

1 State of Arkansas *As Engrossed: H4/1/21 S4/7/21*

2 93rd General Assembly

# A Bill

3 Regular Session, 2021

HOUSE BILL 1243

4

5 By: Representative Lowery

6 By: Senators M. Pitsch, J. Hendren

7

8

## For An Act To Be Entitled

9 AN ACT TO MODIFY THE DEFINITION OF "POLICY  
10 CANCELLATIONS" AS USED IN THE BUSINESS OF INSURANCE;  
11 TO CLARIFY THE MINIMUM NOTICE REQUIREMENTS FOR  
12 CANCELLATION OF CERTAIN PROPERTY AND CASUALTY  
13 POLICIES; AND FOR OTHER PURPOSES.

14

15

16

## Subtitle

17

18

19

20

21

22

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

24

25 SECTION 1. Arkansas Code § 23-66-206 is amended to read as follows:

26 23-66-206. Unfair methods of competition and unfair or deceptive acts  
27 or practices defined.

28 The following are defined as unfair methods of competition and unfair  
29 or deceptive acts or practices in the business of insurance:

30 (1) "Boycott, coercion, and intimidation" means entering into  
31 any agreement to commit or, by any concerted action, committing any act of  
32 boycott, coercion, or intimidation resulting in or tending to result in  
33 unreasonable restraint of, or monopoly in, the business of insurance;

34 (2) "Churning of business" means a situation in which the  
35 licensee replaces an existing policy of life insurance or accident and health  
36 insurance, or both, and that replacement is:



1 (A) Not in accordance with § 23-66-307; or

2 (B) Without objective demonstration by the licensee of the  
3 purpose of replacing the policy for the benefit and betterment of the  
4 insured;

5 (3) "Defamation" means making, publishing, disseminating, or  
6 circulating, directly or indirectly, or aiding, abetting, or encouraging the  
7 making, publishing, disseminating, or circulating of any oral or written  
8 statement or of any pamphlet, circular, article, or literature that is false  
9 or maliciously critical of or derogatory to the financial condition of any  
10 person and that is calculated to injure that person;

11 (4)(A) "Failure to maintain complaint handling procedures" means  
12 failing to adopt and implement reasonable standards for the prompt handling  
13 of complaints received by the person from insureds or claimants, or from the  
14 Insurance Commissioner on behalf of insureds or claimants, and failing to  
15 keep a record of the complaints received.

16 (B)(i) A complete complaints register of all complaints  
17 that the person has received shall be maintained for the current year plus  
18 five (5) calendar years.

19 (ii) ~~This~~ The complaints register described in  
20 subdivision (4)(B)(i) of this section shall indicate:

21 ~~(i)(a)~~ (a) The total number of complaints;

22 ~~(ii)(b)~~ (b) The classification of complaints by  
23 line of insurance;

24 ~~(iii)(c)~~ (c) The nature of each complaint;

25 ~~(iv)(d)~~ (d) The disposition of each complaint;

26 ~~(v)(e)~~ (e) The time it took to process each

27 complaint; and

28 ~~(vi)(f)~~ (f) ~~Such other~~ Other information as the  
29 commissioner may reasonably require by way of rules.

30 (C) As used in this subdivision (4), "complaint" means any  
31 written communication primarily expressing a grievance;

32 (5) "Failure to maintain conflict of interest procedures" means  
33 failing to adopt and implement on or before the next financial or market  
34 conduct examination conducted by the commissioner on and after passage of  
35 this act and thereafter maintain written conflict of interest procedures and  
36 provisions, in form and format satisfactory to the commissioner, designed to

1 identify and resolve promptly any general or pecuniary conflicts of interest  
2 as to officers, directors, managers, supervisors, and other key personnel of  
3 domestic insurers, ~~including, but not limited to,~~ including without  
4 limitation domestic stock and mutual insurers, domestic stipulated premium  
5 insurers, domestic mutual assessment life and disability insurers, domestic  
6 health maintenance organizations, domestic farmers' mutual aid associations,  
7 domestic hospital or medical service corporations, and domestic fraternal  
8 benefit societies;

9 (6) "False information and advertising generally" means making,  
10 publishing, disseminating, circulating, or placing before the public or  
11 causing, directly or indirectly, to be made, published, disseminated,  
12 circulated, or placed before the public in a newspaper, magazine, or other  
13 publication or in the form of a notice, circular, pamphlet, letter, or poster  
14 or over any radio or television station or in any other way an advertisement,  
15 announcement, or statement containing any assertion, representation, or  
16 statement with respect to the business of insurance or with respect to any  
17 person in the conduct of his or her insurance business that is untrue,  
18 deceptive, or misleading;

