

Hall of the House of Representatives
83rd General Assembly - Regular Session, 2001
Amendment Form

Subtitle of House Bill No. 2438

"AN ACT TO PROVIDE FOR THE ASSIGNMENT OF EXCESS JUDGMENTS."

Amendment No. 1 to House Bill No. 2438.

Amend House Bill No. 2438 as originally introduced:

Add Representative R. Smith, Bradford, and Childers as cosponsors of the bill

AND

Delete the title and substitute the following:

"AN ACT TO AUTHORIZE THE STATE INSURANCE COMMISSIONER TO CREATE A LONG-TERM CARE LIABILITY INSURANCE PLAN; AND FOR OTHER PURPOSES."

AND

Delete the subtitle and substitute the following:

"AN ACT TO AUTHORIZE THE STATE INSURANCE COMMISSIONER TO CREATE A LONG-TERM CARE LIABILITY INSURANCE PLAN."

AND

Delete Section 1 and substitute the following:

"SECTION 1. Arkansas Code Title 23, Chapter 91 is amended by adding an additional subchapter to read as follows:

Subchapter 3.

23-91-301. Purpose.

(a)(1) The purpose of this subchapter is to provide for the establishment of a plan for a Long-term Care Liability Insurance Plan, if the Insurance Commissioner determines, after a hearing, that long-term care liability insurance is not reasonably available in this state.

(2) If the commissioner makes such a determination, he shall prepare a voluntary plan which will provide that insurance coverage.

(b) The plan shall provide coverage for professional liability for any long-term care providers licensed by the State or Arkansas.

(c) The plan shall provide insurance for long-term care providers, as set forth herein; but shall not reduce or eliminate the liability of the

Long-term care providers for the matters covered by the plan other than to provide insurance therefor.

23-91-302. Governing board.

(a) There is created a governing board of five (5) members to be appointed by the Governor which shall meet as necessary to review and prescribe operating procedures and rules to implement any plan promulgated pursuant to this subchapter. The governing board shall be comprised of the following members:

(1) Two (2) representatives from insurers licensed to operate in this state;

(2) One (1) representative who is a licensed insurance agent in this state;

(3) One (1) consumer representative; and

(4) One (1) representative from the long-term care industry.

(b) In addition, there shall be four (4) ex-officio members of the governing board who shall be the Insurance Commissioner, the Director of the Department of Human Services, and a member of the State Senate appointed by the President Pro Tempore of the Senate and a member of the State House of Representatives appointed by the Speaker of the House.

23-91-303. Plan for coverage - Contents.

(a) The plan shall:

(1) Give consideration to:

(A) The need for adequate and readily accessible coverage;

(B) Optional methods of improving the market affected;

(C) The inherent limitations of the insurance mechanism;

(D) The need for reasonable underwriting standards; and

(E) The requirement and immediate implementation of

reasonable loss prevention measures;

(2) Establish procedures for participants to have their grievances reviewed by the board; and

(3) Establish a rating plan which shall be actuarially sound.

(b) The plan may, on behalf of its participants:

(1) Issue policies of insurance to participants;

(2) Underwrite, adjust, and pay losses on insurance issued by the plan;

(3) Appoint a service company or companies to perform the functions enumerated in this subsection, including the functions of a plan administrator;

(4) Obtain reinsurance for any part or all of its risks; and

(5) Obtain excess of loss coverages.

