

September 30, 2009

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Personal Automobile Manual Revisions

The Commissioner of Insurance has approved on behalf of all members companies of the North Carolina Rate Bureau, revisions to the Personal Automobile Manual. These revisions are designed to track the changes required as a result of the enactment of Senate Bill 749, which revised the application of the Uninsured and Underinsured Motorist Coverages.

Attached is a copy of Form NC 03 40 02 10 - Notice of Right to Purchase Higher limits of UM/UIM which is also being revised as a result of the enactment of Senate Bill 749.

These changes become effective in accordance with the following Rule of Application:

These changes become effective with respect to new and renewal policies written on or after February 1, 2010.

Please see to it that this circular is brought to the attention of all interested personnel in your company.

Very truly yours,

Wayne B. Hinton

Automobile Manager

WBH:dms

Attachments

A-09-11

14. MISCELLANEOUS COVERAGES

A. Uninsured Motorists Coverage ONLY

1. Owners – (Class Code – Refer to Statistical Plan)

Bodily Injury and Property Damage Uninsured Motorists Coverage shall be afforded under every auto liability policy insuring the owner of a motor vehicle registered or principally garaged in North Carolina.

Exceptions

This coverage shall not apply when a named insured has purchased a policy with Bodily Injury Liability Coverage limits greater than \$30,000/\$60,000.

Uninsured Motorist Coverage Only is available only if the insured has purchased Bodily Injury Liability limits of \$30,000/60,000. The limits of Uninsured Motorist Bodily Injury Coverage shall be \$30,000/\$60,000 unless the insured purchases a higher limit of Uninsured Motorist Bodily Injury Coverage but in no event shall an insurer be required to sell Uninsured Motorists Bodily Injury Coverage at limits that exceed \$1,000,000/\$1,000,000. The limit of Uninsured Motorist Property Damage Coverage shall equal the highest limit of liability for Property Damage Liability Coverage for any one vehicle insured under the policy, provided, however, that (1) the limits shall not be required to exceed \$1,000,000 regardless of whether the highest limits of property damage liability coverage for any one vehicle insured under the policy exceed those limits and (2) a named insured may purchase lesser limits of Uninsured Motorist Property Damage Coverage but not less than the property damage liability limits required by North Carolina's financial responsibility law.

Each time a policy is issued or renewed, the insurer shall notify the named insured as provided in section C. of this Rule.

~~The insurer shall notify the named insured of his right to purchase Uninsured Motorist Bodily Injury Coverage with limits up to \$1,000,000 per person and \$1,000,000 per accident when a policy is issued and when it is renewed. The insurer shall be deemed to have given reasonable notice if it includes Form NC 03 40 01 09 Notice Of Right To Purchase Higher Limits of UM/UIM or substantially similar language as a notice accompanying the original and renewal declarations page or if it includes the same language as the language in said form, or substantially similar language, on the policy's original and renewal declarations page. The language of such Notice shall be in at least 10 point type regardless of the manner provided.~~

a. Rates

The per policy rates for Uninsured Motorists Coverage are as follows:

B.I. UM Coverage

	Single Vehicle* Policy	Multi-Vehicle* Policy
\$ 30/60	\$ 13	\$ 31
50/100	14	33
100/200	16	38
100/300	18	42
300/300	21	50
250/500	23	54
500/500	24	57
500/1,000	26	61
1,000/1,000	28	66

P.D. UM Coverage

	Single Vehicle* Policy	Multi-Vehicle* Policy
\$ 25,000	\$ 2	\$ 5
50,000	3	7
100,000	4	9
250,000	6	14
500,000	8	19
750,000	10	24
1,000,000	11	26

For limits other than those shown, charge the premium for the next higher limit.

* For the purposes of this rule, the term vehicle includes a private passenger auto, motorcycle, golfmobile or other miscellaneous type vehicle.

* These rates are not subject to modification under the provisions of any rating plan or other manual rule.

b. Additional Persons

Bodily Injury Uninsured Motorists Coverage Only may be extended to an executive officer, partner or employee of the named insured provided such additional person does not own an auto.

The charge for each additional person shall be the single car policy rate shown above.

2. Non-Owners – (Class Code 990000)

a. A Named Non-Owner Liability Policy may be extended to provide Uninsured Motorists Coverage. The annual charge per policy shall be the single car policy rate shown above for the limits of coverage selected.

b. Bodily Injury Uninsured Motorists Coverage Only may be afforded to any person who does not own an auto and who is not otherwise afforded Uninsured Motorists Coverage.

