

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 688*
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House Committee Substitute Favorable 6/19/91

Short Title: Insurance Rate Equity.

(Public)

Sponsors:

Referred to:

April 18, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT THE STACKING OF UNINSURED AND
3 UNDERINSURED MOTORIST COVERAGE.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 20-279.21(b)(3) reads as rewritten:
6 "(3) No policy of bodily injury liability insurance, covering
7 liability arising out of the ownership, maintenance, or use of any
8 motor vehicle, shall be delivered or issued for delivery in this State
9 with respect to any motor vehicle registered or principally garaged in
10 this State unless coverage is provided therein or supplemental
11 thereto, ~~in limits for bodily injury or death set forth in subsection (e) of~~
12 ~~G.S. 20-279.5,~~ under provisions filed with and approved by the
13 Commissioner of Insurance, for the protection of persons insured
14 thereunder who are legally entitled to recover damages from owners
15 or operators of uninsured motor vehicles and hit-and-run motor
16 vehicles because of bodily injury, sickness or disease, including
17 death, ~~resulting therefrom; provided, an insured is entitled to secure~~
18 ~~additional coverage up to the limits of bodily injury liability in the owner's~~
19 ~~policy of liability insurance that he carries for the protection of third~~
20 ~~persons therefrom, in an amount not to be less than the financial~~
21 ~~responsibility amounts for bodily injury liability as set forth in G.S.~~
22 ~~20-279.5 nor greater than one million dollars (\$1,000,000), as~~

1 selected by the policy owner. ~~Such~~ The provisions shall include
2 coverage for the protection of persons insured thereunder who are
3 legally entitled to recover damages from owners or operators of
4 uninsured motor vehicles because of injury to or destruction of the
5 property of such insured, with a limit in the aggregate for all
6 insureds in any one accident of up to the limits of property damage
7 liability in the owner's policy of liability insurance, and subject, for
8 each insured, to an exclusion of the first one hundred dollars
9 (\$100.00) of such damages. ~~Such~~ The provision shall further provide
10 that a written statement by the liability insurer, whose name appears
11 on the certification of financial responsibility made by the owner of
12 any vehicle involved in an accident with the insured, that ~~such~~ the
13 other motor vehicle was not covered by insurance at the time of the
14 accident with the insured shall operate as a **prima facie** presumption
15 that the operator of ~~such~~ the other motor vehicle was uninsured at the
16 time of the accident with the insured for the purposes of recovery
17 under this provision of the insured's liability insurance policy. The
18 coverage required under this subdivision ~~shall is not be~~ applicable
19 where any insured named in the policy ~~shall reject~~ rejects the
20 coverage. An insured named in the policy may select different
21 coverage limits as provided in this subdivision. Once the named
22 insured exercises this option, the insurer is not required to offer the
23 option in any renewal, reinstatement, substitute, amended, altered,
24 modified, transfer, or replacement policy unless the named insured
25 makes a written request to exercise a different option. The selection
26 or rejection of uninsured motorist coverage by a named insured is
27 valid and binding on all insureds and vehicles under the policy. If the
28 named insured rejects the coverage required under this subdivision,
29 the insurer shall is not be required to offer the coverage in any
30 renewal, reinstatement, substitute, amended, altered, modified,
31 transfer or replacement policy unless the named insured makes a
32 written request for the coverage. Rejection of this coverage for
33 policies issued after October 1, 1986, shall be made in writing by the
34 named insured on a form promulgated by the North Carolina Rate
35 Bureau and approved by the Commissioner of Insurance.

36 Where coverage is provided on more than one vehicle insured on
37 the same policy or where the owner or the named insured has more
38 than one policy with coverage under this subdivision, there shall not be
39 permitted any combination of coverage within a policy or where more
40 than one policy may apply to determine the total amount of coverage
41 available.

