against the insurer: Provided, in that
14 event, the insured, or someone in his behalf, shall report the
15 accident within 24 hours or as soon thereafter as may be
16 practicable, to a police officer, peace officer, other judicial
17 officer, or to the Commissioner of Motor Vehicles. In the event
18 that the accident involved no physical contact with a vehicle
19 operated by an unknown driver the insured shall prove the facts
20 of the accident by clear and convincing evidence, including the
21 testimony of at least one disinterested witness. The insured shall
22 also within a reasonable time give notice to the insurer of his
23 injury, the extent thereof, and shall set forth in the notice the
24 time, date and place of the injury. Thereafter, on forms to be
25 mailed by the insurer within 15 days following receipt of the
26 notice of the accident to the insurer, the insured shall furnish to
27 insurer any further reasonable information concerning the
28 accident and the injury that the insurer requests. If the forms are
29 not furnished within 15 days, the insured is deemed to have
30 complied with the requirements for furnishing information to the
31 insurer. Suit may not be instituted against the insurer in less than
32 60 days from the posting of the first notice of the injury or
33 accident to the insurer at the address shown on the policy or after
34 personal delivery of the notice to the insurer or its agent. The
35 failure to post notice to the insurer 60 days before the initiation
36 of the suit shall not be grounds for dismissal of the action, but
37 shall automatically extend the time for filing of an answer or
38 other pleadings to 60 days after the time of service of the
39 summons, complaint, or other process on the insurer.

40 Provided under this section the term 'uninsured motor vehicle' shall
41 include, but not be limited to, an insured motor vehicle where the
42 liability insurer thereof is unable to make payment with respect to the
43 legal liability within the limits specified therein because of insolvency.

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

8 In the event of payment to any person under the coverage required by
9 this section and subject to the terms and conditions of coverage, the
10 insurer making payment shall, to the extent thereof, be entitled to the
11 proceeds of any settlement for judgment resulting from the exercise of
12 any limits of recovery of that person against any person or organization
13 legally responsible for the bodily injury for which the payment is made,
14 including the proceeds recoverable from the assets of the insolvent
15 insurer.

16 For the purpose of this section, an 'uninsured motor vehicle' shall be a
17 motor vehicle as to which there is no bodily injury liability insurance
18 and property damage liability insurance in at least the amounts specified
19 in subsection (c) of G.S. 20-279.5, or there is that insurance but the
20 insurance company writing the insurance denies coverage thereunder, or
21 has become bankrupt, or there is no bond or deposit of money or
22 securities as provided in G.S. 20-279.24 or 20-279.25 in lieu of the
23 bodily injury and property damage liability insurance, or the owner of
24 the motor vehicle has not qualified as a self-insurer under the provisions
25 of G.S. 20-279.33, or a vehicle that is not subject to the provisions of
26 the Motor Vehicle Safety and Financial Responsibility Act; but the term
27 'uninsured motor vehicle' shall not include:

- 28 a. A motor vehicle owned by the named insured;
- 29 b. A motor vehicle that is owned or operated by a self-insurer
30 within the meaning of any motor vehicle financial responsibility
31 law, motor carrier law or any similar law;
- 32 c. A motor vehicle that is owned by the United States of America,
33 Canada, a state, or any agency of any of the foregoing
34 (excluding, however, political subdivisions thereof);
- 35 d. A land motor vehicle or trailer, if operated on rails or crawler-
36 treads or while located for use as a residence or premises and not
37 as a vehicle; or
- 38 e. A farm-type tractor or equipment designed for use principally off
39 public roads, except while actually upon public roads.

40 For purposes of this section 'persons insured' means the named insured
41 and, while resident of the same household, the spouse of any named
42 insured and relatives of either, while in a motor vehicle or otherwise,
43 and any person who uses with the consent, expressed or implied, of the

1 named insured, the motor vehicle to which the policy applies and a
2 guest in the motor vehicle to which the policy applies or the personal
3 representative of any of the above or any other person or persons in
4 lawful possession of the motor vehicle.

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

38 In any event, the limit of underinsured motorist coverage applicable
39 to any claim is determined to be the difference between the amount paid
40 to the claimant under the exhausted liability policy or policies and the
41 limit of underinsured motorist coverage applicable to the motor vehicle
42 involved in the accident. Furthermore, if a claimant is an insured under
43 the underinsured motorist coverage on separate or additional policies,

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

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

1 upon any such claim in which the underinsured motorist insurer and
2 claimant are joined, payment upon the judgment, unless otherwise
3 agreed to, shall be applied pro rata to the claimant's claim beyond
4 payment by the insurer of the owner, operator or maintainer of the
5 underinsured highway vehicle and the claim of the underinsured
6 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
9 such an amount that, if recovered, would support a claim under
10 underinsured motorist coverage shall give notice of the initiation of the
11 suit to the underinsured motorist insurer as well as to the insurer
12 providing primary liability coverage upon the underinsured highway
13 vehicle. Upon receipt of notice, the underinsured motorist insurer shall
14 have the right to appear in defense of the claim without being named as
15 a party therein, and without being named as a party may participate in
16 the suit as fully as if it were a party. The underinsured motorist insurer
17 may elect, but may not be compelled, to appear in the action in its own
18 name and present therein a claim against other parties; provided that
19 application is made to and approved by a presiding superior court judge,
20 in any such suit, any insurer providing primary liability insurance on the
21 underinsured highway vehicle may upon payment of all of its applicable
22 limits of liability be released from further liability or obligation to
23 participate in the defense of such proceeding. However, before
24 approving any such application, the court shall be persuaded that the
25 owner, operator, or maintainer of the underinsured highway vehicle
26 against whom a claim has been made has been apprised of the nature of
27 the proceeding and given his right to select counsel of his own choice to
28 appear in the action on his separate behalf. If an underinsured motorist
29 insurer, following the approval of the application, pays in settlement or
30 partial or total satisfaction of judgment moneys to the claimant, the
31 insurer shall be subrogated to or entitled to an assignment of the
32 claimant's rights against the owner, operator, or maintainer of the
33 underinsured highway vehicle and, provided that adequate notice of
34 right of independent representation was given to the owner, operator, or
35 maintainer, a finding of liability or the award of damages shall be res
36 judicata between the underinsured motorist insurer and the owner,
37 operator, or maintainer of underinsured highway vehicle.

38 The coverage required under this subdivision shall not be applicable
39 where any insured named in the policy rejects the coverage. An insured
40 named in the policy may select different coverage limits as provided in
41 this subdivision. If the named insured does not reject underinsured
42 motorist coverage and does not select different coverage limits, the
43 amount of underinsured motorist coverage shall be equal to the highest

1 limit of bodily injury liability coverage for any one vehicle in the policy.
2 Once the option to reject underinsured motorist coverage or to select
3 different coverage limits is offered by the insurer, the insurer is not
4 required to offer the option in any renewal, reinstatement, substitute,
5 amended, altered, modified, transfer, or replacement policy unless a
6 named insured makes a written request to exercise a different option.
7 The selection or rejection of underinsured motorist coverage by a named
8 insured or the failure to select or reject is valid and binding on all
9 insureds and vehicles under the policy.

10 Rejection of or selection of different coverage limits for underinsured
11 motorist coverage for policies under the jurisdiction of the North
12 Carolina Rate Bureau shall be made in writing by the named insured on
13 a form promulgated by the Bureau and approved by the Commissioner
14 of Insurance."

15 Section 2. This act is effective when it becomes law.