Such coverage shall be written for a period of one year or three years. The charge for each person covered shall be the minimum limits single car policy rate multiplied by the following factor:

Policy Term	Factor
One Year	3.50
Three Years	5.50

B. Combined Uninsured/Underinsured Motorists Coverage

1. Owners – (Class Code – Refer to Statistical Plan)

Combined Uninsured/Underinsured Motorists Coverage shall be afforded under every auto liability policy insuring the owner of a motor vehicle registered or principally garaged in North Carolina.

Exceptions

This coverage shall not apply when a named insured has purchased a policy with Bodily Injury Liability Coverage limits not greater than \$30,000/\$60,000.

The limits of Uninsured/Underinsured Motorist Bodily Injury Coverage shall equal the highest limits of liability for Bodily Injury Liability Coverage for any one vehicle insured under the policy, provided, however, that (1) the limits shall not be required to exceed \$1,000,000/\$1,000,000 regardless of whether the highest limits of bodily injury liability coverage for any one vehicle insured under the policy exceed those limits, (2) unless the a named insured may purchases a higher greater or lesser limits, except that the limits must exceed the bodily injury liability limits required by North Carolina's financial responsibility law, and in no event shall an insurer be required to sell combined uninsured/underinsured motorist bodily injury coverage at limits that exceed \$1,000,000/\$1,000,000, and (3) the limits shall be equal to the limits of uninsured motorist bodily injury coverage purchased. of Uninsured/Underinsured Motorist Bodily Injury Coverage. The limit of Uninsured/Underinsured Motorist Property Damage Coverage sold with Combined Uninsured/Underinsured Motorist Bodily Injury Coverage, which is available only on an Uninsured Motorists basis, shall equal the highest limit of liability for Property Damage Liability Coverage for any one vehicle insured under the policy, provided, however, that (1) the limits shall not be required to exceed \$1,000,000 regardless of whether the highest limits of property damage liability coverage for any one vehicle insured under the policy exceed those limits and (2) a named insured may purchase lesser limits of Uninsured Motorist Property Damage Coverage but not less than the property damage liability limits required by North Carolina's financial responsibility law.

Each time a policy is issued or renewed, the insurer shall notify the named insured as provided in section C. of this Rule.

~~The insurer shall notify the named insured of his right to purchase Combined Uninsured/Underinsured Motorist Bodily Injury Coverage with limits up to \$1,000,000 per person and \$1,000,000 per accident when a policy is issued and when it is renewed. The insurer shall be deemed to have given reasonable notice if it includes Form NC 03 40 01 09 Notice Of Right To Purchase Higher Limits of UM/UIM or substantially similar language as a notice accompanying the original and renewal declarations page or if it includes the same language as the language in said form, or substantially similar language, on the policy's original and renewal declarations page. The language of such Notice shall be in at least 10 point type regardless of the manner provided.~~

2. Rates

The per policy rates for Combined Uninsured/Underinsured Motorists Coverage are as follows:

B.I. UM/UIM Coverage

	Single Vehicle* Policy	Multi-Vehicle* Policy
\$ 50/100	\$ 24	\$ 57
100/200	52	123
100/300	68	160
300/300	98	232
250/500	118	278
500/500	169	399
500/1,000	191	450
1,000/1,000	219	517

P.D. UM/UIM Coverage

	Single Vehicle* Policy	Multi-Vehicle* Policy
\$ 25,000	\$ 2	\$ 5
50,000	3	7
100,000	4	9
250,000	6	14
500,000	8	19
750,000	10	24
1,000,000	11	26

For limits other than those shown, charge the premium for the next higher limit.

* For the purposes of this rule, the term vehicle includes a private passenger auto, motorcycle, golfmobile or other miscellaneous type vehicle.

These total rates are not subject to modification under the provisions of any rating plan or other manual rule.

C. Notice

Every insurer that sells motor vehicle liability policies shall, when issuing and renewing a policy, give reasonable notice to the named insured of all of the following:

- (1) The named insured is required to purchase uninsured motorist bodily injury coverage, uninsured motorist property damage coverage, and, if applicable, underinsured motorist bodily injury coverage.
- (2) The named insured's uninsured motorist bodily injury coverage limits shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy unless the insured elects to purchase greater or lesser limits for uninsured motorist bodily injury coverage.
- (3) The named insured's uninsured motorist property damage coverage limits shall be equal to the highest limits of property damage liability coverage for any one vehicle insured under the policy unless the insured elects to purchase lesser limits for uninsured motorist property damage coverage.
- (4) The named insured's underinsured motorist bodily injury coverage limits, if applicable, shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy unless the insured elects to purchase greater or lesser limits for underinsured motorist bodily injury coverage.
- (5) The named insured may purchase uninsured motorist bodily injury coverage and, if applicable, underinsured motorist coverage with limits up to one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident.

