

2 State of Arkansas
3 89th General Assembly
4 Regular Session, 2013

A Bill

DRAFT ANS/ANS
HOUSE BILL

5
6 By: Representative Lowery

7 Filed with: Interim House Committee on Insurance and Commerce
8 pursuant to A.C.A. §10-3-217.

9 For An Act To Be Entitled

10 AN ACT TO ESTABLISH THE ARKANSAS INSURANCE FAIR
11 CONDUCT ACT; AND FOR OTHER PURPOSES.

12 13 14 Subtitle

15 TO ESTABLISH THE ARKANSAS INSURANCE FAIR
16 CONDUCT ACT.

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

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21 SECTION 1. Arkansas Code Title 23, Chapter 66, is amended to add an
22 additional subchapter to read as follows:

23 24 Subchapter 8 – Arkansas Insurance Fair Conduct Act

25 26 23-66-801. Title.

27 This subchapter shall be known and may be cited as the "Arkansas
28 Insurance Fair Conduct Act".

29 30 23-66-802. Definitions.

31 As used in this subchapter:

32 (1) "Complaint" means a written communication primarily
33 expressing a grievance;

34 (2) "Failure to maintain complaint handling procedures" means
35 the failure by a person to adopt and maintain reasonable standards for the

1 prompt handling of complaints received from an insured, claimant, or the
2 Insurance Commissioner on behalf of an insured or claimant;

3 (3) "First-party claimant" means an individual, corporation,
4 association, partnership, or entity asserting a right to payment as a covered
5 person under an insurance policy arising out of the occurrence of the
6 contingency or loss covered by the insurance policy;

7 (5) "Insurance policy" means an individual, group, or blanket
8 policy, contract, or evidence of coverage written, issued, amended,
9 delivered, or renewed in this state;

10 (6) "Misrepresentation of an insurance policy" means making,
11 issuing, circulating, or causing to be made, issued, or circulated, a
12 pertinent fact or insurance policy provision relating to the coverage at
13 issue, that:

14 (A) Misrepresents the benefits, advantages, conditions, or
15 terms of an insurance policy;

16 (B) Uses a name or title of an insurance policy or class
17 of insurance policies, misrepresenting its true nature;

18 (C) Is a misrepresentation for the purpose of inducing or
19 tending to induce the lapse, forfeiture, exchange, conversion, or surrender
20 of an insurance policy; and

21 (D) Is a misrepresentation for the purpose of effectuating
22 a pledge, assignment of, or a loan against an insurance policy;

23 (7)(A) "Person" means an individual, corporation, association,
24 partnership, reciprocal exchange, interinsurer, Lloyd's plan insurer,
25 fraternal benefit society, or other entity engaged in the business of
26 insurance, including without limitation agents, brokers, and adjusters.

27 (B) "Person" does not include health carriers, health
28 plans, or medical service plans or hospital service plans as defined in § 23-
29 75-101;

30 (8) "Standards for the prompt investigation of claims" means the
31 reasonable standards that a person adopts and maintains for exercising
32 reasonable and ordinary care in investigating claims efficiently;

33 (9) "Standards for prompt, fair, and equitable settlements"
34 means the reasonable standards a person adopts and maintains for exercising
35 reasonable and ordinary care in settling claims in the public interest; and

1 (10) “Unfair claims settlement practices” means committing or
2 performing with a frequency that indicates a general business practice and
3 without exercising reasonable and ordinary care any of the following:

4 (A) Misrepresenting an insurance policy;

5 (B) Failing to maintain complaint handling procedures;

6 (C) Failing to adopt and implement reasonable standards
7 for the prompt investigation of claims;

8 (D) Refusing to pay claims without conducting a reasonable
9 investigation;

10 (E) Failing to affirm or deny coverage of claims within a
11 reasonable time after proof of loss statements have been completed or within
12 the time specified in the insurance policy;

13 (F) Not attempting to effectuate prompt, fair, and
14 equitable settlements of claims in which liability is reasonably clear;

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

18 (H) Making claim payments to policyholders or
19 beneficiaries without a statement that clearly states the coverage under
20 which payments are being made;

21 (I) Delaying the investigation or payment of claims by
22 requiring an insured or claimant, or the physician of either, to submit a
23 preliminary claim report and then the subsequent submission of a formal proof
24 of loss form;