42 In addition to the above requirements relating to uninsured motorist
43 insurance, every policy of bodily injury liability insurance covering
44 liability arising out of the ownership, maintenance or use of any motor

1 vehicle, which policy is delivered or issued for delivery in this State,
2 shall be subject to the following provisions which need not be
3 contained therein.

4 a. A provision that the insurer shall be bound by a final judgment
5 taken by the insured against an uninsured motorist if the insurer
6 has been served with copy of summons, complaint or other
7 process in the action against the uninsured motorist by
8 registered or certified mail, return receipt requested, or in any
9 manner provided by law; provided however, that the
10 determination of whether a motorist is uninsured may be
11 decided only by an action against the insurer alone. The insurer,
12 upon being served as herein provided, shall be a party to the
13 action between the insured and the uninsured motorist though
14 not named in the caption of the pleadings and may defend the
15 suit in the name of the uninsured motorist or in its own name.
16 The insurer, upon being served with copy of summons,
17 complaint or other pleading, shall have the time allowed by
18 statute in which to answer, demur or otherwise plead (whether
19 ~~such~~the pleading is verified or not) to the summons, complaint
20 or other process served upon it. The consent of the insurer shall
21 not be required for the initiation of suit by the insured against
22 the uninsured motorist: Provided, however, no action shall be
23 initiated by the insured until 60 days following the posting of
24 notice to the insurer at the address shown on the policy or after
25 personal delivery of ~~such~~the notice to the insurer or its agent
26 setting forth the belief of the insured that the prospective
27 defendant or defendants are uninsured motorists. No default
28 judgment shall be entered when the insurer has timely filed an
29 answer or other pleading as required by law. The failure to post
30 notice to the insurer 60 days in advance of the initiation of suit
31 shall not be grounds for dismissal of the action, but shall
32 automatically extend the time for the filing of an answer or
33 other pleadings to 60 days after the time of service of the
34 summons, complaint, or other process on the insurer.

35 b. Where the insured, under the uninsured motorist coverage,
36 claims that he has sustained bodily injury as the result of
37 collision between motor vehicles and asserts that the identity of
38 the operator or owner of a vehicle (other than a vehicle in which
39 the insured is a passenger) cannot be ascertained, the insured
40 may institute an action directly against the insurer: Provided, in
41 ~~such~~that event, the insured, or someone in his behalf, shall
42 report the accident within 24 hours or as soon thereafter as may
43 be practicable, to a police officer, peace officer, other judicial
44 officer, or to the Commissioner of Motor Vehicles. The insured

1 shall also within a reasonable time give notice to the insurer of
2 his injury, the extent thereof, and shall set forth in ~~such~~the
3 notice the time, date and place of ~~such~~the injury. Thereafter, on
4 forms to be mailed by the insurer within 15 days following
5 receipt of the notice of the accident to the insurer, the insured
6 shall furnish to insurer ~~such~~any further reasonable information
7 concerning the accident and the injury ~~as~~that the insurer ~~shall~~
8 ~~request~~requests. If ~~such~~the forms are not ~~so~~ furnished within 15
9 days, the insured ~~shall be~~is deemed to have complied with the
10 requirements for furnishing information to the insurer. Suit may
11 not be instituted against the insurer in less than 60 days from
12 the posting of the first notice of ~~such~~the injury or accident to
13 the insurer at the address shown on the policy or after personal
14 delivery of ~~such~~the notice to the insurer or its agent. The failure
15 to post notice to the insurer 60 days ~~in advance of~~before the
16 initiation of the suit shall not be grounds for dismissal of the
17 action, but shall automatically extend the time for filing of an
18 answer or other pleadings to 60 days after the time of service of
19 the summons, complaint, or other process on the insurer.

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

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

31 In the event of payment to any person under the coverage required
32 by this section and subject to the terms and conditions of ~~such~~
33 coverage, the insurer making ~~such~~ payment shall, to the extent thereof,
34 be entitled to the proceeds of any settlement for judgment resulting
35 from the exercise of any limits of recovery of ~~such~~that person against
36 any person or organization legally responsible for the bodily injury for
37 which ~~such~~the payment is made, including the proceeds recoverable
38 from the assets of the insolvent insurer.