~~The insurer shall notify the named insured of his right to purchase Uninsured Motorist Bodily Injury Coverage with limits up to \$1,000,000 per person and \$1,000,000 per accident when a policy is issued and when it is renewed.~~ The insurer shall be deemed to have given reasonable notice if it includes, in at least 12 point type, Form NC 03 40 01 09-Notice Of Right To Purchase Higher Limits of UM/UIM or substantially similar language as a notice accompanying the original and renewal declarations page or if it includes, in at least 12 point type, the same language as the language in said form, or substantially similar language, on the policy's original and renewal declarations page. ~~The language of such Notice shall be in at least 1012 point type regardless of the manner provided.~~

NOTICE OF RIGHT TO PURCHASE HIGHER LIMITS OF UM/UIM

NOTICE: YOU ARE REQUIRED TO PURCHASE UNINSURED MOTORIST BODILY INJURY COVERAGE, UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE AND, IN SOME CASES, UNDERINSURED MOTORIST BODILY INJURY COVERAGE. THIS INSURANCE PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES AND PROPERTY DAMAGE CAUSED BY THE NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE LIMITED OR ONLY MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE. YOU MAY PURCHASE UNINSURED MOTORIST BODILY INJURY COVERAGE AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE WITH LIMITS UP TO ONE MILLION DOLLARS (\$1,000,000) PER PERSON AND ONE MILLION DOLLARS (\$1,000,000) PER ACCIDENT OR SUCH LESSER LIMITS YOU CHOOSE. YOU CANNOT PURCHASE COVERAGE FOR LESS THAN THE MINIMUM LIMITS FOR BODILY INJURY AND PROPERTY DAMAGE COVERAGE THAT ARE REQUIRED FOR YOUR OWN VEHICLE. IF YOU DO NOT CHOOSE A GREATER OR LESSER LIMIT FOR UNINSURED MOTORIST BODILY INJURY COVERAGE, A LESSER LIMIT FOR UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE AND/OR A GREATER OR LESSER LIMIT FOR UNDERINSURED MOTORIST BODILY INJURY COVERAGE, THEN THE LIMITS FOR THE UNINSURED MOTORISTS BODILY INJURY COVERAGE AND IF APPLICABLE THE UNDERINSURED MOTORIST BODILY INJURY COVERAGE WILL BE THE SAME AS THE HIGHEST LIMITS FOR BODILY INJURY LIABILITY COVERAGE FOR ANY ONE OF YOUR OWN VEHICLES INSURED UNDER THE POLICY AND THE LIMITS FOR THE UNINSURED MOTORIST PROPERTY COVERAGE WILL BE THE SAME AS THE HIGHEST LIMITS FOR PROPERTY DAMAGE LIABILITY COVERAGE FOR ANY ONE OF YOUR OWN VEHICLES INSURED UNDER THE POLICY. IF YOU WISH TO PURCHASE UNINSURED MOTORIST AND IF APPLICABLE UNDERINSURED MOTORIST COVERAGE AT DIFFERENT LIMITS THAN THE LIMITS FOR YOUR OWN VEHICLE INSURED UNDER THE POLICY THEN YOU ~~THIS INSURANCE PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES CAUSED BY THE NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE LIMITED OR ONLY MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE.~~ YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING ~~THIS ADDITIONAL COVERAGE.~~ DIFFERENT COVERAGE LIMITS.

YOU SHOULD ALSO READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED UNDER UNINSURED AND UNDERINSURED MOTORIST COVERAGES.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SENATE BILL 749
RATIFIED BILL

AN ACT TO REVISE AND CLARIFY THE REQUIREMENTS FOR UNINSURED AND UNDERINSURED MOTORIST COVERAGE IN MOTOR VEHICLE LIABILITY INSURANCE POLICIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-279.21 reads as rewritten:

"§ 20-279.21. "Motor vehicle liability policy" defined.

(a) A "motor vehicle liability policy" as said term is used in this Article shall mean an owner's or an operator's policy of liability insurance, certified as provided in G.S. 20-279.19 or 20-279.20 as proof of financial responsibility, and issued, except as otherwise provided in G.S. 20-279.20, by an insurance carrier duly authorized to transact business in this State, to or for the benefit of the person named therein as insured.

