

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001

# A Bill

HOUSE BILL 2444

4  
5 By: Representative Ledbetter  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS  
10 CODE CONCERNING UNINSURED AND UNDERINSURED  
11 MOTORIST COVERAGE; AND FOR OTHER PURPOSES.  
12

## Subtitle

13  
14 AN ACT TO AMEND VARIOUS SECTIONS OF THE  
15 ARKANSAS CODE CONCERNING UNINSURED AND  
16 UNDERINSURED MOTORIST COVERAGE.  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code 23-89-203 is amended to read as follows:  
22 23-89-203. Rejection of coverage.

23 (a) The named insured shall have the right to reject in writing all or  
24 any one (1) or more of the coverages enumerated in § 23-89-202.

25 (b) After a named insured or applicant for insurance rejects this  
26 coverage, the insurer or any of its affiliates shall ~~not~~ still be required to  
27 notify any insured as to the availability of the coverage in any renewal,  
28 reinstatement, substitute, amended, or replacement policy ~~as to the~~  
29 ~~availability of such coverage.~~  
30

31 SECTION 2. Arkansas Code 23-89-209 is amended to read as follows:  
32 23-89-209. Underinsured motorist coverage.

33 (a)(1) No private passenger automobile liability insurance covering  
34 liability arising out of the ownership, maintenance, or use of any motor  
35 vehicles in this state shall be delivered or issued in this state or issued  
36 as to any private passenger automobile principally garaged in this state

1 unless the insured has the opportunity, which he may reject in writing, to  
2 purchase underinsured motorist coverage.

3 (2) After a named insured or applicant for insurance rejects  
4 underinsured motorist coverage, the insurer or any of its affiliates shall  
5 ~~not still~~ be required to notify any insured as to the availability of the  
6 coverage in any ~~renewal~~, reinstatement, substitute, amended, or replacement  
7 policy ~~as to the availability of such coverage~~.

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

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

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

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

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

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

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

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

1           ~~(3) Written confirmation from the tortfeasor's liability insurer~~  
 2 ~~as to the amount of the alleged tortfeasor's liability limits and the terms~~  
 3 ~~of the tentative settlement, which shall in no event include any component~~  
 4 ~~sum representing punitive or exemplary damages; provided, however, that in no~~  
 5 ~~event shall evidence of the referenced liability limits, the fact that a~~  
 6 ~~tentative settlement was reached, or the terms of such tentative settlement~~  
 7 ~~be admissible in any civil action with the sole exceptions of:-~~

8                     ~~(A) Actions by underinsured motorist insurers to enforce~~  
 9 ~~subrogation rights as contemplated by this subchapter;-~~

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

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

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

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

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

33           ~~(e) In the event that the tortfeasor's motor vehicle liability~~  
 34 ~~insurance carrier and the underinsured motorist coverage are provided by the~~  
 35 ~~same insurance company, the requirements of subsection (c) and (d) of this~~  
 36 ~~section are hereby waived, and the underinsured party may proceed against his~~

1 ~~underinsured insurance carrier at any time after settlement of the underlying~~  
2 ~~tortfeasor's liability policy claim.~~

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

4 (1) May file an action directly against the insured's insurance  
5 company without joining the underinsured motorist and litigate all issues of  
6 liability and damage;

7 (2) May file an action joining both the underinsured motorist  
8 and the insurer and litigate all issues of liability and damage;

9 (3) May file an action against the underinsured motorist without  
10 joining the insurance company while giving adequate notice of the filing and  
11 pendency of the action to the insurer; or

12 (4) May file an action against the underinsured motorist without  
13 giving any notice to the insurance company in which case the insurer is not  
14 bound by the judgment.

15 (d) Every insurer writing underinsured motorist coverage in this state  
16 has a good faith duty and obligation to investigate and evaluate a claim by  
17 an insured prior to the payment of liability coverage by the tortfeasor's  
18 company to the insured.

19  
20 SECTION 3. Arkansas Code 23-89-403 is amended to read as follows:

21 23-89-403. Bodily injury coverage required.

22 (a)(1) No automobile liability insurance covering liability arising  
23 out of the ownership, maintenance, or use of any motor vehicle shall be  
24 delivered or issued for delivery in this state with respect to any motor  
25 vehicle registered or principally garaged in this state unless coverage is  
26 provided therein or supplemental thereto and is not less than limits  
27 described in § 27-19-605, the named insured's liability limits, under  
28 provisions filed with and approved by the Insurance Commissioner, for the  
29 protection of persons insured thereunder who are legally entitled to recover  
30 damages from owners or operators of uninsured motor vehicles because of  
31 bodily injury, sickness, or disease, including death, resulting therefrom.

32 (2) However, the coverage required to be provided under this  
33 section shall not be applicable where any insured named in the policy shall  
34 reject the coverage, and this rejection shall continue until withdrawn in  
35 writing by the insured.

36 (3) Should a named insured or applicant purchase third-party

1 liability coverage in greater limits than the minimum provided in § 27-19-  
 2 605, the insurer shall have available and the agent shall offer a named  
 3 insured or applicant coverage required under this section in limits up to his  
 4 or her third-party liability limits. No insurer shall be required to offer,  
 5 provide, or make available coverage conforming to this section in connection  
 6 with an excess policy, umbrella policy, or any other policy which does not  
 7 provide primary motor vehicle insurance for liabilities arising out of the  
 8 ownership, maintenance, or use of a specifically identified motor vehicle.  
 9 An insured or applicant not desiring to purchase higher limits shall reject  
 10 the increased limits in writing on the application for insurance coverage,  
 11 although agents must offer the increased limits to all new applicants for  
 12 insurance on and after the passage of this act. The requirement for written  
 13 rejection shall be applicable to new business written on and after January 1,  
 14 2000. For an existing business, insurers shall provide at the next two (2)  
 15 renewals after the passage of this act notice that such increased limits are  
 16 available. Where an existing-named insured has coverage under this section  
 17 less than the insured's third-party liability limits, that coverage shall not  
 18 change on July 30, 1999, unless a named insured requests in writing to  
 19 purchase the higher limits.

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

25  
 26 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the  
 27 General Assembly that the present insurance laws should be clarified to  
 28 indicate that once insured has made a claim on the insured's underinsured  
 29 motorist's coverage; that the insurer may not delay investigation and  
 30 evaluation of its insured's claim simply because its insured has not yet  
 31 settled for or recovered the liability insurance limits of the underinsured  
 32 motorist's insurer; that the amendatory language contained in this act is  
 33 designed to remedy the effects of the Arkansas Supreme Court's ruling in  
 34 State Farm Insurance Co. vs. Thomas, 316 Ark. 345 (1994), which purported to  
 35 hold that an insurer writing an underinsured motorist policy is not subject  
 36 to the same requirement of good faith investigation and payment as the issuer

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

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