39 For the purpose of this section, an 'uninsured motor vehicle' shall
40 be a motor vehicle as to which there is no bodily injury liability
41 insurance and property damage liability insurance in at least the
42 amounts specified in subsection (c) of G.S. 20-279.5, or there is ~~such~~
43 that insurance but the insurance company writing the ~~same~~insurance
44 denies coverage thereunder, or has become bankrupt, or there is no

1 bond or deposit of money or securities as provided in G.S. 20-279.24
 2 or 20-279.25 in lieu of ~~such the~~ bodily injury and property damage
 3 liability insurance, or the owner of ~~such the~~ motor vehicle has not
 4 qualified as a self-insurer under the provisions of G.S. 20-279.33, or a
 5 vehicle that is not subject to the provisions of the Motor Vehicle
 6 Safety and Financial Responsibility Act; but the term 'uninsured motor
 7 vehicle' shall not include:

- 8 a. A motor vehicle owned by the named insured;
 9 b. A motor vehicle ~~which that~~ is owned or operated by a self-
 10 insurer within the meaning of any motor vehicle financial
 11 responsibility law, motor carrier law or any similar law;
 12 c. A motor vehicle ~~which that~~ is owned by the United
 13 States of America, Canada, a state, or any agency of any of
 14 the foregoing (excluding, however, political subdivisions
 15 thereof);
 16 d. A land motor vehicle or trailer, if operated on rails or
 17 crawler-treads or while located for use as a residence or
 18 premises and not as a vehicle; or
 19 e. A farm-type tractor or equipment designed for use
 20 principally off public roads, except while actually upon public
 21 roads.

22 For purposes of this section 'persons insured' means the named insured
 23 and, while resident of the same household, the spouse of any ~~such~~
 24 named insured and relatives of either, while in a motor vehicle or
 25 otherwise, and any person who uses with the consent, expressed or
 26 implied, of the named insured, the motor vehicle to which the policy
 27 applies and a guest in ~~such the~~ motor vehicle to which the policy
 28 applies or the personal representative of any of the above or any other
 29 person or persons in lawful possession of ~~such the~~ motor vehicle."

30 Sec. 2. G.S. 20-279.21(b)(4) reads as rewritten:

- 31 "(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3)
 32 of this subsection, provide underinsured motorist coverage, to be used
 33 only with ~~policies a~~ policy that are is written at limits that exceed those
 34 prescribed by subdivision (2) of this section and that afford uninsured
 35 motorist coverage as provided by subdivision (3) of this subsection, in
 36 an amount equal to the policy limits for not to be less than the financial
 37 responsibility amounts for bodily injury liability as set forth in G.S.
 38 20-279.5 nor greater than one million dollars (\$1,000,000) as selected
 39 by the policy owner. automobile bodily injury liability as specified in the
 40 owner's policy.—An 'uninsured motor vehicle,' as described in
 41 subdivision (3) of this subsection, includes an 'underinsured highway
 42 vehicle,' which means a highway vehicle with respect to the
 43 ownership, maintenance, or use of which, the sum of the limits of
 44 liability under all bodily injury liability bonds and insurance policies

