

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999

# A Bill

SENATE BILL 760

4  
5 By: Senator Russ  
6  
7

## For An Act To Be Entitled

8 "THE MOTOR VEHICLE INSURANCE PREMIUM REDUCTION ACT."

### Subtitle

9 "THE MOTOR VEHICLE INSURANCE PREMIUM  
10 REDUCTION ACT."  
11  
12  
13  
14  
15

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
17

18 SECTION 1. Title. This Act shall be known and may be cited as the  
19 "Motor Vehicle Insurance Premium Reduction Act".  
20

21 SECTION 2. For purposes of this act:

22 (1) "Commissioner" means the Arkansas Insurance Commissioner;

23 (2) "Noneconomic loss" means any loss other than economic loss and  
24 includes but is not limited to pain, suffering, inconvenience, mental anguish,  
25 and other noneconomic damages otherwise recoverable under the laws of this  
26 state; and

27 (3) "Rate reduction day" is the date on which a final and definitive  
28 judgment is rendered in the declaratory judgment proceeding authorized in  
29 section 7 of this act, or, if no suit for declaratory judgment is filed prior  
30 to August 1, 1999, "rate reduction day" is August 1, 1999.  
31

32 SECTION 3. (a) No motor vehicle liability insurance covering liability  
33 arising out of the ownership, maintenance, or use of any motor vehicle shall  
34 be delivered or issued for delivery in this state with respect to any motor  
35 vehicle designed for use on public highways and required to be registered in  
36 this state or as provided in this section unless coverage is provided therein

1 or supplemental thereto, in not less than the limits of bodily injury  
2 liability provided by the policy, under provisions filed with and approved by  
3 the commissioner, for the protection of persons insured thereunder who are  
4 legally entitled to recover nonpunitive damages from owners or operators of  
5 uninsured or underinsured motor vehicles because of bodily injury, sickness,  
6 or disease, including death resulting therefrom; however, the coverage  
7 required under this section is not applicable when any insured named in the  
8 policy either rejects coverage, selects lower limits, or selects economic-only  
9 coverage, in the manner provided in subdivision (b) of this section. In no  
10 event shall the policy limits of an uninsured motorist policy be less than the  
11 minimum liability limits required under the Motor Vehicle Safety  
12 Responsibility Act, unless economic-only coverage is selected as authorized  
13 herein. Such coverage need not be provided in or supplemental to a renewal,  
14 reinstatement, or substitute policy where the named insured has rejected the  
15 coverage or selected lower limits in connection with a policy previously  
16 issued to him by the same insurer or any of its affiliates. The coverage  
17 provided under this section may exclude coverage for punitive or exemplary  
18 damages by the terms of the policy or contract. Insurers may also make  
19 available, at a reduced premium, the coverage provided under this section with  
20 an exclusion for all noneconomic loss. This coverage shall be known as  
21 "economic-only" uninsured motorist coverage.

22 (b) After September 1, 1999, such rejection, selection of lower limits,  
23 or selection of economic-only coverage shall be made only on a form prescribed  
24 by the commissioner. The prescribed form shall be provided by the insurer and  
25 signed by the named insured or his legal representative. The form signed by  
26 the named insured or his legal representative which initially rejects such  
27 coverage, selects lower limits, or selects economic-only coverage shall be  
28 conclusively presumed to become a part of the policy or contract when issued  
29 and delivered, irrespective of whether physically attached thereto. A  
30 properly completed and signed form creates a rebuttable presumption that the  
31 insured knowingly rejected coverage, selected a lower limit, or selected  
32 economic-only coverage. Any form executed prior to the effective date of this  
33 act shall be valid only until the policy renewal date; thereafter, the  
34 rejection, selection of lower limits, or selection of economic-only coverage  
35 shall be on a form prescribed by the commissioner as provided in this section.

36 (c) This section and its requirement for uninsured motorist coverage

1 shall apply to any liability insurance covering any accident, which occurs in  
2 this state and involves a resident of this state.

3 (d) Notwithstanding any contrary provision of this section, an  
4 automobile liability policy written to provide coverage for a school bus may  
5 limit the scope of uninsured motorist liability to only provide liability  
6 coverage for damages incurred by reason of an accident or incident involving  
7 the school bus, or a temporary substitute vehicle, and such limitation shall  
8 limit the uninsured motorist coverage of a named insured in the policy to only  
9 damages incurred by reason of such accident or incident.

10  
11 SECTION 4. (a) Every motor vehicle insurer authorized to transact  
12 business in the State of Arkansas shall notify the commissioner of the  
13 effective dates of each liability policy within fifteen (15) business days  
14 after the date such policy was issued.

15 (b) All such entities shall notify the commissioner when any policy is  
16 terminated, withdrawn, canceled, lapsed, or otherwise made ineffective within  
17 fifteen (15) business days after the date the policy became ineffective.