(b) Such owner's policy of liability insurance:

- (1) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted;
- (2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, or any other persons in lawful possession, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: thirty thousand dollars (\$30,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, sixty thousand dollars (\$60,000) because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars (\$25,000) because of injury to or destruction of property of others in any one accident; and
- (3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting ~~therefrom. therefrom, with limits equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy.~~ The named insured may purchase uninsured motorist bodily injury coverage with greater limits, subject to the limitation that in no event shall uninsured motorist bodily injury coverage limits exceed one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident. The limits of such uninsured motorist bodily injury coverage shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy; provided, however, that (i) the limits shall not exceed one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident regardless of whether the highest limits of bodily injury liability



coverage for any one vehicle insured under the policy exceed those limits and (ii) a named insured may purchase greater or lesser limits, except that the limits shall not be less than the bodily injury liability limits required pursuant to subdivision (2) of this subsection, and in no event shall an insurer be required by this subdivision to sell uninsured motorist bodily injury coverage at limits that exceed one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident. The When the policy is issued and renewed, the insurer shall notify the named insured as provided in subsection (m) of this section. ~~of his or her right to purchase uninsured motorist bodily injury coverage with greater limits, when the policy is issued and renewed, as provided in subsection (m) of this section.~~ The provisions shall include coverage for the protection of persons insured ~~thereunder~~ under the policy who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such ~~insured.~~ insured, with a limit in the aggregate for all insureds in any one accident equal to the highest limits of property damage liability coverage for any one vehicle insured in the owner's policy of liability insurance, and ~~The limits of such uninsured motorist property damage coverage shall be equal to the highest limits of property damage liability coverage for any one vehicle insured under the policy; provided, however, that (i) the limits shall not exceed one million dollars (\$1,000,000) per accident regardless of whether the highest limits of property damage liability coverage for any one vehicle insured under the policy exceed those limits and (ii) a named insured may purchase lesser limits, except that the limits shall not be less than the property damage liability limits required pursuant to subdivision (2) of this subsection. When the policy is issued and renewed, the insurer shall notify the named insured as provided in subsection (m) of this section. For uninsured motorist property damage coverage, the limits purchased by the named insured shall be subject, for each insured, to an exclusion of the first one hundred dollars (\$100.00) of such damages. The provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that the other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a prima facie presumption that the operator of the other motor vehicle was uninsured at the time of the accident with the insured for the purposes of recovery under this provision of the insured's liability insurance policy.~~

If a person who is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of a policy that insures more than one motor vehicle, that person shall not be permitted to combine the uninsured motorist limit applicable to any one motor vehicle with the uninsured motorist limit applicable to any other motor vehicle to determine the total amount of uninsured motorist coverage available to that person. If a person who is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of more than one policy, that person may combine the highest applicable uninsured motorist limit available under each policy to determine the total amount of uninsured motorist coverage available to that person. The previous sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-10(1) and (2).

In addition to the above requirements relating to uninsured motorist insurance, every policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle, which policy is delivered or issued for delivery in this State, shall be subject to the following provisions which need not be contained therein.

- a. A provision that the insurer shall be bound by a final judgment taken by the insured against an uninsured motorist if the insurer has been

served with copy of summons, complaint or other process in the action against the uninsured motorist by registered or certified mail, return receipt requested, or in any manner provided by law; provided however, that the determination of whether a motorist is uninsured may be decided only by an action against the insurer alone. The insurer, upon being served as herein provided, shall be a party to the action between the insured and the uninsured motorist though not named in the caption of the pleadings and may defend the suit in the name of the uninsured motorist or in its own name. The insurer, upon being served with copy of summons, complaint or other pleading, shall have the time allowed by statute in which to answer, demur or otherwise plead (whether the pleading is verified or not) to the summons, complaint or other process served upon it. The consent of the insurer shall not be required for the initiation of suit by the insured against the uninsured motorist: Provided, however, no action shall be initiated by the insured until 60 days following the posting of notice to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent setting forth the belief of the insured that the prospective defendant or defendants are uninsured motorists. No default judgment shall be entered when the insurer has timely filed an answer or other pleading as required by law. The failure to post notice to the insurer 60 days in advance of the initiation of suit shall not be grounds for dismissal of the action, but shall automatically extend the time for the filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

