

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

1

HOUSE BILL 845

Short Title: Lower Underinsured Motorist Coverage.

(Public)

---

Sponsors: Representatives Beard; and Bowman.

---

Referred to: Commerce.

---

April 17, 1991

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE INSURED OPTIONS FOR LOWER LIMITS OF  
2 UNDERINSURED MOTORIST COVERAGE IN AUTOMOBILE LIABILITY  
3 INSURANCE POLICIES.  
4

5 The General Assembly of North Carolina enacts:

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

7 "(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3)  
8 of this subsection, provide underinsured motorist coverage, to be used  
9 only with policies that are written at limits that exceed those prescribed  
10 by subdivision (2) of this section and that afford uninsured motorist  
11 coverage as provided by subdivision (3) of this subsection, in an  
12 amount equal to the policy limits for automobile bodily injury liability  
13 as specified in the owner's ~~policy~~ policy; unless lower limits are  
14 selected or the coverage is rejected as provided in this subdivision. An  
15 'uninsured motor vehicle,' as described in subdivision (3) of this  
16 subsection, includes an 'underinsured highway vehicle,' which means a  
17 highway vehicle with respect to the ownership, maintenance, or use of  
18 which, the sum of the limits of liability under all bodily injury liability  
19 bonds and insurance policies applicable at the time of the accident is  
20 less than the applicable limits of liability under the owner's policy. For  
21 the purposes of this subdivision, the term 'highway vehicle' means a  
22 land motor vehicle or trailer other than (i) a farm-type tractor or other  
23 vehicle designed for use principally off public roads and while not  
24 upon public roads, (ii) a vehicle operated on rails or crawler-treads, or

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

16 In any event, the limit of underinsured motorist coverage  
17 applicable to any claim is determined to be the difference between the  
18 amount paid to the claimant pursuant to the exhausted liability policy  
19 and the total limits of the owner's underinsured motorist coverages  
20 provided in the owner's policies of insurance; it being the intent of this  
21 paragraph to provide to the owner, in instances where more than one  
22 policy may apply, the benefit of all limits of liability of underinsured  
23 motorist coverage under all such policies: Provided that this paragraph  
24 shall apply only to nonfleet private passenger motor vehicle insurance  
25 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 Such selection or rejection by a named insured shall be valid and  
14 binding on all insureds and vehicles under the policy.

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

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

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