

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1494

Short Title: Revise UM/UIM Coverage Requirements. (Public)

Sponsors: Representatives Goforth; Insko, Lucas, and Tarleton.

Referred to: Insurance, if favorable, Ways and Means/Broadband Connectivity.

April 13, 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  
34 the Commissioner of Insurance, for the protection of persons insured  
35 ~~thereunder~~ under the policy who are legally entitled to recover damages  
36 from owners or operators of uninsured motor vehicles and hit-and-run motor  
37 vehicles ~~because of bodily injury, sickness or disease, including death,~~



1 ~~resulting therefrom, who cause bodily injury, sickness or disease,~~ with limits  
2 equal to the highest limits of bodily injury liability coverage for any one  
3 vehicle insured under the policy. ~~The~~ Notwithstanding the previous  
4 sentence, the named insured may purchase uninsured motorist bodily injury  
5 coverage with greater or lesser limits, subject to the limitation that in no  
6 event shall uninsured motorist bodily injury coverage limits be less than the  
7 bodily injury liability limits required pursuant to subdivision (2) of this  
8 subsection or exceed one million dollars (\$1,000,000) per person and one  
9 million dollars (\$1,000,000) per accident. The insurer shall notify the named  
10 insured of his or her right to purchase uninsured motorist bodily injury  
11 coverage with greater or lesser limits, when the policy is issued and  
12 renewed, as provided in subsection (m) of this section. The provisions shall  
13 include coverage for the protection of persons insured ~~thereunder~~ under the  
14 policy who are legally entitled to recover damages from owners or operators  
15 of uninsured motor vehicles because of injury to or destruction of the  
16 property of such insured, with a limit in the aggregate for all insureds in any  
17 one accident equal to the highest limits of property damage liability  
18 coverage for any one vehicle insured in the owner's policy of liability  
19 insurance, and subject, for each insured, to an exclusion of the first one  
20 hundred dollars (\$100.00) of such damages. The provision shall further  
21 provide that a written statement by the liability insurer, whose name appears  
22 on the certification of financial responsibility made by the owner of any  
23 vehicle involved in an accident with the insured, that the other motor vehicle  
24 was not covered by insurance at the time of the accident with the insured  
25 shall operate as a prima facie presumption that the operator of the other  
26 motor vehicle was uninsured at the time of the accident with the insured for  
27 the purposes of recovery under this provision of the insured's liability  
28 insurance policy.

29 If a person who is legally entitled to recover damages from the owner or  
30 operator of an uninsured motor vehicle is an insured under the uninsured  
31 motorist coverage of a policy that insures more than one motor vehicle, that  
32 person shall not be permitted to combine the uninsured motorist limit  
33 applicable to any one motor vehicle with the uninsured motorist limit  
34 applicable to any other motor vehicle to determine the total amount of  
35 uninsured motorist coverage available to that person. If a person who is  
36 legally entitled to recover damages from the owner or operator of an  
37 uninsured motor vehicle is an insured under the uninsured motorist coverage  
38 of more than one policy, that person may combine the highest applicable  
39 uninsured motorist limit available under each policy to determine the total  
40 amount of uninsured motorist coverage available to that person. The  
41 previous sentence shall apply only to insurance on nonfleet private passenger  
42 motor vehicles as described in G.S. 58-40-10(1) and (2).

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

- 48 a. A provision that the insurer shall be bound by a final judgment taken  
49 by the insured against an uninsured motorist if the insurer has been  
50 served with copy of summons, complaint or other process in the  
51 action against the uninsured motorist by registered or certified mail,