18 (c) If any cancellation of a motor vehicle liability policy occurs at  
19 the request of the insured, the insurer is not obligated to cancel such policy  
20 earlier than ten (10) business days prior to actual receipt by the insurer of  
21 such request.

22  
23 SECTION 5. (a) There shall be no recovery for the first ten thousand  
24 dollars (\$10,000) of bodily injury and no recovery for the first ten thousand  
25 dollars (\$10,000) of property damage based on any cause or right of action  
26 arising out of a motor vehicle accident, for such injury or damages occasioned  
27 by an owner or operator of a motor vehicle involved in such accident who fails  
28 to own or maintain motor vehicle liability insurance.

29 (b) For purposes of this act, the meaning of "bodily injury" and  
30 "property damage" is governed by the applicable motor vehicle liability  
31 insurance policy or, in the event of security other than an insurance policy,  
32 the meaning of such terms is that which is commonly ascribed thereto.

33 (c) The limitation of recovery provisions of this section do not apply  
34 if the driver of the other vehicle:

35 (1) Is cited for a violation of the Omnibus DWI Act, beginning at  
36 Arkansas Code 5-65-101, as a result of the accident and subsequently is found

1 guilty of, or pleads guilty or nolo contendere to such offense;

2 (2) Intentionally causes the accident;

3 (3) Flees from the scene of the accident; or

4 (4) At the time of the accident, is in furtherance of the  
5 commission of a felony offense.

6 (d) Each person who is involved in an accident in which the other motor  
7 vehicle was not covered by motor vehicle liability insurance and who is found  
8 to be liable for damages to the owner or operator of the other motor vehicle  
9 may assert as an affirmative defense the limitation of recovery provisions of  
10 subsection (a) of this section.

11 (e) If the owner of a motor vehicle, who fails to own or maintain motor  
12 vehicle liability insurance, institutes an action to recover damages in any  
13 amount, regardless of whether such owner or operator is at fault, and is  
14 awarded an amount equal to or less than the minimum amount of motor vehicle  
15 liability insurance, then such owner or operator shall be assessed and held  
16 liable for all court costs incurred by all parties to the action.

17 (f) Each person who applies for a driver's license, registers a motor  
18 vehicle, or operates or owns a motor vehicle in this state is deemed to have  
19 given his consent to be subject to and governed by the provisions of this act.  
20 All persons who apply for the issuance or renewal of a driver's license, motor  
21 vehicle title, or motor vehicle registration shall sign a declaration on a  
22 form developed by the Department of Finance and Administration that states  
23 that the person acknowledges and gives consent to the requirements and  
24 provisions of this act and that the person will comply with all provisions of  
25 this act and the Motor Vehicle Safety Responsibility Act. Proof of whether  
26 the person obtained or signed such declaration is irrelevant to the  
27 application of this act.

28 (g) Nothing in this act shall preclude a passenger in a vehicle from  
29 asserting a claim to recover damages for injury, death, or loss, which he  
30 occasioned, in whole or in part, by the negligence of another person arising  
31 out of the operation or use of a motor vehicle. This section shall not apply  
32 to a passenger who is also the owner of the uninsured motor vehicle involved  
33 in the accident.

34 (h) Notwithstanding any provision of law to the contrary, no insurer  
35 shall lose any rights of subrogation for claims paid under the applicable  
36 insurance policy for the recovery of any sum in excess of the first ten

1 thousand dollars (\$10,000) of bodily injury and the first ten thousand dollars  
2 (\$10,000) of property damages.

3 (i) In claims where no suit is filed, the claimant's insurer shall have  
4 all rights to recover any amount paid by the claimant's insurer on behalf of  
5 the insured for the recovery of any sum in excess of the first ten thousand  
6 dollars (\$10,000) of bodily injury and the first ten thousand dollars  
7 (\$10,000) of property damages.

8  
9 SECTION 6. (a) Every motor vehicle insurer authorized to transact  
10 business in the State of Arkansas shall make a motor vehicle policy rate  
11 filing with the commissioner to reduce its combined rates for bodily injury  
12 liability and property damage liability by a minimum of ten percent (10%),  
13 based upon the average rate in this state on the day prior to "rate reduction  
14 day", unless the motor vehicle insurer can demonstrate at a rate hearing that  
15 such a decrease will result in inadequate rates or the provisions of section  
16 8(b) of this act become applicable.

17 (b) Every motor vehicle insurer authorized to transact business in the  
18 State of Arkansas shall also make a motor vehicle policy rate filing with the  
19 commissioner to reduce its rates for uninsured and underinsured motorist  
20 coverage, for insureds which select a policy which provides economic-only  
21 uninsured motorist coverage, by a minimum of twenty percent (20%), based upon  
22 the average rate of its uninsured and underinsured motorist coverage in this  
23 state on the day prior to "rate reduction day", unless the motor vehicle  
24 insurer can demonstrate at a rate hearing that such a decrease will result in  
25 inadequate rates, or the provisions of section 8(b) of this act become  
26 applicable.