- b. Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury as the result of collision between motor vehicles and asserts that the identity of the operator or owner of a vehicle (other than a vehicle in which the insured is a passenger) cannot be ascertained, the insured may institute an action directly against the insurer: Provided, in that event, the insured, or someone in his behalf, shall report the accident within 24 hours or as soon thereafter as may be practicable, to a police officer, peace officer, other judicial officer, or to the Commissioner of Motor Vehicles. The insured shall also within a reasonable time give notice to the insurer of his injury, the extent thereof, and shall set forth in the notice the time, date and place of the injury. Thereafter, on forms to be mailed by the insurer within 15 days following receipt of the notice of the accident to the insurer, the insured shall furnish to insurer any further reasonable information concerning the accident and the injury that the insurer requests. If the forms are not furnished within 15 days, the insured is deemed to have complied with the requirements for furnishing information to the insurer. Suit may not be instituted against the insurer in less than 60 days from the posting of the first notice of the injury or accident to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent. The failure to post notice to the insurer 60 days before the initiation of the suit shall not be grounds for dismissal of the action, but shall automatically extend the time for filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

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

An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes

insolvent within three years after such an accident. Nothing herein shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to the insured than is provided herein.

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

For the purpose of this section, an "uninsured motor vehicle" shall be a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance in at least the amounts specified in subsection (c) of G.S. 20-279.5, or there is that insurance but the insurance company writing the insurance denies coverage thereunder, or has become bankrupt, or there is no bond or deposit of money or securities as provided in G.S. 20-279.24 or 20-279.25 in lieu of the bodily injury and property damage liability insurance, or the owner of the motor vehicle has not qualified as a self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act; but the term "uninsured motor vehicle" shall not include:

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

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

Notwithstanding the provisions of this subsection, no policy of motor vehicle liability insurance applicable solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to provide uninsured motorist coverage. When determining whether a policy is applicable solely to fleet vehicles, the insurer may rely upon the number of vehicles reported by the insured at the time of the issuance of the policy for the policy term in question. In the event of a renewal of the policy, when determining whether a policy is applicable solely to fleet vehicles, the insurer may rely upon the number of vehicles reported by the insured at the time of the renewal of the policy for the policy term in question. Any motor vehicle liability policy that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide uninsured motorist coverage in accordance with the provisions of this subsection in amounts equal to the highest limits of bodily injury and property damage liability coverage for any one noncommercial motor vehicle insured under the policy, subject to the right of the insured to purchase ~~higher~~ greater or lesser uninsured motorist bodily injury liability coverage limits and lesser uninsured motorist property damage coverage

limits as set forth in this subsection. For the purpose of the immediately preceding sentence, noncommercial motor vehicle shall mean any motor vehicle that is not a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this subsection.

- (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 a policy that is written at limits that exceed those prescribed by subdivision (2) of this subsection, ~~section, with limits equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy. The named insured may purchase underinsured motorist coverage with greater limits, subject to the limitation that in no event shall the underinsured motorist coverage limits exceed one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident. The limits of such underinsured motorist bodily injury coverage shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy; provided, however, that (i) the limits shall not exceed one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident regardless of whether the highest limits of bodily injury liability coverage for any one vehicle insured under the policy exceed those limits, (ii) a named insured may purchase greater or lesser limits, except that the limits shall exceed the bodily injury liability limits required pursuant to subdivision (2) of this subsection, and in no event shall an insurer be required by this subdivision to sell underinsured motorist bodily injury coverage at limits that exceed one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident, and (iii) the limits shall be equal to the limits of uninsured motorist bodily injury coverage purchased pursuant to subdivision (3) of this subsection. When the policy is issued and renewed, the~~ The insurer shall notify the named insured as provided in subsection (m) of this section. ~~his or her right to purchase underinsured motorist coverage with greater limits, when the policy is issued and renewed, as provided in subsection (m) of this section.~~ 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 at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. For purposes of an underinsured motorist claim asserted by a person injured in an accident where more than one person is injured, a highway vehicle will also be an "underinsured highway vehicle" if the total amount actually paid to that person under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. Notwithstanding the immediately preceding sentence, a highway vehicle shall not be an "underinsured motor vehicle" for purposes of an underinsured motorist claim under an owner's policy insuring that vehicle unless the owner's policy insuring that vehicle provides underinsured motorist coverage with limits that are greater than that policy's bodily injury liability limits. 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 coverage required by this subdivision. Underinsured motorist coverage is deemed to apply when, by reason of payment of judgment or settlement, all liability bonds or insurance policies providing coverage for bodily injury caused by the ownership,

maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of that liability coverage for the purpose of any single liability claim presented for underinsured motorist coverage is deemed to occur when either (a) the limits of liability per claim have been paid upon the claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been paid. Underinsured motorist coverage is deemed to apply to the first dollar of an underinsured motorist coverage claim beyond amounts paid to the claimant under the exhausted liability policy.