1 applicable at the time of the accident is less than the applicable limits
2 of ~~liability~~ underinsured motorist coverage for the vehicle involved in
3 the accident and insured under the owner's policy. For the purposes of
4 this subdivision, the term 'highway vehicle' means a land motor
5 vehicle or trailer other than (i) a farm-type tractor or other vehicle
6 designed for use principally off public roads and while not upon public
7 roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a
8 vehicle while located for use as a residence or premises. The
9 provisions of subdivision (3) of this subsection shall apply to the
10 coverage required by this subdivision. Underinsured motorist coverage
11 ~~shall be~~ is deemed to apply when, by reason of payment of judgment or
12 settlement, all liability bonds or insurance policies providing coverage
13 for bodily injury caused by the ownership, maintenance, or use of the
14 underinsured highway vehicle have been exhausted. Exhaustion of
15 ~~such that~~ liability coverage for the purpose of any single liability claim
16 presented for underinsured motorist coverage shall be ~~is~~ deemed
17 to occur when either (a) the limits of liability per claim have been paid
18 upon such the claim, or (b) by reason of multiple claims, the aggregate
19 per occurrence limit of liability has been paid. Underinsured motorist
20 coverage ~~shall be~~ is deemed to apply to the first dollar of an
21 underinsured motorist coverage claim beyond amounts paid to the
22 claimant ~~pursuant to~~ under the exhausted liability policy.

23 In any event, the limit of underinsured motorist coverage
24 applicable to any claim is determined to be the difference between the
25 amount paid to the claimant ~~pursuant to~~ under the exhausted liability
26 policy and the ~~total limits of the owner's underinsured motorist coverages~~
27 ~~provided in the owner's policies of insurance; it being the intent of this~~
28 ~~paragraph to provide to the owner, in~~ limit of underinsured motorist
29 coverage applicable to the motor vehicle involved in the accident. If
30 no vehicle described in the policy is involved in the accident, then the
31 limit of underinsured motorist coverage applicable to the claim is
32 determined to be the difference between the amount paid to the
33 claimant under the exhausted liability policy and the limit of
34 underinsured motorist coverage applicable to the one motor vehicle
35 under the policy with the highest limit available. The underinsured
36 motorist limits applicable to any one motor vehicle under a policy shall
37 not be combined with or added to the limits applicable to any other
38 motor vehicle under that policy. In instances where more than one
39 policy may apply, the benefit of all applicable limits of liability of
40 underinsured motorist coverage coverage, as determined using the test
41 set out above, under all such policies; policies shall be available to the
42 owner; Provided provided that this paragraph sentence shall apply only
43 to insurance on nonfleet private passenger motor vehicle insurance

1 vehicles as defined described in G.S. 58-131.36(9) and (10). G.S. 58-40-
2 15(9) and (10).

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

43 A party injured by the operation of an underinsured highway
44 vehicle who institutes a suit for the recovery of moneys for ~~such~~ those

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

32 The coverage required under this subdivision shall not be
33 applicable where any insured named in the policy rejects the coverage.
34 An insured named in the policy may select different coverage limits as
35 provided in this subdivision. Once the named insured exercises this
36 option, the insurer is not required to offer the option in any renewal,
37 reinstatement, substitute, amended, altered, modified, transfer, or
38 replacement policy unless the named insured makes a written request
39 to exercise a different option. The selection or rejection of
40 underinsured motorist coverage by a named insured is valid and
41 binding on all insureds and vehicles under the policy.

42 If the named insured rejects the coverage required under this
43 subdivision, the insurer shall not be required to offer the coverage in
44 any renewal, reinstatement, substitute, amended, altered, modified,

1 transfer or replacement policy unless the named insured makes a
2 written request for the coverage. Rejection of this coverage for
3 policies issued after October 1, 1986, shall be made in writing by the
4 named insured on a form promulgated by the North Carolina Rate
5 Bureau and approved by the Commissioner of Insurance."

6 Sec. 3. Within 60 days after the ratification of this act the North Carolina
7 Rate Bureau shall make appropriate rate and policy form filings with the Commissioner
8 of Insurance to reflect the provisions of this act.

9 Sec. 4. Sections 1 and 2 of this act become effective 60 days after approval
10 by the Commissioner of Insurance of all filings made by the Bureau under Section 3 of
11 this act. The remainder of this act is effective upon ratification. This act shall not affect
12 litigation pending on the effective date of Sections 1 and 2 of this act. This act shall
13 apply only to new and renewal policies written on and after the effective date of
14 Sections 1 and 2 of this act.