

*As Engrossed: 3/16/93 4/8/93*

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**  
4 **By: Senator Beebe**

# A Bill

**SENATE BILL 626**

## For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE SECTION 23-89-209, TO  
9 PROVIDE THAT THE PURCHASER OF UNDERINSURED MOTORIST  
10 COVERAGE BE ENTITLED, AFTER NOTICE, TO RECOVER A SUM EQUAL  
11 TO A TORTFEASOR'S LIABILITY LIMITS FROM HIS OWN FIRST  
12 PARTY UNDERINSURED MOTORIST COVERAGE INSURER WITHOUT  
13 FORFEITING RIGHTS TO HIS UNDERINSURED BENEFITS; TO MAKE  
14 CLEAR THE ORIGINAL LEGISLATIVE INTENT THAT UNDERINSURED  
15 MOTORIST COVERAGE BE OFFERED IN CONJUNCTION WITH UNINSURED  
16 MOTORIST COVERAGE IN PRIVATE PASSENGER AUTOMOBILE  
17 LIABILITY INSURANCE, BUT NOT SEPARATELY; AND FOR OTHER  
18 PURPOSES."

## Subtitle

21 "AN ACT TO FACILITATE RECEIPT OF UNDERINSURED MOTORIST  
22 BENEFITS."

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

26 SECTION 1. Arkansas Code 23-89-209 is hereby amended to read as  
27 follows:

28 "23-89-209. Underinsured motorist coverage.

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

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1 affiliates shall not be required to notify any insured in any renewal,  
2 reinstatement, substitute, amended or replacement policy as to the  
3 availability of such coverage. The coverage shall enable the insured or the  
4 insured's legal representative to recover from the insurer the amount of  
5 *damages for bodily injuries to or death of an insured which the insured is*  
6 *legally entitled to recover from the owner or operator of another motor*  
7 *vehicle whenever the liability insurance limits of such other owner or*  
8 *operator are less than the amount of the damages incurred by the insured.*

9 Underinsured motorist coverage shall be at least equal to the limits  
10 prescribed for bodily injury or death under § 27-19-605. Coverage of the  
11 insured pursuant to underinsured motorist coverage shall not be reduced by the  
12 tortfeasor's insurance coverage except to the extent that the injured party  
13 would receive compensation in excess of his damages.

14 (b) Underinsured motorist coverage as described in this section shall  
15 not be available to insureds nor shall insurers be mandated to offer same  
16 unless the insured has elected uninsured motorist coverage *as provided by*  
17 *Arkansas Code §23-89-403.* Underinsured motorist coverage shall not be issued  
18 without *such* uninsured motorist coverage being issued in coordination  
19 therewith.

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

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

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

30 (3) *Written confirmation from the tortfeasor's liability insurer*  
31 *as to the amount of the alleged tortfeasor's liability limits and the terms of*  
32 *the tentative settlement, which shall in no event include any component sum*  
33 *representing punitive or exemplary damages; provided, however, that with the*  
34 *sole exceptions of:*

35 (i) *actions by underinsured motorist insurers to enforce*

1 subrogation rights as contemplated by this act;  
2                   (ii) actions by first party liability insureds against  
3 their insurer to enforce their contract or a settlement hereunder, if any; and  
4                   (iii) actions by first party underinsured motorist insureds  
5 against their insurer to enforce their contract or a settlement hereunder, in  
6 no event shall evidence of the referenced liability limits, the fact that a  
7 tentative settlement was reached, or the terms of such tentative settlement be  
8 admissible in any civil action.