19 (7) "False statements and entries" means:

20 (A) Filing with any supervisory or other public official  
21 or making, publishing, disseminating, circulating, or delivering to any  
22 person, or placing before the public or causing, directly or indirectly, to  
23 be made, published, disseminated, circulated, delivered to any person, or  
24 placed before the public any false statement of financial condition of a  
25 person with intent to deceive; and

26 (B) Knowingly making any false entry of a material fact in  
27 any book, report, or statement of any person or knowingly omitting to make a  
28 true entry of any material fact pertaining to the business of the person in  
29 any book, report, or statement of that person;

30 (8) "Misrepresentation and false advertising of insurance  
31 policies" means making, issuing, circulating, or causing to be made, issued,  
32 or circulated, any estimate, illustrations, circular, statement, sales  
33 presentation, omission, or comparison, ~~which~~ that:

34 (A) Misrepresents the benefits, advantages, conditions, or  
35 terms of any insurance policy;

36 (B) Misrepresents the dividends or share of the surplus to

1 be received on any insurance policy;

2 (C) Makes any false or misleading statements to the  
3 dividends or share of surplus previously paid on any insurance policy;

4 (D) Is misleading or is a misrepresentation as to the  
5 financial condition of any person or as to the legal reserve system upon  
6 which any life insurer operates;

7 (E) Uses any name or title of any insurance policy or  
8 class of insurance policies, misrepresenting the true nature ~~thereof~~ of the  
9 insurance policy;

10 (F) Is a misrepresentation for the purpose of inducing or  
11 tending to induce the lapse, forfeiture, exchange, conversion, or surrender  
12 of any insurance policy;

13 (G) Is a misrepresentation for the purpose of effectuating  
14 a pledge or assignment of or effecting a loan against any insurance policy;  
15 or

16 (H) Misrepresents any insurance policy as being shares of  
17 stock;

18 (9)(A) ~~“Policy cancellations” means cancellations of insurance~~  
19 ~~coverage on a property or casualty risk that has been in force over sixty~~  
20 ~~(60) days or after the effective date of a renewal policy or an annual~~  
21 ~~anniversary date unless the cancellation is based upon at least one (1) of~~  
22 ~~the following reasons:~~

23 ~~(i) Nonpayment of premium;~~

24 ~~(ii) Fraud or material misrepresentation made by or~~  
25 ~~with the knowledge of the named insured in obtaining the policy, continuing~~  
26 ~~the policy, or in presenting a claim under the policy;~~

27 ~~(iii) The occurrence of a material change in the~~  
28 ~~risk that substantially increases any hazard insured against after policy~~  
29 ~~issuance;~~

30 ~~(iv) Violation of any local fire, health, safety,~~  
31 ~~building, or construction regulation or ordinances with respect to any~~  
32 ~~insured property or the occupancy of the property that substantially~~  
33 ~~increases any hazard insured against under the policy;~~

34 ~~(v) Nonpayment of membership dues in those cases in~~  
35 ~~which the bylaws, agreements, or other legal instruments of the insurer~~  
36 ~~issuing the policy require payment as a condition of the issuance and~~

1 ~~maintenance of the policy; or~~

2 ~~(vi) A material violation of a material provision of~~  
3 ~~the policy.~~

4 ~~(B) Cancellations of property and casualty policies shall~~  
5 ~~only be effective when notice of cancellation is mailed or delivered by the~~  
6 ~~insurer to the named insured and to any lienholder or loss payee named in the~~  
7 ~~policy at least twenty (20) days prior to the effective date of cancellation.~~  
8 ~~However, when cancellation is for nonpayment of premium, at least ten (10)~~  
9 ~~days' notice of cancellation accompanied by the reason for cancellation shall~~  
10 ~~be given.~~

11 ~~(C) The provisions of this subdivision (9) shall not be~~  
12 ~~applicable to any policy providing coverage for workers' compensation or~~  
13 ~~employers' liability or to any policy providing coverage for personal~~  
14 ~~automobile liability, automobile physical damage, or automobile collision, or~~  
15 ~~any combination thereof;~~

16 ~~(10)(A)~~ "Rebates", except as otherwise expressly provided by  
17 law, means the act of knowingly:

18 (i) Permitting or offering to make or making any  
19 life, health, and annuity insurance contract, or agreement as to the  
20 contract, other than as plainly expressed in the insurance contract issued  
21 ~~thereon~~ for the life, health, or annuity insurance policy;

22 (ii) Paying, allowing, or giving or offering to pay,  
23 allow, or give, directly or indirectly, as inducement to the insurance  
24 contract any rebate of premiums payable on the contract or any special favor  
25 or advantage in the dividends or other benefits ~~thereon~~ under the insurance  
26 contract or any valuable consideration or inducement whatever not specified  
27 in the contract; or

28 (iii) Giving, selling, or purchasing or offering to  
29 give, sell, or purchase as inducement to the insurance contract or in  
30 connection with the contract any stocks, bonds, or other securities of any  
31 insurance company or other corporation, association, or partnership or any  
32 dividends or profits accrued ~~thereon~~ under the insurance contract or anything  
33 of value whatsoever not specified in the insurance contract.

