

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 688*
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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.

1 20-279.5 nor greater than one million dollars (\$1,000,000), as
2 selected by the policy owner. ~~Such~~ The provisions shall include
3 coverage for the protection of persons insured thereunder who are
4 legally entitled to recover damages from owners or operators of
5 uninsured motor vehicles because of injury to or destruction of the
6 property of such insured, with a limit in the aggregate for all
7 insureds in any one accident of up to the limits of property damage
8 liability in the owner's policy of liability insurance, and subject, for
9 each insured, to an exclusion of the first one hundred dollars
10 (\$100.00) of such damages. ~~Such~~ The provision shall further provide
11 that a written statement by the liability insurer, whose name appears
12 on the certification of financial responsibility made by the owner of
13 any vehicle involved in an accident with the insured, that ~~such~~ the
14 other motor vehicle was not covered by insurance at the time of the
15 accident with the insured shall operate as a **prima facie** presumption
16 that the operator of ~~such~~ the other motor vehicle was uninsured at the
17 time of the accident with the insured for the purposes of recovery
18 under this provision of the insured's liability insurance policy. The
19 coverage required under this subdivision ~~shall is not be~~ is not be applicable
20 where any insured named in the policy ~~shall reject~~ rejects the
21 coverage. An insured named in the policy may select different
22 coverage limits as provided in this subdivision. Once the named
23 insured exercises this option, the insurer is not required to offer the
24 option in any renewal, reinstatement, substitute, amended, altered,
25 modified, transfer, or replacement policy unless the named insured
26 makes a written request to exercise a different option. The selection
27 or rejection of uninsured motorist coverage by a named insured is
28 valid and binding on all insureds and vehicles under the policy. If the
29 named insured rejects the coverage required under this subdivision,
30 the insurer shall is not be required to offer the coverage in any
31 renewal, reinstatement, substitute, amended, altered, modified,
32 transfer or replacement policy unless the named insured makes a
33 written request for the coverage. Rejection of this coverage for
34 policies issued after October 1, 1986, shall be made in writing by the
35 named insured on a form promulgated by the North Carolina Rate
36 Bureau and approved by the Commissioner of Insurance.

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

43 In addition to the above requirements relating to uninsured motorist
44 insurance, every policy of bodily injury liability insurance covering

1 liability arising out of the ownership, maintenance or use of any motor
2 vehicle, which policy is delivered or issued for delivery in this State,
3 shall be subject to the following provisions which need not be
4 contained therein.

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

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

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

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

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

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

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

1 denies coverage thereunder, or has become bankrupt, or there is no
 2 bond or deposit of money or securities as provided in G.S. 20-279.24
 3 or 20-279.25 in lieu of ~~such~~the bodily injury and property damage
 4 liability insurance, or the owner of ~~such~~the motor vehicle has not
 5 qualified as a self-insurer under the provisions of G.S. 20-279.33, or a
 6 vehicle that is not subject to the provisions of the Motor Vehicle
 7 Safety and Financial Responsibility Act; but the term 'uninsured motor
 8 vehicle' shall not include:

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

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

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

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

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

24 In any event, the limit of underinsured motorist coverage
25 applicable to any claim is determined to be the difference between the
26 amount paid to the claimant ~~pursuant to~~ under the exhausted liability
27 policy and the ~~total limits of the owner's underinsured motorist coverages~~
28 ~~provided in the owner's policies of insurance; it being the intent of this~~
29 ~~paragraph to provide to the owner, in~~ limit of underinsured motorist
30 coverage applicable to the motor vehicle involved in the accident. If
31 no vehicle described in the policy is involved in the accident, then the
32 limit of underinsured motorist coverage applicable to the claim is
33 determined to be the difference between the amount paid to the
34 claimant under the exhausted liability policy and the limit of
35 underinsured motorist coverage applicable to the one motor vehicle
36 under the policy with the highest limit available. The underinsured
37 motorist limits applicable to any one motor vehicle under a policy shall
38 not be combined with or added to the limits applicable to any other
39 motor vehicle under that policy. In instances where more than one
40 policy may apply, the benefit of all applicable limits of liability of
41 underinsured motorist coverage coverage, as determined using the test
42 set out above, under all such policies: policies shall be available to the
43 owner; Provided provided that this paragraph sentence shall apply only
44 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 claims arising prior to; nor litigation pending on the effective date of Sections 1 and 2 of
13 this act. This act shall apply only to new and renewal policies written on and after the
14 effective date of Sections 1 and 2 of this act.