(c) The plan shall provide for:

(1) The method of classifying risks including appropriate consideration of quality assurance procedures in effect, such as gathering and maintaining reports and statistics concerning compliance therewith, voluntary and permissive use of monitoring devices by the facilities, and other procedures;

(2) The making, filing, and approval authority of rates which are not excessive, inadequate, or unfairly discriminatory and policy forms applicable to the risks insured by the plan;

(3) The adjusting and processing of claims;

(4) The commission rates to be paid to agents or brokers for coverages written by the plan;

(5) Any other insurance or investment functions that are necessary for the purpose of providing adequate and readily accessible coverage;

(6) The method of operation of the plan;

(7) The examination of the plan, including the activities of the plan administrator;

(8) The establishment of procedures to conduct necessary analyses at reasonable intervals to appropriately evaluate the Arkansas long-term care liability insurance market;

(9) The establishment of procedures and guidelines to prevent a company from transferring and causing to be transferred substantially all of its long-term care liability exposure to the plan, unless the commissioner finds after notice and hearing that it is in the best interests of Arkansas citizens to allow such a practice; and

(10) Other matters as may be necessary and proper for the execution of the board's powers, duties, and obligations under this subchapter.

23-91-304 Coverages provided.

(a) The plan shall provide insurance for professional liability for long-term care providers for actual damages and non-economic compensatory damages.

(b) The plan shall not provide coverage for punitive damages, nor shall it cover such other standard exceptions in liability contracts.

(c) The risks assumed by the plan shall include the obligation to pay all actual damages, non-economic compensatory damages, and costs of defense.

(d) The plan shall provide insurance on an occurrence basis, with limitations of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) annual aggregate, with such deductibles as shall be specified in the individual coverage contract.

(e) The plan administrator shall have the sole and exclusive right to defend all covered claims and to make all determinations as to settlement of covered claims.

23-91-305 Funding.

(a) As a precondition to establishing the plan, the plan shall be capitalized from independent sources, including participants, in an amount sufficient to fund the initial consulting, actuarial, legal and other professional expenses necessary to establish the plan.

(b) The plan shall be established and maintained through a periodic premium payment by the participants in an amount determined by the governing board of the plan to be sufficient to render the plan self-supporting and actuarially sound to fund the plan risks assumed by the plan and to fund expenses of the plan.

(c)(1) Provision shall be made for adjustment of contributions for participants based on experience-rating adjustments for participants based on their loss experience.

(2) The information provided to the plan for the purpose of making this determination shall be submitted in the form provided by the Commissioner and the form shall be confidential and not discoverable or admissible at trial and no waiver of objection or privilege shall be implied

from the submission; except that any document or fact contained in or referred to in such submission which is otherwise discoverable or admissible under the prevailing rules of evidence shall continue to be discoverable or admissible notwithstanding the previous provisions of this subsection.

23-91-306. Information for individuals.

The plan or its agent shall provide to any person seeking the insurance available in each plan information about the services prescribed in the plan, including full information on the requirements and procedures for participation in the plan.

23-91-307. No liability in creating plan.

There shall be no liability on the part of and no cause of action shall arise against the commissioner, his representatives, or any plan, its participants, or its employees for any good faith action taken by them in the performance of their powers and duties in creating any plan pursuant to this subchapter.

23-91-308. Rules and regulations.

The commissioner shall have the authority to promulgate rules and regulations consistent with this subchapter and necessary to effectuate the purpose of this subchapter.

23-91-309 Termination.

(a) If the board finds after investigation that there is sufficient availability and competition in the marketplace, the board shall request that the commissioner hold a public hearing to determine if it is in the best interest of Arkansas citizens to suspend operation of or dissolve the plan. If after the hearing the commissioner determines that there is sufficient availability and competition in the voluntary long-term care liability insurance market and it is in the best interest of Arkansas citizens, the commissioner may:

- (1) Suspend operations of the plan;
- (2) Suspend policy issuance by the plan; or
- (3) Dissolve the plan.

(b) If the commissioner determines that funds remain in the plan after termination, and all claims have been paid, the commissioner shall apportion the remaining funds amongst the participants in an equitable manner.

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly that an emergency exists due to the unavailability of professional liability insurance for long-term care facilities; that such unavailability could jeopardize the stability of those facilities; that it is imperative to have adequate long-term care facilities within this state; and this act will provide a mechanism for helping assure the continued viability of those facilities. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house

overrides the veto."

The Amendment was read _____

By: Representative Ledbetter

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Chief Clerk