1 return receipt requested, or in any manner provided by law; provided  
2 however, that the determination of whether a motorist is uninsured  
3 may be decided only by an action against the insurer alone. The  
4 insurer, upon being served as herein provided, shall be a party to the  
5 action between the insured and the uninsured motorist though not  
6 named in the caption of the pleadings and may defend the suit in the  
7 name of the uninsured motorist or in its own name. The insurer, upon  
8 being served with copy of summons, complaint or other pleading,  
9 shall have the time allowed by statute in which to answer, demur or  
10 otherwise plead (whether the pleading is verified or not) to the  
11 summons, complaint or other process served upon it. The consent of  
12 the insurer shall not be required for the initiation of suit by the  
13 insured against the uninsured motorist: Provided, however, no action  
14 shall be initiated by the insured until 60 days following the posting of  
15 notice to the insurer at the address shown on the policy or after  
16 personal delivery of the notice to the insurer or its agent setting forth  
17 the belief of the insured that the prospective defendant or defendants  
18 are uninsured motorists. No default judgment shall be entered when  
19 the insurer has timely filed an answer or other pleading as required  
20 by law. The failure to post notice to the insurer 60 days in advance of  
21 the initiation of suit shall not be grounds for dismissal of the action,  
22 but shall automatically extend the time for the 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 b. Where the insured, under the uninsured motorist coverage, claims  
26 that he has sustained bodily injury as the result of collision between  
27 motor vehicles and asserts that the identity of the operator or owner  
28 of a vehicle (other than a vehicle in which the insured is a passenger)  
29 cannot be ascertained, the insured may institute an action directly  
30 against the insurer: Provided, in that event, the insured, or someone  
31 in his behalf, shall report the accident within 24 hours or as soon  
32 thereafter as may be practicable, to a police officer, peace officer,  
33 other judicial officer, or to the Commissioner of Motor Vehicles. The  
34 insured shall also within a reasonable time give notice to the insurer  
35 of his injury, the extent thereof, and shall set forth in the notice the  
36 time, date and place of the injury. Thereafter, on forms to be mailed  
37 by the insurer within 15 days following receipt of the notice of the  
38 accident to the insurer, the insured shall furnish to insurer any further  
39 reasonable information concerning the accident and the injury that  
40 the insurer requests. If the forms are not furnished within 15 days, the  
41 insured is deemed to have complied with the requirements for  
42 furnishing information to the insurer. Suit may not be instituted  
43 against the insurer in less than 60 days from the posting of the first  
44 notice of the injury or accident to the insurer at the address shown on  
45 the policy or after personal delivery of the notice to the insurer or its  
46 agent. The failure to post notice to the insurer 60 days before the  
47 initiation of the suit shall not be grounds for dismissal of the action,  
48 but shall automatically extend the time for 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            Provided under this section the term "uninsured motor vehicle" shall  
2 include, but not be limited to, an insured motor vehicle where the liability  
3 insurer ~~thereof of the vehicle~~ is unable to make payment with respect to the  
4 legal liability within the limits specified ~~therein~~ by the policy because of  
5 insolvency.

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

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

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

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

44            For purposes of this section "persons insured" means the named insured and,  
45 while resident of the same household, the spouse of any named insured and  
46 relatives of either, while in a motor vehicle or otherwise, and any person  
47 who uses with the consent, expressed or implied, of the named insured, the  
48 motor vehicle to which the policy applies and a guest in the motor vehicle to  
49 which the policy applies or the personal representative of any of the above or  
50 any other person or persons in lawful possession of the motor vehicle.

1           Notwithstanding any language or provision to the contrary, no vehicle  
2           ~~other than a nonfleet private passenger motor vehicle shall be required by~~  
3           ~~this subsection to be covered by uninsured motorist coverage.~~ the provisions  
4           ~~of this subsection, no policy of motor vehicle liability insurance applicable~~  
5           ~~solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or~~  
6           ~~applicable solely to fleet vehicles shall be required to provide uninsured~~  
7           ~~motorist coverage. Any motor vehicle liability policy that insures both~~  
8           ~~commercial motor vehicles as defined in G.S. 20-4.01(3d) and~~  
9           ~~noncommercial motor vehicles shall provide uninsured motorist coverage in~~  
10           ~~accordance with the provisions of this subsection in amounts equal to the~~  
11           ~~highest limits of bodily injury and property damage liability coverage for~~  
12           ~~any one noncommercial motor vehicle insured under the policy, subject to~~  
13           ~~the right of the insured to purchase higher uninsured motorist bodily injury~~  
14           ~~liability coverage limits as set forth in this subsection. For the purpose of the~~  
15           ~~immediately preceding sentence, noncommercial motor vehicle shall mean~~  
16           ~~any motor vehicle that is not a commercial motor vehicle as defined in~~  
17           ~~G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this~~  
18           ~~subsection.~~