34 (B) ~~Subdivision (10)(A) or subdivision (14)~~ Subdivision  
35 (9)(A) or subdivision (13) of this section shall not be construed as  
36 including within "rebates" or "unfair discrimination" any of the following

1 practices:

2 (i) In the case of any contract of life insurance or  
3 life annuity, the paying of bonuses to policyholders or otherwise abating  
4 their premiums in whole or in part out of surplus accumulated from  
5 nonparticipating insurance, provided that those bonuses or abatement of  
6 premiums shall be fair and equitable for policyholders and for the best  
7 interests of the company and its policyholders;

8 (ii) In the case of life insurance policies issued  
9 on the industrial debit plan, making allowance to policyholders who have  
10 continuously for a specified period made premium payments directly to an  
11 office of the insurer in an amount that fairly represents the saving in  
12 collection expenses;

13 (iii) Readjustment of the rate of premium for a  
14 group insurance policy based on the loss or expense under the policy at the  
15 end of the first or any subsequent policy year of insurance under the policy,  
16 which may be made retroactive only for the policy year;

17 (iv) Engaging in an arrangement that does not  
18 violate section 106 of the Bank Holding Company Act Amendments of 1970, 12  
19 U.S.C. § 1972, as interpreted by the Board of Governors of the Federal  
20 Reserve System, or section 1464(q) of the Home Owners' Loan Act, 12 U.S.C. §  
21 1461 et seq.; or

22 (v) Under a prior written agreement with a client  
23 paying total annual premiums, for all lines of business, of one hundred  
24 thousand dollars (\$100,000) or more, adjusting or refunding a part of a  
25 consulting fee charged by a licensed insurance consultant based on  
26 commissions received by the consultant from insurance carriers;

27 ~~(11)~~(10) "Stock operations and advisory board contracts" means  
28 issuing or delivering or permitting agents, officers, or employees to issue  
29 or deliver agency company stock, or other capital stock or benefit  
30 certificates or shares in any common-law corporation, or securities or any  
31 special or advisory board contracts or other contracts of any kind that  
32 promise returns and profits as an inducement to insurance;

33 ~~(12)~~(11) "Underwriting: refusing certain risks" means refusing  
34 to issue or limiting the amount of coverage on a property or casualty risk  
35 based upon knowledge of an insurer's nonrenewal of the applicant's previous  
36 property or casualty policy or contract;

1           ~~(13)~~(12) “Unfair claims settlement practices” means committing  
2 or performing with such frequency as to indicate a general business practice  
3 any of the following:

4           (A) Misrepresenting pertinent facts or insurance policy  
5 provisions relating to coverages at issue;

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

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

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

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

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

17          (G) Attempting to settle claims on the basis of an  
18 application that was altered without notice to, or knowledge or consent of,  
19 the insured;

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

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

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

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

34          (L) Attempting to settle a claim for less than the amount  
35 to which a reasonable person would have believed he or she was entitled by  
36 reference to written or printed advertising material accompanying or made

1 part of an application;

2 (M) Making known to insureds or claimants a policy of  
3 appealing from arbitration awards in favor of insureds or claimants for the  
4 purpose of compelling them to accept settlements or compromises less than the  
5 amount awarded in arbitration;

6 (N) Failing to promptly settle claims, when liability has  
7 become reasonably clear, under one (l) portion of the insurance policy  
8 coverage in order to influence settlements under other portions of the  
9 insurance policy coverage; and

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

12 ~~(14)~~(13) "Unfair discrimination" means:

13 (A) Making or permitting any unfair discrimination between  
14 individuals of the same class and equal expectation of life in the rates  
15 charged for any contract of life insurance or of life annuity or in the  
16 dividends or other benefits payable ~~thereon~~ under the contract of life  
17 insurance or of life annuity, or in any other of the terms and conditions of  
18 such a contract;

