

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

A Bill

SENATE BILL 831

4
5 By: Senator Everett
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For An Act To Be Entitled

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9 "AN ACT TO CLARIFY THE ARKANSAS CODE TO PROVIDE THAT
10 WHEN AN INSURED MAKES A CLAIM PURSUANT TO THE
11 INSURED' S UNDERINSURED MOTORISTS COVERAGE, THE INSURER
12 MAY NOT DELAY INVESTIGATION AND EVALUATION OF ITS
13 INSURED' S CLAIM; AND FOR OTHER PURPOSES. "
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Subtitle

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16 "TO CLARIFY THE ARKANSAS CODE TO PROVIDE
17 THAT WHEN AN INSURED MAKES A CLAIM
18 PURSUANT TO THE INSURED' S UNDERINSURED
19 MOTORISTS COVERAGE, THE INSURER MAY NOT
20 DELAY INVESTIGATION AND EVALUATION OF
21 ITS INSURED' S CLAIM. "
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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26 SECTION 1. Arkansas Code 23-89-209(a) is amended to read as follows:

27 "23-89-209. Underinsured motorist coverage.

28 (a)(1) No private passenger automobile liability insurance covering
29 liability arising out of the ownership, maintenance, or use of any motor
30 vehicles in this state shall be delivered or issued in this state or issued as
31 to any private passenger automobile principally garaged in this state unless
32 the insured has the opportunity, which he may reject in writing, to purchase
33 underinsured motorist coverage.

34 (2) After a named insured or applicant for insurance rejects
35 underinsured motorist coverage, the insurer or any of its affiliates shall ~~not~~
36 nevertheless be required to notify any insured ~~in any renewal, reinstatement,~~

1 ~~substitute, amended, or replacement policy~~ as to the availability of such
 2 coverage in any reinstatement, substitute, amended, or replacement policy.

3 (3) The coverage shall enable the insured or the insured's legal
 4 representative to recover from the insurer the amount of damages for bodily
 5 injuries to or death of an insured which the insured is legally entitled to
 6 recover from the owner or operator of another motor vehicle whenever the
 7 liability insurance limits of such other owner or operator are less than the
 8 amount of the ~~damages incurred by claim of~~ the insured.

9 (4) Underinsured motorist coverage shall be at least equal to
 10 named insured's liability limits for bodily injury or death and shall be
 11 supplemental to liability coverage. ~~the limits prescribed for bodily injury or~~
 12 ~~death under § 27-19-605.~~

13 (5) Coverage of the insured pursuant to underinsured motorist
 14 coverage shall not be reduced by the tortfeasor's insurance coverage except to
 15 the extent that the injured party would receive compensation in excess of his
 16 damages.

17 (b)(1) Underinsured motorist coverage as described in this section
 18 shall not be available to insureds nor shall insurers be mandated to offer
 19 same unless the insured has elected uninsured motorist coverage as provided by
 20 § 23-89-403.

21 (2) Underinsured motorist coverage shall not be issued without
 22 uninsured motorist coverage being issued in coordination therewith.

23 ~~(c) If a tentative agreement to settle for the liability limits of the~~
 24 ~~owner or operator of the other vehicle has been reached between the insured~~
 25 ~~and such owner or operator, written notice may be given by the insured injured~~
 26 ~~party to his underinsured motorist coverage insurer by certified mail, return~~
 27 ~~receipt requested. Such written notice shall include:~~

28 ~~(1) Written documentation of pecuniary losses incurred, including~~
 29 ~~copies of all medical bills;~~

30 ~~(2) Written authorization or a court order authorizing the~~
 31 ~~underinsured motorist insurer to obtain medical reports from all employers and~~
 32 ~~medical providers; and~~

33 ~~(3) Written confirmation from the tortfeasor's liability insurer~~
 34 ~~as to the amount of the alleged tortfeasor's liability limits and the terms of~~
 35 ~~the tentative settlement, which shall in no event include any component sum~~
 36 ~~representing punitive or exemplary damages; provided, however, that in no~~

1 ~~event shall evidence of the referenced liability limits, the fact that a~~
 2 ~~tentative settlement was reached, or the terms of such tentative settlement be~~
 3 ~~admissible in any civil action with the sole exceptions of:~~

4 ~~(A) Actions by underinsured motorist insurers to enforce~~
 5 ~~subrogation rights as contemplated by this subchapter;~~

6 ~~(B) Actions by first party liability insureds against their~~
 7 ~~insurer to enforce their contract or a settlement hereunder, if any; and~~