- 19           (4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this  
20           subsection, provide underinsured motorist coverage, to be used only with a  
21           policy that is written at limits that exceed those prescribed by subdivision (2)  
22           of this section, with limits equal to the highest limits of bodily injury liability  
23           coverage for any one vehicle insured under the policy. The named insured  
24           may purchase underinsured motorist coverage with greater or lesser limits,  
25           subject to the limitation that in no event shall the underinsured motorist  
26           coverage limits be less than or equal to the bodily injury liability limits  
27           required pursuant to subdivision (2) of this subsection or exceed one million  
28           dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per  
29           accident. The insurer shall notify the named insured of his or her right to  
30           purchase underinsured motorist coverage with greater or lesser limits, when  
31           the policy is issued and renewed, as provided in subsection (m) of this  
32           section. An "uninsured motor vehicle," as described in subdivision (3) of this  
33           subsection, includes an "underinsured highway vehicle," which means a  
34           highway vehicle with respect to the ownership, maintenance, or use of  
35           which, the sum of the limits of liability under all bodily injury liability bonds  
36           and insurance policies applicable at the time of the accident is less than the  
37           applicable limits of underinsured motorist coverage for the vehicle involved  
38           in the accident and insured under the owner's policy. For purposes of an  
39           underinsured motorist claim asserted by a person injured in an accident  
40           where more than one person is injured, a highway vehicle will also be an  
41           "underinsured highway vehicle" if the total amount actually paid to that  
42           person under all bodily injury liability bonds and insurance policies  
43           applicable at the time of the accident is less than the applicable limits of  
44           underinsured motorist coverage for the vehicle involved in the accident and  
45           insured under the owner's policy. Notwithstanding the immediately  
46           preceding sentence, a highway vehicle shall not be an "underinsured motor  
47           vehicle" for purposes of an underinsured motorist claim under an owner's  
48           policy insuring that vehicle unless the owner's policy insuring that vehicle  
49           provides underinsured motorist coverage with limits that are greater than that  
50           policy's bodily injury liability limits. For the purposes of this subdivision,

1 the term "highway vehicle" means a land motor vehicle or ~~trailer~~ ~~other~~  
2 ~~than~~ trailer, but shall not include:

3 (i) a. A farm-type tractor or other vehicle designed for use principally off  
4 public roads and while not upon public ~~roads~~; roads;

5 (ii) b. A vehicle operated on rails or ~~crawler treads~~; crawler-treads; or

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

7 The provisions of subdivision (3) of this subsection shall apply to the  
8 coverage required by this subdivision. Underinsured motorist coverage is  
9 deemed to apply when, by reason of payment of judgment or settlement, all  
10 liability bonds or insurance policies providing coverage for bodily injury  
11 caused by the ownership, maintenance, or use of the underinsured highway  
12 vehicle have been exhausted. Exhaustion of that liability coverage for the  
13 purpose of any single liability claim presented for underinsured motorist  
14 coverage is deemed to occur when either (a) the limits of liability per claim  
15 have been paid upon the claim, or (b) by reason of multiple claims, the  
16 aggregate per occurrence limit of liability has been paid. Underinsured  
17 motorist coverage is deemed to apply to the first dollar of an underinsured  
18 motorist coverage claim beyond amounts paid to the claimant under the  
19 exhausted liability policy.

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

35 An underinsured motorist insurer may at its option, upon a claim  
36 pursuant to underinsured motorist coverage, pay moneys without there  
37 having first been an exhaustion of the liability insurance policy covering the  
38 ownership, use, and maintenance of the underinsured highway vehicle. In  
39 the event of payment, the underinsured motorist insurer shall be either: (a)  
40 entitled to receive by assignment from the claimant any right or (b)  
41 subrogated to the claimant's right regarding any claim the claimant has or  
42 had against the owner, operator, or maintainer of the underinsured highway  
43 vehicle, provided that the amount of the insurer's right by subrogation or  
44 assignment shall not exceed payments made to the claimant by the insurer.  
45 No insurer shall exercise any right of subrogation or any right to approve  
46 settlement with the original owner, operator, or maintainer of the  
47 underinsured highway vehicle under a policy providing coverage against an  
48 underinsured motorist where the insurer has been provided with written  
49 notice before a settlement between its insured and the underinsured motorist  
50 and the insurer fails to advance a payment to the insured in an amount equal  
51 to the tentative settlement within 30 days following receipt of that notice.