25 (J) Failing to promptly provide a reasonable explanation
26 of the basis for denial of a claim or an offer of a compromise settlement in
27 the insurance policy;

28 (K) Compelling an insured to institute litigation to
29 recover amounts due under an insurance policy by offering substantially less
30 than the amounts ultimately recovered in an action brought by an insured;

31 (L) Attempting to settle a claim for less than the amount
32 that a reasonable person would have believed he or she was entitled by
33 reference to written or printed advertising material accompanying or made
34 part of an application;

35 (M) Making known to an insured or a claimant a policy of
36 appealing from arbitration awards in favor of insureds or claimants for the

1 purpose of compelling them to accept settlements or compromises for less than
2 the amount awarded in arbitration;

3 (N) Failing to promptly settle claims, when liability has
4 become reasonably clear, under one (1) portion of the insurance policy
5 coverage in order to influence settlements under other portions of the
6 insurance policy coverage; and

7 (O) Requiring as a condition of payment of a claim that
8 repairs must be made by a specific contractor, supplier, or repair shop.

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10 23-66-803. Authority in addition to existing law.

11 The authority of the Insurance Commissioner under this subchapter is in
12 addition to powers of the commissioner to order restitution or enforce a
13 penalty, fine, or forfeiture authorized by the insurance laws of this state.

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15 23-66-804. Unreasonable denial of claim or benefit.

16 (a) A first-party claimant to an insurance policy that is unreasonably
17 denied a claim for coverage or payment of benefits or been subject to unfair
18 claims settlement practices of an insurer or insurance company may bring an
19 action in this state to recover:

20 (1) The actual damages sustained;

21 (2) The costs of the action;

22 (3) Reasonable attorney's fees; and

23 (4) Litigation costs.

24 (b) After finding that an insurer or insurance company has acted
25 unreasonably, negligently, or without exercising reasonable and ordinary care
26 in denying a claim or benefits or has used unfair claims settlement
27 practices, a court:

28 (1) May increase the total award of damages to an amount not
29 more than three (3) times the actual damages; and

30 (2) Shall award to the prevailing first-party claimant
31 reasonable attorney's fees and actual and statutory litigation costs,
32 including expert witness fees.

33 (c) An insurer or insurance company has unreasonably denied a claim if
34 it:

35 (1) Fails to act in good faith;

36 (2) Uses unfair claims settlement practices;

- 1 (3) Misrepresents an insurance policy;
- 2 (4) Fails to acknowledge pertinent communications;
- 3 (5) Fails to promptly investigate claims; or
- 4 (6) Fails to maintain standards for prompt, fair, and equitable
- 5 settlements applicable to insurers.

6 (d) This section does not limit a court's existing ability to make any
7 other determination regarding an action for an unfair or deceptive practice
8 of an insurer or provide for any other remedy that is available at law.

9 (e) This section does not apply to a health plan offered by a health
10 carrier or a hospital and medical service corporation as defined in § 23-75-
11 101.

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13 23-66-805. Procedure for payment — Demand.

14 (a)(1) Twenty (20) days before filing an action under this subchapter,
15 a first-party claimant shall provide to the insurer or insurance company and
16 to the Insurance Commissioner written notice by regular mail of the basis for
17 the cause of action.

18 (2) The insurer or insurance company and the commissioner are
19 deemed to have received notice three (3) business days after the notice is
20 mailed.

21 (b) The first-party claimant may bring an action against an insurer or
22 insurance company after the expiration of the twenty-day time period if the
23 insurer or insurance company fails to resolve the matter that is the basis
24 for the action.

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26 23-66-806. Unfair practices in general – Remedies and penalties.

27 (a) A person shall not engage in unfair claims settlement practices or
28 deceptive acts or practices in the person's insurance business as such
29 methods, acts, or practices are defined under subsection (b) of this section.

30 (b)(1) In addition to the unfair or deceptive acts or practices
31 defined and prohibited by the insurance laws of this state, the Insurance
32 Commissioner may define other acts and practices in the conduct of the
33 insurance business to be unfair or deceptive through regulation.

34 (2) In defining other acts and practices in the conduct of the
35 insurance business to be unfair or deceptive, the commissioner shall identify

1 in the rule the basis for defining the act or practice in the conduct of
2 insurance to be unfair or deceptive.

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Referral requested by: Representative Mark Lowery
Prepared by: ANS/PAT