In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant under the exhausted liability policy or policies and the limit of underinsured motorist coverage applicable to the motor vehicle involved in the accident. Furthermore, if a claimant is an insured under the underinsured motorist coverage on separate or additional policies, the limit of underinsured motorist coverage applicable to the claimant is the difference between the amount paid to the claimant under the exhausted liability policy or policies and the total limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy; provided that this sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-15(9) and (10). The underinsured motorist limits applicable to any one motor vehicle under a policy shall not be combined with or added to the limits applicable to any other motor vehicle under that policy.

An underinsured motorist insurer may at its option, upon a claim pursuant to underinsured motorist coverage, pay moneys without there having first been an exhaustion of the liability insurance policy covering the ownership, use, and maintenance of the underinsured highway vehicle. In the event of payment, the underinsured motorist insurer shall be either: (a) entitled to receive by assignment from the claimant any right or (b) subrogated to the claimant's right regarding any claim the claimant has or had against the owner, operator, or maintainer of the underinsured highway vehicle, provided that the amount of the insurer's right by subrogation or assignment shall not exceed payments made to the claimant by the insurer. No insurer shall exercise any right of subrogation or any right to approve settlement with the original owner, operator, or maintainer of the underinsured highway vehicle under a policy providing coverage against an underinsured motorist where the insurer has been provided with written notice before a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of that notice. Further, the insurer shall have the right, at its election, to pursue its claim by assignment or subrogation in the name of the claimant, and the insurer shall not be denominated as a party in its own name except upon its own election. Assignment or subrogation as provided in this subdivision shall not, absent contrary agreement, operate to defeat the claimant's right to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for damages beyond those paid by the underinsured motorist insurer. The claimant and the underinsured motorist insurer may join their claims in a single suit without requiring that the insurer be named as a party. Any claimant who intends to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for moneys beyond those paid by the underinsured motorist insurer shall before doing so give notice to the insurer and give the insurer, at its expense, the opportunity to participate in the prosecution of the claim. Upon the entry of judgment in a suit upon any such claim in which the underinsured motorist insurer and claimant are joined, payment upon the judgment, unless otherwise agreed to, shall be applied pro rata to the claimant's claim beyond payment by the insurer of the owner, operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys for those injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of notice, the underinsured motorist insurer shall have the right to appear in defense of the claim without being named as a party therein, and without being named as a party may participate in the suit as fully as if it were a party. The underinsured motorist insurer may elect, but may not be compelled, to appear in the action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge, in any such suit, any insurer providing primary liability insurance on the underinsured highway vehicle may upon payment of all of its applicable limits of liability be released from further liability or obligation to participate in the defense of such proceeding. However, before approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in the action on his separate behalf. If an underinsured motorist insurer, following the approval of the application, pays in settlement or partial or total satisfaction of judgment moneys to the claimant, the insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the underinsured highway vehicle and, provided that adequate notice of right of independent representation was given to the owner, operator, or maintainer, a finding of liability or the award of damages shall be res judicata between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle.

As consideration for payment of policy limits by a liability insurer on behalf of the owner, operator, or maintainer of an underinsured motor vehicle, a party injured by an underinsured motor vehicle may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the vehicle any judgment that exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available underinsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing underinsured motorist coverage from pursuing any right of subrogation.

Notwithstanding the provisions of this subsection, no policy of motor vehicle liability insurance applicable solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to provide underinsured motorist coverage. When determining whether a policy is applicable solely to fleet vehicles, the insurer may rely upon the number of vehicles reported by the insured at the time of the issuance of the policy for the policy term in question. In the event of a renewal of the policy, when determining whether a policy is applicable solely to fleet vehicles, the insurer may rely upon the number of vehicles reported by the insured at the time of the renewal of the policy for the policy term in question. Any motor vehicle liability policy that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide underinsured motorist coverage in accordance with the provisions of this subsection in an amount equal to the highest limits of bodily injury liability coverage for any one noncommercial motor vehicle insured under the policy, subject to the right of the insured to purchase ~~higher~~ greater or lesser underinsured motorist bodily injury liability coverage limits as set forth in this subsection. For the purpose of the immediately preceding sentence, noncommercial motor

vehicle shall mean any motor vehicle that is not a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this subsection.