9           Within thirty (30) days of receipt of such written notice, the  
10 underinsured motorist insurer may make payment to its insured of an amount  
11 equal to the tentative settlement amount agreed to by the owner or operator of  
12 the other motor vehicle or his liability insurer. In such event, the  
13 underinsured motorist insurer shall be entitled to subrogate to its insured's  
14 right of recovery against the owner or operator of such other motor vehicle to  
15 the extent of such payments and to the extent of any underinsured motorist  
16 insurance benefit it pays to its insured. If the underinsured motorist  
17 insurer fails to pay its insured the amount of the tentative tort settlement  
18 within thirty (30) days, the underinsured motorist insurer has no right to the  
19 proceeds of any settlement or judgment between its insured and the other owner  
20 or operator and/or such owner's or operator's liability insurer, no right to  
21 otherwise recoup the amount of the underinsured motorist benefit it may pay  
22 from such other owner or operator or his insurer, and no right to refuse  
23 payment of its underinsured motorist coverage benefit by reason of the  
24 settlement made by its insured."

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26           SECTION 2. The General Assembly finds that full implementation of  
27 underinsured motorist benefits has been hindered in this state by reason of  
28 the fact that the issuers of such coverage have often refused payment of the  
29 benefit when the insured injured party has, knowingly or unknowingly, given a  
30 complete release of the tortfeasor upon receipt of the tortfeasor's liability  
31 limits. While the General Assembly acknowledges and appreciates the  
32 underinsured motorist coverage insurers' right to subrogate against the  
33 tortfeasor for underinsured benefits it may pay to its own first party  
34 insured, the practical effect of such insurer's position (when combined with  
35 zealous protection of the tortfeasor by liability insurers) has been to delay,

1 obstruct, and defeat the timely payment of underinsured motorist benefits.  
2 The General Assembly believes it is in the public interest to require that if  
3 a tortfeasor and his liability insurer have made a tentative settlement for  
4 policy limits, the underinsured insurer must decide within thirty (30) days  
5 whether it:

6 (i) believes subrogation or indemnity rights are worth pursuing, in  
7 which event it must pay its insured the other owner or driver's liability  
8 limits (in addition to the proper portion of their underinsured benefit); or

9 (ii) believes that there is no point in pursuit of subrogation; after  
10 30 days, it will be held to have waived same -- which will allow the injured  
11 party to obtain the other owner or driver's liability limits as well as such  
12 portion of the underinsured benefit as to which he is entitled.

13 The General Assembly also finds that since the enactment of Act 1987,  
14 No. 335, §§1.2 calling for the mandated offer of underinsured motorist  
15 coverage there has been confusion amongst insurers and the general public as  
16 to whether underinsured motorist coverage must be offered separately from the  
17 uninsured motorist coverages. Since the issuance of underinsured motorist  
18 coverage in the absence of uninsured motorist coverage crates "gaps" in  
19 insurance coverage and is inherently misleading, the General Assembly herewith  
20 declares its intent that the two coverages always be offered (and accepted or  
21 rejected) in a coordinated package.

22  
23 *SECTION 3. The notice to policyholders regarding the right to accept or*  
24 *reject he underinsured motorist coverage as required by Arkansas Code §23-89-*  
25 *209 applies to new policies issued on and after July 1, 1993 and to policies*  
26 *existing on the effective date of this act but only from and after their first*  
27 *renewal on or after January 1, 1994.*

28  
29 *SECTION 4. All provisions of this act of a general and permanent nature*  
30 *are amendatory to the Arkansas Code of 1987 and the Arkansas Code Revision*  
31 *Commission shall incorporate the same in the Code.*

32  
33 *SECTION 5. If any provision of this act or the application thereof to*  
34 *any person or circumstance is held invalid, such invalidity shall not affect*  
35 *other provisions or applications of the act which can be given effect without*

1 the invalid provision or application, and this end the provisions of this act  
2 are declared to be severable.

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4 SECTION 6. All laws and parts of laws in conflict with the act are  
5 hereby declared repealed.

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7 SECTION 7. An emergency is hereby declared to exist and this act being  
8 necessary for the preservation of the public peace, health and safety shall be  
9 in full force and effect from and after its passage and approval.

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*/s/Senator Beebe*

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