

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 909\*

Short Title: Insurance Rate Equity.

(Public)

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Sponsors: Representatives McLaughlin; Barbee, Bowman, Church, Creech, Diamont, Easterling, Hasty, Hege, Lineberry, and Thompson.

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Referred to: Commerce.

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April 18, 1991

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE REDUCED INSURANCE RATES FOR REDUCED  
3 COVERAGES.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 20-279.21(b)(4) reads as rewritten:

6 "(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3)  
7 of this subsection, provide underinsured motorist coverage, to be used  
8 only with policies that are written at limits that exceed those prescribed  
9 by subdivision (2) of this section and that afford uninsured motorist  
10 coverage as provided by subdivision (3) of this subsection, in an  
11 amount equal to the policy limits for automobile bodily injury liability  
12 as specified in the owner's ~~policy~~ policy, unless the owner of the  
13 policy selects such lower limits as provided by his insurance carrier or  
14 the underinsured motorist coverage is rejected as provided in this  
15 subdivision. An 'uninsured motor vehicle,' as described in subdivision  
16 (3) of this subsection, includes an 'underinsured highway vehicle,'  
17 which means a highway vehicle with respect to the ownership,  
18 maintenance, or use of which, the sum of the limits of liability under  
19 all bodily injury liability bonds and insurance policies applicable at the  
20 time of the accident is less than the applicable limits of liability under  
21 the owner's policy. For the purposes of this subdivision, the term  
22 'highway vehicle' means a land motor vehicle or trailer other than (i) a  
23 farm-type tractor or other vehicle designed for use principally off

1 public roads and while not upon public roads, (ii) a vehicle operated on  
2 rails or crawler-treads, or (iii) a vehicle while located for use as a  
3 residence or premises. The provisions of subdivision (3) of this  
4 subsection shall apply to the coverage required by this subdivision.  
5 Underinsured motorist coverage shall be deemed to apply when, by  
6 reason of payment of judgment or settlement, all liability bonds or  
7 insurance policies providing coverage for bodily injury caused by the  
8 ownership, maintenance, or use of the underinsured highway vehicle  
9 have been exhausted. Exhaustion of such liability coverage for purpose  
10 of any single liability claim presented for underinsured motorist  
11 coverage shall be deemed to occur when either (a) the limits of  
12 liability per claim have been paid upon such claim, or (b) by reason of  
13 multiple claims, the aggregate per occurrence limit of liability has been  
14 paid. Underinsured motorist coverage shall be deemed to apply to the  
15 first dollar of an underinsured motorist coverage claim beyond  
16 amounts paid to the claimant pursuant to the exhausted liability policy.

17 In any event, the limit of underinsured motorist coverage  
18 applicable to any claim is determined to be the difference between the  
19 amount paid to the claimant pursuant to the exhausted liability policy  
20 and the total limits of the owner's underinsured motorist coverages  
21 provided in the owner's policies of insurance; it being the intent of this  
22 paragraph to provide to the owner, in instances where more than one  
23 policy may apply, the benefit of all limits of liability of underinsured  
24 motorist coverage under all such policies: Provided that this paragraph  
25 shall apply only to nonfleet private passenger motor vehicle insurance  
26 as defined in G.S. 58-131.36(9) and (10).

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

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

23 A party injured by the operation of an underinsured highway  
24 vehicle who institutes a suit for the recovery of moneys for such  
25 injuries and in such an amount that, if recovered, would support a  
26 claim under underinsured motorist coverage shall give notice of the  
27 initiation of the suit to the underinsured motorist insurer as well as to  
28 the insurer providing primary liability coverage upon the underinsured  
29 highway vehicle. Upon receipt of such notice, the underinsured  
30 motorist insurer shall have the right to appear in defense of such claim  
31 without being named as a party therein, and without being named as a  
32 party may participate in such suit as fully as if it were a party. The  
33 underinsured motorist insurer may elect, but may not be compelled, to  
34 appear in such action in its own name and present therein a claim  
35 against other parties; provided that application is made to and  
36 approved by a presiding superior court judge, in any such suit, any  
37 insurer providing primary liability insurance on the underinsured  
38 highway vehicle may upon payment of all of its applicable limits of  
39 liability be released from further liability or obligation to participate in  
40 the defense of such proceeding. However, prior to approving any such  
41 application, the court shall be persuaded that the owner, operator, or  
42 maintainer of the underinsured highway vehicle against whom a claim  
43 has been made has been apprised of the nature of the proceeding and  
44 given his right to select counsel of his own choice to appear in such

1 action on his separate behalf. In the event that an underinsured  
2 motorist insurer, following the approval of such application, pays in  
3 settlement or partial or total satisfaction of judgment moneys to the  
4 claimant, such insurer shall be subrogated to or entitled to an  
5 assignment of the claimant's rights against the owner, operator, or  
6 maintainer of the underinsured highway vehicle and, provided that  
7 adequate notice of right of independent representation was given to  
8 such owner, operator, or maintainer, a finding of liability or the award  
9 of damages shall be **res judicata** between the underinsured motorist  
10 insurer and the owner, operator, or maintainer of underinsured  
11 highway vehicle.

12 The coverage required under this subdivision shall not be  
13 applicable where any insured named in the policy selects lower limits  
14 as are provided by his insurance carrier or rejects the coverage. Such  
15 selection or rejection by an owner of the policy shall be valid and  
16 binding on all insureds and vehicles under the policy.

17 If the named insured rejects the coverage required under this  
18 subdivision, the insurer shall not be required to offer the coverage in  
19 any renewal, reinstatement, substitute, amended, altered, modified,  
20 transfer or replacement policy unless the named insured makes a  
21 written request for the coverage. Rejection of this coverage for  
22 policies issued after October 1, 1986, shall be made in writing by the  
23 named insured on a form promulgated by the North Carolina Rate  
24 Bureau and approved by the Commissioner of Insurance."

25 Sec. 2. Within 60 days after the ratification of this act the North Carolina  
26 Rate Bureau shall make appropriate filings with the Commissioner of Insurance to  
27 reflect the provisions of this act, including a filing to make the multivehicle rate for  
28 underinsured motorist coverage the same per vehicle as the single vehicle rate. Section  
29 1 of this act becomes effective 60 days after approval by the Commissioner of Insurance  
30 of all filings made by the Bureau under this section.

31 Sec. 3. This act is effective upon ratification.