

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 38

Short Title: No "Stacking" of UIM Insurance.

(Public)

Sponsors: Senators Kincaid; and Smith.

Referred to: Judiciary I.

February 7, 1991

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT "STACKING" OF UNDERINSURED MOTORIST COVERAGES.

The General Assembly of North Carolina enacts:

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

"(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with policies that are a policy written at limits that exceed those prescribed by subdivision (2) of this section and that afford uninsured motorist coverage as provided by subdivision (3) of this subsection, in an amount equal to the policy limits for automobile bodily injury liability as specified in the owner's policy. An 'uninsured motor vehicle,' as described in subdivision (3) of this subsection, includes an 'underinsured highway vehicle,' which means a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable to that vehicle at the time of the accident is less than the applicable limits of liability under the owner's policy. For the purposes of this subdivision, the term 'highway vehicle' means a land motor vehicle or trailer other than (i) a farm-type tractor or other vehicle designed for use principally off public roads and while not upon public roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a vehicle while located for use as a residence or premises. The provisions of subdivision (3) of this subsection shall apply to the

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1 coverage required by this subdivision. Underinsured motorist coverage  
2 shall be deemed to apply when, by reason of payment of judgment or  
3 settlement, all liability bonds or insurance policies providing coverage  
4 for bodily injury caused by the ownership, maintenance, or use of the  
5 underinsured highway vehicle have been exhausted. Exhaustion of  
6 such liability coverage for purpose of any single liability claim  
7 presented for underinsured motorist coverage shall be deemed to occur  
8 when either (a) the limits of liability per claim have been paid upon  
9 such claim, or (b) by reason of multiple claims, the aggregate per  
10 occurrence limit of liability has been paid. Underinsured motorist  
11 coverage shall be deemed to apply to the first dollar of an underinsured  
12 motorist coverage claim beyond amounts paid to the claimant pursuant  
13 to the exhausted liability policy.

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

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

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

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

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

11 The coverage required under this subdivision shall not be  
12 applicable where any insured named in the policy rejects the coverage.

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

21 Sec. 2. The Commissioner of Insurance shall hold hearings, pursuant to G.S.  
22 58-2-50, within 90 days after the effective date of this act, to determine the size of the  
23 reduction of motor vehicle liability insurance premiums resulting from the enactment of  
24 Section 1 of this act which is the General Assembly's response to the 1989 North  
25 Carolina Supreme Court case of Sutton v. Aetna Casualty & Surety Co., to prohibit  
26 "stacking" of underinsured motorist coverages.

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