19 (B) Making or permitting any unfair discrimination between  
20 individuals of the same class and of essentially the same hazard in the  
21 amount of premium policy fees or rates charged for any policy or contract of  
22 accident and health insurance, or in the benefits payable ~~thereunder~~ under  
23 the policy or contract of accident and health insurance, or in any of the  
24 terms or conditions of the contract, or in any other manner whatever;

25 (C) Making or permitting any unfair discrimination between  
26 individuals or risks of the same class and of essentially the same hazards by  
27 refusing to issue, refusing to renew, cancelling, or limiting the amount of  
28 insurance coverage on a property or casualty risk because of the geographic  
29 location of the risk unless:

30 (i) The refusal, cancellation, or limitation is for  
31 a business purpose that is not a mere pretext for unfair discrimination; or

32 (ii) The refusal, cancellation, or limitation is  
33 required by law or regulatory mandate;

34 (D) Making or permitting any unfair discrimination between  
35 individuals or risks of the same class and of essentially the same hazards by  
36 refusing to issue, refusing to renew, cancelling, or limiting the amount of



1 insurance coverage on a residential property risk or on the personal property  
2 contained ~~therein~~ in the residential property because of the age of the  
3 residential property unless:

4 (i) The refusal, cancellation, or limitation is for  
5 a business purpose that is not a mere pretext for unfair discrimination; or

6 (ii) The refusal, cancellation, or limitation is  
7 required by law or regulatory mandate;

8 (E) Refusing to insure, refusing to continue to insure, or  
9 limiting the amount of coverage available to an individual because of the  
10 marital status of the individual. However, nothing in this ~~subdivision~~  
11 ~~(14)(E)~~ subdivision (13)(E) shall prohibit an insurer from taking marital  
12 status into account for the purpose of defining persons eligible for  
13 dependent benefits;

14 (F) Terminating or modifying coverage or refusing to issue  
15 or refusing to renew any policy or contract of insurance solely because the  
16 applicant or insured or any employee of either is mentally or physically  
17 impaired. However, ~~subdivision (14)(F)~~ this subdivision (13)(F) shall not be  
18 interpreted to modify any other provision of law relating to the termination,  
19 modification, issuance, or renewal of any insurance policy or contract;

20 (G)(i) Refusing to insure or continue to insure an  
21 individual or risks solely because of the individual's race, color, creed,  
22 national origin, citizenship, status as a victim of domestic abuse, or sex.

23 (ii) As used in ~~subdivision (14)(G)(i)~~ subdivision  
24 (13)(G)(i) of this section, "domestic abuse" means:

25 (a) Physical harm, bodily injury, or assault  
26 between family or household members;

27 (b) The infliction of fear of imminent  
28 physical harm, bodily injury, or assault between family members or household  
29 members; or

30 (c) Sexual conduct between family or household  
31 members, whether minors or adults, that constitutes a crime under the laws of  
32 this state; and

33 (H)(i)(a) Refusing to insure, or refusing to continue to  
34 insure, or limiting the amount, extent, or kind of coverage available for  
35 life insurance to an individual, or charging an individual a different rate  
36 for the same coverage, solely because of the individual's status as a living

1 organ donor.

2 (b) With respect to other conditions, a person  
3 who is a living organ donor shall be subject to the same standards of sound  
4 actuarial principles as a person who is not a living organ donor.

5 (ii) As used in this ~~subdivision (14)(H)~~ subdivision  
6 (13)(H), “living organ donor” means a person who is a registered organ donor;  
7 ~~and~~

8 ~~(15)(A)~~(14)(A) “Unfair financial planning practices” includes an  
9 insurance producer:

10 (i)(a) Holding himself or herself out, directly or  
11 indirectly, to the public as a financial planner, investment adviser,  
12 consultant, financial counselor, or any other specialist engaged in the  
13 business of giving financial planning or advice relating to investments,  
14 insurance, real estate, tax matters, or trust and estate matters, if the  
15 insurance producer is, in fact, engaged only in the sale of policies.

16 (b) However, ~~subdivision (15)(A)(i)(a)~~  
17 subdivision (14)(A)(i)(a) of this section does not preclude a person who  
18 holds some form of formal recognized financial planning or consultant  
19 certification or designation from using the certification or designation when  
20 the person is only selling insurance.

21 (c) ~~Subdivision (15)(A)(i)(a)~~ Subdivision  
22 (14)(A)(i)(a) of this section does not permit persons to charge an additional  
23 fee for services that are customarily associated with the solicitation,  
24 negotiation, or servicing of policies;

25 (ii)(a) Engaging in the business of financial  
26 planning without disclosing in writing to the client, prior to the execution  
27 of the agreement provided for in ~~subdivision (15)(A)(iii)~~ subdivision  
28 (14)(A)(iii) of this section, or solicitation of the sale of a product or  
29 service that:

30 (1) He or she is also an insurance  
31 salesperson; and

32 (2) A commission for the sale of an  
33 insurance product will be received in addition to a fee for financial  
34 planning, if the sale involves a commission.