27 (c) Every motor vehicle insurer authorized to transact business in the  
28 State of Arkansas shall file rates for bodily injury liability, property  
29 damage liability, and uninsured motorist coverage with the commissioner no  
30 later than thirty (30) calendar days after "rate reduction day". The  
31 commissioner shall conclusively act on all rate filings within ninety (90)  
32 calendar days after "rate reduction day".

33 (d) The savings provided by this act shall be applicable to an insured  
34 only upon policy renewal or policy issuance.

35 (e) The commissioner shall certify and make available the official  
36 "rate reduction day". If, however, due to unforeseen events or time delays

1 which preclude the filing of rates or the acting thereon by the commissioner,  
2 the commissioner may apply to the Pulaski County Circuit Court for a stay  
3 order suspending the running of all time limits or provisions which are tied  
4 to the "rate reduction day" and the court, for good cause shown, shall grant  
5 such stay order.

6  
7 SECTION 7. Because the General Assembly finds and declares that  
8 questions of law may be raised by some persons with respect to the  
9 constitutionality of some of the provisions of this act, the public welfare  
10 requires that such questions of law be resolved with expedition prior to such  
11 time as its provisions take effect in order to avoid disruption of the orderly  
12 implementation of its provisions. Therefore, the General Assembly finds that  
13 the remedy of declaratory judgment to determine the constitutionality of the  
14 provisions of this act should be immediately made available in order to avoid  
15 confusion by the public. Therefore, any resident of this state may institute  
16 an action in the circuit court of residency seeking a declaratory judgment to  
17 determine the constitutionality of the provisions of this act. The Attorney  
18 General and the commissioner shall be served with a copy of the proceeding and  
19 be entitled to be heard. In the interest of further expediting this  
20 procedure, the courts of this state are urged to minimize all unnecessary  
21 delays and suspend all applicable rules of court in contravention hereof for  
22 this limited purpose.

23  
24 SECTION 8. (a) Except as provided in subsection (b) of this section,  
25 if any provision or item of this act or the application thereof is held to be  
26 invalid or unconstitutional by a final and definitive judgment, such  
27 invalidity shall not affect other provisions, items, or applications of this  
28 act which are not specifically declared to be invalid or unconstitutional and  
29 which can be given effect without the invalid provisions, items, or  
30 applications, and to this end the provisions of this act are hereby declared  
31 severable.

32 (b) Exceptions.

33 (1) If any provision or item of this act or the application  
34 thereof is held to be invalid or unconstitutional by a final and definitive  
35 judgment, the mandatory percentage rate reduction provisions of this act are  
36 also decreed to be invalid; however, each insurer shall still make a rate

1 filing with the commissioner within thirty (30) calendar days after "rate  
2 reduction day" adjusting its rates to reflect the actuarial value, as  
3 determined by the commissioner, with respect to the remaining valid and  
4 constitutional provisions of this act.

5 (2) If the mandatory rate reduction provisions or the actuarial  
6 provisions of this act, or both, are held to be invalid or unconstitutional by  
7 a final and definitive judgment, all other provisions of this act are also  
8 decreed to be invalid.

9  
10 SECTION 9. (a)(1) Sections 3 and 4 of this act shall become effective  
11 one hundred twenty (120) calendar days after "rate reduction day" and shall  
12 apply to all causes of action which occur on or after that date.

13 (2) If, however, during the time prescribed in section 6(c) of  
14 this act, the commissioner approves rates of insurers selling more than  
15 twenty-five percent (25%) of the motor vehicle insurance in this state, as  
16 measured by earned premium volume for the calendar year of 1998, which rates  
17 are not in compliance with the mandatory percentage rate reduction provisions  
18 of this act or, if applicable, the actuarial provision of this act, all as  
19 determined and certified by the commissioner within ten (10) calendar days  
20 after the rate approval, then sections 3 and 4 of this act shall never take  
21 effect.

22 (b) All other sections of this act shall become effective as soon as  
23 possible in accordance with the emergency clause of this act.

24  
25 SECTION 10. All provisions of this act of a general and permanent  
26 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
27 Code Revision Commission shall incorporate the same in the Code.

28  
29 SECTION 11. If any provision of this act or the application thereof to  
30 any person or circumstance is held invalid, such invalidity shall not affect  
31 other provisions or applications of the act which can be given effect without  
32 the invalid provision or application, and to this end the provisions of this  
33 act are declared to be severable.

34  
35 SECTION 12. All laws and parts of laws in conflict with this act are  
36 hereby repealed.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

SECTION 13. EMERGENCY CLAUSE. It is hereby found and determined by the Eighty-second General Assembly that this act should result in the decrease in the cost of motor vehicle insurance in this state and that this act should go into effect as soon as possible in order for the citizens of this state to receive its benefits at the earliest possible date. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.