

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999  
4

*As Engrossed: S3/26/99*

# A Bill

SENATE BILL 854

5 By: Senator Dowd  
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## For An Act To Be Entitled

9 "AN ACT TO AMEND THE ARKANSAS CODE PERTAINING TO  
10 UNDERINSURED MOTORIST COVERAGE; AND FOR OTHER  
11 PURPOSES. "

## Subtitle

13 "AN ACT TO AMEND THE ARKANSAS CODE  
14 PERTAINING TO UNDERINSURED MOTORIST  
15 COVERAGE. "  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 SECTION 1. Arkansas Code 23-89-203(b) is amended to read as follows:

22 "(b) After a named insured or applicant for insurance rejects this  
23 coverage, the insurer or any of its affiliates shall ~~not~~ nevertheless be  
24 required to notify any insured as to the availability of such coverage in any  
25 ~~renewal, reinstatement, substitute, amended, or replacement policy as to the~~  
26 ~~availability of such coverage.~~ "

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28 SECTION 2. Arkansas Code 23-89-209 is amended to read as follows:

29 "23-89-209. Underinsured motorist coverage.

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

36 (2) After a named insured or applicant for insurance rejects

1 underinsured motorist coverage, the insurer or any of its affiliates shall ~~not~~  
2 nevertheless be required to notify any insured as to the availability of such  
3 coverage in any ~~renewal~~, reinstatement, substitute, amended, or replacement  
4 policy ~~as to the availability of such coverage~~.

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

11 (4) Underinsured motorist coverage shall be at least equal to the  
12 named insured's liability limits prescribed for bodily injury or death ~~under §~~  
13 ~~27-19-605~~.

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

18 (b)(1) Underinsured motorist coverage as described in this section  
19 shall not be available to insureds nor shall insurers be mandated to offer  
20 same unless the insured has elected uninsured motorist coverage as provided by  
21 § 23-89-403.

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

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

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

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

34 (3) Written confirmation from the tortfeasor's liability insurer  
35 as to the amount of the alleged tortfeasor's liability limits and the terms of  
36 the tentative settlement, which shall in no event include any component sum

1 representing punitive or exemplary damages; provided, however, that in no  
2 event shall evidence of the referenced liability limits, the fact that a  
3 tentative settlement was reached, or the terms of such tentative settlement be  
4 admissible in any civil action with the sole exceptions of:

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

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

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

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

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

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

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

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34 SECTION 3. All provisions of this act of a general and permanent nature  
35 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
36 Revision Commission shall incorporate the same in the Code.

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SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 5. All laws and parts of laws in conflict with this act are hereby repealed.

*/s/ Dowd*