1 Further, the insurer shall have the right, at its election, to pursue its claim by  
2 assignment or subrogation in the name of the claimant, and the insurer shall  
3 not be denominated as a party in its own name except upon its own election.  
4 Assignment or subrogation as provided in this subdivision shall not, absent  
5 contrary agreement, operate to defeat the claimant's right to pursue recovery  
6 against the owner, operator, or maintainer of the underinsured highway  
7 vehicle for damages beyond those paid by the underinsured motorist insurer.  
8 The claimant and the underinsured motorist insurer may join their claims in  
9 a single suit without requiring that the insurer be named as a party. Any  
10 claimant who intends to pursue recovery against the owner, operator, or  
11 maintainer of the underinsured highway vehicle for moneys beyond those  
12 paid by the underinsured motorist insurer shall before doing so give notice to  
13 the insurer and give the insurer, at its expense, the opportunity to participate  
14 in the prosecution of the claim. Upon the entry of judgment in a suit upon  
15 any such claim in which the underinsured motorist insurer and claimant are  
16 joined, payment upon the judgment, unless otherwise agreed to, shall be  
17 applied pro rata to the claimant's claim beyond payment by the insurer of the  
18 owner, operator or maintainer of the underinsured highway vehicle and the  
19 claim of the underinsured motorist insurer.

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

50 As consideration for payment of policy limits by a liability insurer on  
51 behalf of the owner, operator, or maintainer of an underinsured motor

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

9 Notwithstanding any language or provision to the contrary, no vehicle  
10 other than a nonfleet private passenger motor vehicle shall be required by  
11 this subsection to be covered by underinsured motorist coverage.~~the~~  
12 ~~provisions of this subsection, no policy of motor vehicle liability insurance~~  
13 ~~applicable solely to commercial motor vehicles as defined in~~  
14 ~~G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to~~  
15 ~~provide underinsured motorist coverage. Any motor vehicle liability policy~~  
16 ~~that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d)~~  
17 ~~and noncommercial motor vehicles shall provide underinsured motorist~~  
18 ~~coverage in accordance with the provisions of this subsection in an amount~~  
19 ~~equal to the highest limits of bodily injury liability coverage for any one~~  
20 ~~noncommercial motor vehicle insured under the policy, subject to the right~~  
21 ~~of the insured to purchase higher underinsured motorist bodily injury~~  
22 ~~liability coverage limits as set forth in this subsection. For the purpose of the~~  
23 ~~immediately preceding sentence, noncommercial motor vehicle shall mean~~  
24 ~~any motor vehicle that is not a commercial motor vehicle as defined in~~  
25 ~~G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this~~  
26 ~~subsection.~~

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

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

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

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

- 49 (1) Except as hereinafter provided, the liability of the insurance carrier with  
50 respect to the insurance required by this Article shall become absolute  
51 whenever injury or damage covered by said motor vehicle liability policy



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

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

48 If the plaintiff initiating an action against the insured has complied with  
49 the provisions of this subsection, then, in such event, the insurer may not  
50 cancel or annul the policy as to such liability and the defense of  
51 noncooperation shall not be available to the insurer: Provided, however,

1 nothing in this section shall be construed as depriving an insurer of its  
2 defenses that the policy was not in force at the time in question, that the  
3 operator was not an "insured" under policy provisions, or that the policy had  
4 been lawfully canceled at the time of the accident giving rise to the cause of  
5 action.

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

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

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

17 (4) The policy, the written application ~~therefor~~ therefor for the policy, if any, and any  
18 rider or endorsement which does not conflict with the provisions of the  
19 Article shall constitute the entire contract between the parties.

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

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

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

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

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

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

43 (m) Every insurer that sells motor vehicle liability policies subject to the requirements of  
44 subdivisions (b)(3) and (b)(4) of this section shall give reasonable notice to the named insured,  
45 when the policy is issued and renewed, that the named insured may purchase uninsured  
46 motorist bodily injury coverage and, if applicable, underinsured motorist coverage with limits  
47 up to one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per  
48 accident. An insurer shall be deemed to have given reasonable notice if it includes the  
49 following or substantially similar language on the policy's original and renewal declarations  
50 pages or in a separate notice accompanying the original and renewal declarations pages in at  
51 least 10 point type:

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

12 Payment of premium for the cost of uninsured or underinsured motorist coverage by or on  
13 behalf of the insured shall create an irrebuttable presumption that the reasonable notice required  
14 by this subsection has been given to the named insured. In addition, evidence of the amount of  
15 premium paid for the cost of uninsured or underinsured motorist coverage shall constitute  
16 irrebuttable proof of the amount of uninsured and underinsured motorist coverage purchased by  
17 the insured.

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

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

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