

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

# A Bill

**SENATE BILL 85**

## For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF THE TRADE PRACTICES  
9 ACT OF THE ARKANSAS INSURANCE CODE, ARKANSAS CODE SECTIONS  
10 23-66-201 THROUGH 23-66-316; AND FOR OTHER PURPOSES."

## Subtitle

13 "AN ACT TO AMEND VARIOUS SECTIONS OF THE TRADE PRACTICES  
14 ACT OF THE ARKANSAS INSURANCE CODE."

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

18 SECTION 1. Arkansas Code 23-66-206 (9) is amended to read as follows:  
19 "23-66-206. Unfair methods of competition and unfair or deceptive acts  
20 or practices defined.

21 (9) Unfair claims settlement practices are committing or performing  
22 any of the following:

23 (A) Misrepresenting pertinent facts or insurance policy or contract  
24 provisions relating to coverages at issue;

25 (B) Failing to acknowledge and act reasonably and promptly upon  
26 communications with respect to claims arising under insurance policies;

27 (C) Failing to adopt and implement reasonable standards for the prompt  
28 investigation of claims arising under insurance policies;

29 (D) Refusing to pay claims without conducting a reasonable  
30 investigation based upon all available information;

31 (E) Failing to affirm or deny coverage of claims within a reasonable  
32 time after proof of loss statements have been completed;

33 (F) Not attempting in good faith to effectuate prompt, fair, and  
34 equitable settlements of claims in which liability has become reasonably  
35 clear;

1 (G) Attempting to settle claims on the basis of an application which  
2 was altered without notice to, or knowledge or consent of, the insured;

3 (H) Making claim payments to policyholders or beneficiaries not  
4 accompanied by a statement setting forth the coverage under which payments are  
5 being made;

6 (I) Delaying the investigation or payment of claims by requiring an  
7 insured or claimant, or the physician of either, to submit a preliminary claim  
8 report and then requiring the subsequent submission of formal proof of loss  
9 forms, both of which submissions contain substantially the same information;

10 (J) Failing to promptly provide a reasonable explanation of the basis  
11 in the insurance policy in relation to the facts of applicable law for denial  
12 of a claim or for the offer of a compromise settlement;

13 (K) Compelling insureds to institute litigation to recover amounts due  
14 under an insurance policy by offering substantially less than the amounts  
15 ultimately recovered in actions brought by those insureds;

16 (L) Attempting to settle a claim for less than the amount to which a  
17 reasonable man would have believed he was entitled by reference to written or  
18 printed advertising material accompanying or made part of an application;

19 (M) Making known to insureds or claimants a policy of appealing from  
20 arbitration awards in favor of insureds or claimants for the purpose of  
21 compelling them to accept settlements or compromises less than the amount  
22 awarded in arbitration;

23 (N) Failing to promptly settle claims, where liability has become  
24 reasonably clear, under one (1) portion of the insurance policy coverage in  
25 order to influence settlements under other portions of the insurance policy  
26 coverage; and

27 (O) *Requiring as a condition of payment of a claim that repairs must be*  
28 *made by a particular contractor, supplier, or repair shop;"*

29 SECTION 2. Arkansas Code 23-66-206 (11)(B) is amended to read as  
30 follows:

31 "(B) Cancellations of property and casualty policies shall only be  
32 effective when notice of cancellation is mailed or delivered by the insurer to  
33 the named insured and to any lienholder or loss payee named in the policy at  
34 least twenty (20) days prior to the effective date of cancellation. However,  
35 where cancellation is for nonpayment of premium, at least ten (10) days\_

1 notice of cancellation accompanied by the reason for cancellation shall be  
2 given. The insurer shall maintain proof of mailing for all notices of  
3 cancellation mailed or delivered under subsection (11) of this section."  
4

5 SECTION 3. Arkansas Code 23-66-209 (a) is amended to read as follows:

6 "(a) (1) Whenever the commissioner has reason to believe that any person  
7 has been engaged or is engaging in this state in any unfair method of  
8 competition or any unfair or deceptive act or practice, whether or not defined  
9 in §23-66-206 or §23-66-307, and that a proceeding by him in respect thereto  
10 would be to the interest of the public, he shall issue and serve upon the  
11 person a statement of the charges in that respect and a notice of a hearing  
12 thereon to be held at a time and place fixed in the notice, which shall not be  
13 less than ten (10) days after date of the service thereof.

14 (2) If the commissioner determines that the public health, safety, or  
15 welfare imperatively requires emergency action, and incorporates a finding to  
16 that effect in his order, a summary order directing the person to cease and  
17 desist from engaging in unfair method of competition or unfair or deceptive  
18 act or practice may be issued pending an administrative hearing before the  
19 commissioner, which shall be promptly instituted."  
20

21 SECTION 4. Arkansas Code 23-66-209 (b) is amended to read as follows:

22 "(b) At the time and place fixed for the hearing, the person shall have  
23 an opportunity to be heard and to show cause why an order should not be made  
24 by the commissioner requiring such person to cease and desist from the acts,  
25 methods, or practices so complained of, or to show cause why an emergency  
26 order of the commissioner should be modified or set aside. Upon good cause  
27 shown, the commissioner shall permit any person to intervene, appear, and be  
28 heard at the hearing by counsel or in person."  
29

30 SECTION 5. Arkansas Code 23-66-210 (a) is amended to read as follows:

31 "§ 23-66-210. Cease and desist and penalty orders - Modifications.

32 (a) If after the hearing held pursuant to §23-66-209(a) (1) or (a) (2),  
33 the commissioner shall determine that the person charged has engaged in an  
34 unfair method of competition or an unfair or deceptive act or practice, he  
35 shall reduce his findings to writing and shall issue and cause to be served

1 upon the person charged with the violation a copy of the findings and an order  
2 requiring the person to cease and desist from engaging in the method of  
3 competition, act, or practice, and, if the act or practice is a violation of §  
4 23-66-206 or § 23-66-312, the commissioner may at his discretion order any one  
5 (1) or more of the following:

6       (1) Payment of a monetary penalty of not more than one thousand dollars  
7 (\$1,000) for each and every act or violation, unless the person knew or  
8 reasonably should have known he was in violation of this subchapter. In this  
9 case, the penalty shall be not more than five thousand dollars (\$5,000) for  
10 each and every act or violation;

11       (2) Suspension or revocation of the person's license if he knew or  
12 reasonably should have known he was in violation of this chapter."  
13

14       SECTION 6. SAVING CLAUSE. Nothing herein shall be deemed to derogate  
15 or diminish any rights or laws existing at the time of the enactment of this  
16 law.

17  
18       SECTION 7. All provisions of this act of a general and permanent  
19 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
20 Code Revision Commission shall incorporate the same in the Code.

21  
22       SECTION 8. If any provision of this act or the application thereof to  
23 any person or circumstance is held invalid, such invalidity shall not affect  
24 other provisions or applications of the act which can be given effect without  
25 the invalid provision or application, and to this end the provisions of this  
26 act are declared to be severable.

27  
28       SECTION 9. All laws and parts of laws in conflict with this act are  
29 hereby repealed.

30  
31       SECTION 10. EMERGENCY. It is hereby found and determined by the  
32 General Assembly of the State of Arkansas that the present law on trade  
33 practices is inadequate for the protection of the public and the immediate  
34 passage of this act is necessary in order to provide for the protection of the  
35 public. Therefore, an emergency is hereby declared to exist and this act

1 being necessary for the immediate preservation of the public peace, health and  
2 safety shall be in full force and effect from and after July 1, 1993.

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*/s/ Senators Dowd*