(c) Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, and within 30 days following the date of its delivery to him of any motor vehicle owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this Article as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this Article.

(e) Uninsured or underinsured motorist coverage that is provided as part of a motor vehicle liability policy shall insure that portion of a loss uncompensated by any workers' compensation law and the amount of an employer's lien determined pursuant to G.S. 97-10.2(h) or (j). In no event shall this subsection be construed to require that coverage exceed the applicable uninsured or underinsured coverage limits of the motor vehicle policy or allow a recovery for damages already paid by workers' compensation. The policy need not insure a loss from any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

(1) Except as hereinafter provided, the liability of the insurance carrier with respect to the insurance required by this Article shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy. As to policies issued to insureds in this State under the assigned risk plan or through the North Carolina Motor Vehicle Reinsurance Facility, a default judgment taken against such an insured shall not be used as a basis for obtaining judgment against the insurer unless counsel for the plaintiff has forwarded to the insurer, or to one of its agents, by registered or certified mail with return receipt requested, or served by any other method of service provided by law, a copy of summons, complaint, or other pleadings, filed in the action. The return receipt shall, upon its return to plaintiff's counsel, be filed with the clerk of court wherein the action is pending against the insured and shall be admissible in evidence as proof of notice to the insurer. The refusal of insurer or its agent to accept delivery of the registered mail, as provided in this section, shall not affect the validity of such notice and any insurer or agent of an insurer refusing to accept such registered mail shall be charged with the knowledge of the contents of such notice. When notice has been sent to an agent of the insurer such notice shall be notice to the insurer. The word "agent" as used in this subsection shall include, but shall not be limited to, any person designated by the insurer as its agent for the service of process, any person duly licensed by the insurer in the State as insurance agent, any general agent of the company in the State of North Carolina, and any employee of the company in a managerial or other responsible position, or the North Carolina Commissioner of Insurance; provided, where the return receipt is signed by an employee of the insurer or an employee of an agent for the insurer, shall be deemed for the purposes of this subsection to have been received. The term "agent" as used in this subsection shall not include a producer of record or broker, who forwards an application for insurance to the North Carolina Motor Vehicle Reinsurance Facility.

The insurer, upon receipt of summons, complaint or other process, shall be entitled, upon its motion, to intervene in the suit against its insured as a

party defendant and to defend the same in the name of its insured. In the event of such intervention by an insurer it shall become a named party defendant. The insurer shall have 30 days from the signing of the return receipt acknowledging receipt of the summons, complaint or other pleading in which to file a motion to intervene, along with any responsive pleading, whether verified or not, which it may deem necessary to protect its interest: Provided, the court having jurisdiction over the matter may, upon motion duly made, extend the time for the filing of responsive pleading or continue the trial of the matter for the purpose of affording the insurer a reasonable time in which to file responsive pleading or defend the action. If, after receiving copy of the summons, complaint or other pleading, the insurer elects not to defend the action, if coverage is in fact provided by the policy, the insurer shall be bound to the extent of its policy limits to the judgment taken by default against the insured, and noncooperation of the insured shall not be a defense.

If the plaintiff initiating an action against the insured has complied with the provisions of this subsection, then, in such event, the insurer may not cancel or annul the policy as to such liability and the defense of noncooperation shall not be available to the insurer: Provided, however, nothing in this section shall be construed as depriving an insurer of its defenses that the policy was not in force at the time in question, that the operator was not an "insured" under policy provisions, or that the policy had been lawfully canceled at the time of the accident giving rise to the cause of action.

Provided further that the provisions of this subdivision shall not apply when the insured has delivered a copy of the summons, complaint or other pleadings served on him to his insurance carrier within the time provided by law for filing answer, demurrer or other pleadings.

- (2) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage;
- (3) The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision (2) of subsection (b) of this section;
- (4) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the Article shall constitute the entire contract between the parties.

(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this Article. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(h) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this Article.

(i) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(k) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

(l) A party injured by an uninsured motor vehicle covered under a policy in amounts less than those set forth in G.S. 20-279.5, may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the uninsured vehicle any judgment that exceeds the liability policy limits, as consideration for payment of any applicable policy limits by the insurer where judgment exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available uninsured motorist benefits, unless the terms

of the covenant expressly provide otherwise, and shall not preclude an insurer providing uninsured motorist coverage from pursuing any right of subrogation.