8 ~~(C) Actions by first party underinsured motorist insureds~~
 9 ~~against their insurer to enforce their contract or a settlement hereunder.~~

10 ~~(d)(1) Within thirty (30) days of receipt of such written notice, the~~
 11 ~~underinsured motorist insurer may make payment to its insured of an amount~~
 12 ~~equal to the tentative settlement amount agreed to by the owner or operator of~~
 13 ~~the other motor vehicle or his liability insurer.~~

14 ~~(2) In such event, the underinsured motorist insurer shall be~~
 15 ~~entitled to subrogate to its insured's right of recovery against the owner or~~
 16 ~~operator of such other motor vehicle to the extent of such payments and to the~~
 17 ~~extent of any underinsured motorist insurance benefit it pays to its insured.~~

18 ~~(3) If the underinsured motorist insurer fails to pay its insured~~
 19 ~~the amount of the tentative tort settlement within thirty (30) days, the~~
 20 ~~underinsured motorist insurer has no right to the proceeds of any settlement~~
 21 ~~or judgment between its insured and the other owner or operator and/or such~~
 22 ~~owner's or operator's liability insurer, no right to otherwise recoup the~~
 23 ~~amount of the underinsured motorist benefit it may pay from such other owner~~
 24 ~~or operator or his insurer, and no right to refuse payment of its underinsured~~
 25 ~~motorist coverage benefit by reason of the settlement made by its insured.~~

26 ~~(e) In the event that the tortfeasor's motor vehicle liability~~
 27 ~~insurance carrier and the underinsured motorist coverage are provided by the~~
 28 ~~same insurance company, the requirements of subsection (c) and (d) of this~~
 29 ~~section are hereby waived, and the underinsured party may proceed against his~~
 30 ~~underinsured insurance carrier at any time after settlement of the underlying~~
 31 ~~tortfeasor's liability policy claim.~~

32 (c) An insured who has a claim against an underinsured motorist:

33 (1) may file an action directly against his insurance company
 34 without joining the underinsured motorist and litigate all issues of liability
 35 and damage, or

36 (2) may file an action joining both the underinsured motorist and

1 the insurer and litigate all issues of liability and damage, or

2 (3) may file an action against the underinsured motorist without
3 joining the insurance company while giving adequate notice of the filing and
4 pendency of the action to the insurer, or

5 (4) may file an action against the underinsured motorist without
6 giving any notice to the insurance company in which case the insurer is not
7 bound by the judgment.

8 (d) Every insurer writing underinsured motorist coverage in this state
9 has a good faith duty and obligation to investigate and evaluate a claim by an
10 insured prior to the payment of liability coverage by the tortfeasor's company
11 to such insured."

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13 SECTION 2. All provisions of this act of a general and permanent nature
14 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
15 Revision Commission shall incorporate the same in the Code.

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17 SECTION 3. If any provision of this act or the application thereof to
18 any person or circumstance is held invalid, such invalidity shall not affect
19 other provisions or applications of the act which can be given effect without
20 the invalid provision or application, and to this end the provisions of this
21 act are declared to be severable.

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23 SECTION 4. All laws and parts of laws in conflict with this act are
24 hereby repealed.

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26 SECTION 5. EMERGENCY CLAUSE. It is hereby found and determined by the
27 Eighty-second General Assembly that the present insurance laws should be
28 clarified to indicate that once an insured has made a claim on the insured's
29 underinsurance motorist's coverage, that the insurer may not delay
30 investigation and evaluation of its insured's claim simply because its insured
31 has not yet settled for or recovered the liability insurance limits of the
32 underinsured motorist's insurer; that the amendatory language contained herein
33 is designed to remedy the effects of the Arkansas Supreme Court's ruling in
34 the case of State Farm Insurance Co. vs. Thomas, 316 Ark. 345 (1994), which
35 purported to hold that an insurer writing an underinsured motorist policy is
36 not subject to the same requirement of good faith investigation and payment as

1 the issuer of an uninsured motorist policy. Therefore, an emergency is
2 declared to exist and this act being immediately necessary for the
3 preservation of the public peace, health and safety shall become effective on
4 the date of its approval by the Governor. If the bill is neither approved nor
5 vetoed by the Governor, it shall become effective on the expiration of the
6 period of time during which the Governor may veto the bill. If the bill is
7 vetoed by the Governor and the veto is overridden, it shall become effective
8 on the date the last house overrides the veto.

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