

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

As Engrossed: H3/4/97

# A Bill

HOUSE BILL 1818

4  
5 By: Representative Vess

## For An Act To Be Entitled

9 "AN ACT TO CLARIFY THE ARKANSAS CODE TO PROVIDE THAT WHEN  
10 AN INSURED MAKES A CLAIM PURSUANT TO THE INSURED S  
11 UNDERINSURED MOTORISTS COVERAGE THE INSURER MAY NOT DELAY  
12 INVESTIGATION AND EVALUATION OF ITS INSURED S CLAIM UNTIL  
13 SUCH TIME AS ITS INSURED HAS SETTLED OR RECOVERED THE  
14 LIABILITY POLICY LIMITS OF THE UNDERINSURED MOTORISTS  
15 LIABILITY COVERAGE; AND FOR OTHER PURPOSES."

## Subtitle

17  
18 "CLARIFYING THE ARKANSAS CODE REGARDING  
19 UNDERINSURED MOTORIST COVERAGE."

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

22  
23 SECTION 1. Arkansas Code 23-89-209(a)(3) and (4) are amended to read as  
24 follows:

25 "(3) The coverage shall enable the insured or the insured's legal  
26 representative to recover from the insurer the amount of damages for bodily  
27 injuries to or death of an insured which the insured is legally entitled to  
28 recover from the owner or operator of another motor vehicle whenever the  
29 liability insurance limits of such other owner or operator are less than the  
30 amount of the ~~damages incurred by the insured~~ claim of the person or persons  
31 making such claim, regardless of the amount of coverage of either of the  
32 parties in relation to each other.

33 (4) Underinsured motorist coverage shall be at least equal to the  
34 limits prescribed for bodily injury or death under ~~§ 27-19-605~~ and shall be  
35 supplemental to liability coverage.

36

1           SECTION 2. Arkansas Code 23-89-209(a) is amended by inserting two (2)  
2 additional paragraphs at the end thereof to read as follows:

3           "(6) An insured who has a claim against an uninsured motorist may  
4 either file an action directly against his insurance company without joining  
5 the underinsured motorist and litigate all issues of liability and damage, or  
6 may file an action joining both the underinsured motorist and the insurer and  
7 litigate all issues of liability and damage, or may file an action against the  
8 underinsured motorist without joining the insurance company, but giving  
9 adequate notice of the filing and pendency of the action to the insurer, or  
10 may file an action against the underinsured motorist without giving any notice  
11 to the insurance company in which case the insurer is not bound by the  
12 judgment.

13           (7) Every insurer writing underinsured motorist coverage in this  
14 state has a good faith duty and obligation to investigate and evaluate a claim  
15 by an insured prior to the payment of liability coverage by the tortfeasors  
16 company to such insured. Whenever an insured is injured and asserts a claim,  
17 the insurer shall have a reasonable time to investigate, but if the insurer  
18 elects to deny the claim and suit is then filed, then the insurer shall be  
19 subject to the provisions of A.C.A. § 23-79-208 et seq., at they may apply."

20  
21           SECTION 2. All provisions of this act of a general and permanent nature  
22 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
23 Revision Commission shall incorporate the same in the Code.

24  
25           SECTION 3. If any provision of this act or the application thereof to  
26 any person or circumstance is held invalid, such invalidity shall not affect  
27 other provisions or applications of the act which can be given effect without  
28 the invalid provision or application, and to this end the provisions of this  
29 act are declared to be severable.

30  
31           SECTION 4. All laws and parts of laws in conflict with this act are  
32 hereby repealed.

33  
34           SECTION 5. EMERGENCY. It is found and determined by the General  
35 Assembly of the State of Arkansas that the present insurance laws should be  
36 clarified to indicate that once an insured has made a claim on the insureds

1 underinsurance motorists coverage that the insurer may not delay  
2 investigation and evaluation of its insureds claim simply because its insured  
3 has not yet settled for or recovered the liability insurance limits of the  
4 underinsured motorists insurer; that the amendatory language contained herein  
5 is designed to remedy the effects of the Arkansas Supreme Courts ruling in  
6 the case of State Farm Insurance Co. vs. Thomas, 316 Ark. 345(1994) which  
7 purported to hold that an insurer writing an underinsured motorist policy is  
8 not subject to the same requirement of investigation and payment as the issuer  
9 of an uninsured motorist policy. Therefore an emergency is declared to exist  
10 and this act being immediately necessary for the preservation of the public  
11 peace, health and safety shall become effective on the date of its approval by  
12 the Governor. If the bill is neither approved nor vetoed by the Governor, it  
13 shall become effective on the expiration of the period of time during which  
14 the Governor may veto the bill. If the bill is vetoed by the Governor and the  
15 veto is overridden, it shall become effective on the date the last house  
16 overrides the veto.

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

/s/Rep. Vess