(m) Every insurer that sells motor vehicle liability policies subject to the requirements of subdivisions (b)(3) and (b)(4) of this section ~~shall~~ shall, when issuing and renewing a policy, give reasonable notice to the named insured, when the policy is issued and renewed, insured of all of the following:

- (1) The named insured is required to purchase uninsured motorist bodily injury coverage, uninsured motorist property damage coverage, and, if applicable, underinsured motorist bodily injury coverage.
- (2) The named insured's uninsured motorist bodily injury coverage limits shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy unless the insured elects to purchase greater or lesser limits for uninsured motorist bodily injury coverage.
- (3) The named insured's uninsured motorist property damage coverage limits shall be equal to the highest limits of property damage liability coverage for any one vehicle insured under the policy unless the insured elects to purchase lesser limits for uninsured motorist property damage coverage.
- (4) The named insured's underinsured motorist bodily injury coverage limits, if applicable, shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy unless the insured elects to purchase greater or lesser limits for underinsured motorist bodily injury coverage.
- (5) ~~that the~~ The named insured may purchase uninsured motorist bodily injury coverage and, if applicable, underinsured motorist coverage with limits up to one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident.

An insurer shall be deemed to have given reasonable notice if it includes the following or substantially similar language on the policy's original and renewal declarations pages or in a separate notice accompanying the original and renewal declarations pages in at least 40 12 point type:

"NOTICE: YOU ARE REQUIRED TO PURCHASE UNINSURED MOTORIST BODILY INJURY COVERAGE, UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE AND, IN SOME CASES, UNDERINSURED MOTORIST BODILY INJURY COVERAGE. THIS INSURANCE PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES AND PROPERTY DAMAGE CAUSED BY THE NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE LIMITED OR ONLY MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE. YOU MAY PURCHASE UNINSURED MOTORIST BODILY INJURY COVERAGE AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE WITH LIMITS UP TO ONE MILLION DOLLARS (\$1,000,000) PER PERSON AND ONE MILLION DOLLARS (\$1,000,000) PER ACCIDENT. ACCIDENT OR AT SUCH LESSER LIMITS YOU CHOOSE. YOU CANNOT PURCHASE COVERAGE FOR LESS THAN THE MINIMUM LIMITS FOR THE BODILY INJURY AND PROPERTY DAMAGE COVERAGE THAT ARE REQUIRED FOR YOUR OWN VEHICLE. IF YOU DO NOT CHOOSE A GREATER OR LESSER LIMIT FOR UNINSURED MOTORIST BODILY INJURY COVERAGE, A LESSER LIMIT FOR UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE, AND/OR A GREATER OR LESSER LIMIT FOR UNDERINSURED MOTORIST BODILY INJURY COVERAGE, THEN THE LIMITS FOR THE UNINSURED MOTORIST BODILY INJURY COVERAGE AND, IF APPLICABLE, THE UNDERINSURED MOTORIST BODILY INJURY COVERAGE WILL BE THE SAME AS THE HIGHEST LIMITS FOR BODILY INJURY LIABILITY COVERAGE FOR ANY ONE OF YOUR OWN VEHICLES INSURED UNDER THE POLICY AND THE LIMITS FOR THE UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE WILL BE THE SAME AS THE HIGHEST LIMITS FOR PROPERTY DAMAGE LIABILITY COVERAGE FOR ANY ONE OF YOUR OWN VEHICLES INSURED UNDER THE POLICY. IF YOU WISH TO PURCHASE UNINSURED MOTORIST AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE AT DIFFERENT LIMITS THAN THE LIMITS FOR YOUR OWN VEHICLE INSURED UNDER THE POLICY, THEN YOU SHOULD THIS INSURANCE PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES CAUSED BY THE NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE

~~LIMITED OR ONLY MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE. YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING THIS ADDITIONAL COVERAGE. DIFFERENT COVERAGE LIMITS. YOU SHOULD ALSO READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED UNDER UNINSURED AND UNDERINSURED MOTORIST COVERAGES.~~"

(n) Nothing in this section shall be construed to provide greater amounts of uninsured or underinsured motorist coverage in a liability policy than the insured has purchased from the insurer under this section.

(o) An insurer that fails to comply with subsection (m) of this section is subject to a civil penalty under G.S. 58-2-70."

SECTION 2. This act becomes effective February 1, 2010, and applies to motor vehicle liability insurance policies issued or renewed on or after that date.

In the General Assembly read three times and ratified this the 7th day of August, 2009.

Marc Basnight
President Pro Tempore of the Senate

Joe Hackney
Speaker of the House of Representatives

Beverly E. Perdue
Governor

Approved _____ m. this _____ day of _____, 2009