35 (b) The disclosure requirement under this  
36 ~~subdivision (15)(A)(ii)~~ subdivision (14)(A)(ii) may be met by including it in

1 any written disclosure required by federal or state securities law; and  
2 (iii)(a)(1) Charging fees other than commissions for  
3 financial planning by an insurance producer unless the fees are based upon a  
4 written agreement that is signed by the party to be charged in advance of the  
5 performance of the services under the agreement.

6 (2) A copy of the agreement under  
7 ~~subdivision (15)(A)(iii)(a)(1)~~ subdivision (14)(A)(iii)(a)(1) of this section  
8 must be provided to the party to be charged at the time the agreement is  
9 signed by the party.

10 (3) The services for which the fee is to  
11 be charged must be specifically stated in the agreement.

12 (4) The amount of the fee to be charged  
13 or how it will be determined or calculated must be specifically stated in the  
14 agreement.

15 (5) The agreement must state that the  
16 client is under no obligation to purchase any insurance product through the  
17 insurance producer or financial consultant.

18 (b) The insurance producer shall retain a copy  
19 of the agreement for not less than three (3) years after completion of  
20 services, and a copy shall be available to the commissioner upon request.

21 (B) "Unfair financial planning practices" does not include  
22 funeral expense insurance and prepaid funeral benefits contracts; and

23 (15)(A) "Unfair property or casualty policy cancellation" means:

24 (i) After a policy on a property or casualty risk  
25 has been in force for more than sixty (60) days or after the effective date  
26 of a renewal of the policy, insurance coverage is terminated;

27 (a) Before the expiration date of the policy  
28 for a reason other than provided under subdivision (15)(B) of this section;  
29 or

30 (b) Without providing effective notice as  
31 described in subdivision (15)(C) of this section; and

32 (ii)(a) For a policy in force for sixty (60) days or  
33 less, an insurer has terminated the policy without mailing or delivering  
34 notice of cancellation to the named insured or to any lienholder or loss  
35 payee named in the policy at least twenty (20) days before the effective date  
36 of cancellation.

1 (b) However, when cancellation is for  
2 nonpayment of premium, at least ten (10) days' notice of cancellation  
3 accompanied by the reason shall be given.

4 (B) "Unfair property or casualty policy cancellation" does  
5 not include an insurer's cancellation of a policy that has been in force for  
6 more than sixty (60) days or after the effective date of a renewal of the  
7 policy as long as the insurer provides effective notice and terminates the  
8 policy for one (1) of the following reasons:

9 (i) Nonpayment of premium;

10 (ii) Fraud or material misrepresentation made by or  
11 with the knowledge of the named insured in obtaining the policy, continuing  
12 the policy, or presenting a claim under the policy;

13 (iii) The occurrence of a material change in the  
14 risk that substantially increases any hazard insured against after policy  
15 issuance;

16 (iv) Violation of any local fire, health, safety,  
17 building, or construction regulation or ordinance with respect to any insured  
18 property or the occupancy of the property that substantially increases any  
19 hazard insured against under the policy;

20 (v) Nonpayment of membership dues in those cases in  
21 which the bylaws, agreements, or other legal instruments of the insurer  
22 issuing the policy require payment as a condition of the issuance and  
23 maintenance of the policy; or

24 (vi) A material violation of a material provision of  
25 the policy.

26 (C)(i) Cancellations of property and casualty policies in  
27 force for more than sixty (60) days or after the effective date of a renewal  
28 of the policy shall only be effective when notice of cancellation is mailed  
29 or delivered by the insurer to the named insured and to any lienholder or  
30 loss payee named in the policy at least twenty (20) days before the effective  
31 date of cancellation.

32 (ii) However, when cancellation is for nonpayment of  
33 premium, at least ten (10) days' notice of cancellation accompanied by the  
34 reason for cancellation shall be given.

35 (D) This subdivision (15) is not applicable to any policy  
36 providing coverage for workers' compensation or employers' liability or to

1 any policy providing coverage for personal automobile liability, automobile  
2 physical damage, or automobile collision, or any combination of coverage for  
3 personal automobile liability, automobile physical damage, or automobile  
4 collision.

5

6 SECTION 2. EFFECTIVE DATE. This act is effective on and after July 1,  
7 2022.

8

9

*/s/Lowery*

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