

State of Arkansas

76th General Assembly

Regular Session, 1987 AS ENGROSSED 2/5/87

HOUSE BILL 1267

By: Representative Newman

"AN ACT TO PROVIDE FOR MINIMUM STANDARDS FOR COMMERCIAL PROPERTY AND CASUALTY INSURANCE POLICIES; AND FOR OTHER PURPOSES."

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

SECTION 1. The purpose of this Act is to provide minimum standards for commercial lines property and casualty insurance policies or contracts. These minimum standards are designed to minimize restrictions in coverage and to assure minimum standards for such commercial policies or contracts for the protection of the public. This Act is not intended to impede flexibility and innovation in the development of commercial property and casualty insurance policy or contract form or content. This Act is not intended to conflict with the provisions as to insurance contracts in the Arkansas Insurance Code and, in particular, the provisions of Chapter 13 of Act 148 of 1959, as amended.

SECTION 2. This Act shall apply to property and casualty insurance on commercial risks in this State, except:

- (a) reinsurance;
- (b) insurance against loss of or damage to aircraft, their hulls, accessories and equipment, or against liability arising out of the ownership, maintenance or use of aircraft;
- (c) ocean marine or foreign trade insurance;
- (d) medical malpractice insurance;
- (e) title insurance;
- (f) surety or fidelity insurance;
- (g) credit insurance; or
- (h) workers' compensation or employers' liability insurance.

SECTION 3. In addition to other applicable provisions of the Insurance Code, insurers and insurance policies subject to the provisions of this Act shall meet the following standards:

(a) Notice of claim given by or on behalf of the named insured to any authorized agent of the insurer with specific information to identify the insured is deemed notice of claim to the insurer.

(b) Policies may be issued for a term in excess of twelve (12) months with the premium adjustable on an annual basis provided the policy contains an express provision to that effect. The insured and the agent of record must be mailed at the minimum thirty (30) days advance notice in writing of the premium to be charged on policy anniversary date, provided the insured has furnished the information necessary to calculate the premium.

(c) Forms or endorsements issued after the policy inception date not at the request of the named insured which reduce, restrict or modify the original policy coverage must be accepted by the named insured.

(d) Any policy providing an aggregate limit of liability within the schedule of limits must include a notice specifying that the policy limit is an "aggregate". The aggregate limit provision must be clearly defined within the policy.

(e) Policies containing provisions which would reduce the limit of liability available for judgments or settlements by the amount of payment made for defense cost or claim expenses shall not be approved by the Commissioner, unless a separate limit for defense costs equal to one hundred percent (100%) of the annual aggregate limit of liability stated in the policy for judgments or settlements is offered for defense costs or claim expenses to the insured; however, no policy covering automobile liability insurance may contain the defense within limits concept.

SECTION 4. CLAIMS-MADE POLICIES. For purposes of this Act, "claims-made policy" means a policy which provides coverage if a claim for damages is first made during the policy period.

(a) The policy application and the initial page of each claims-made policy must include a conspicuous notice at the top indicating that the contract is a claims-made policy.

(b) The insurer must provide at no additional charge an automatic sixty (60) day extended reporting period upon cancellation or termination of the

policy by either the insured or insurer.

(c) Any notice of termination of a claims-made policy must include a disclosure advising the insured and his agent of the availability of and premium for an extended reporting period endorsement and the importance of purchasing the coverage.

(d) The premium for any extended reporting period endorsement shall be based upon the rates and rating rules in effect at the inception date of the last policy period of the claims-made policy.

(e) Form or rate/rule filings restricting the risks to be covered by an extended reporting period endorsement shall not be approved or accepted for use by the Commissioner.

(f) The limit of liability in the policy aggregate for the optional extended reporting period endorsement offered by the insurer shall be no less than the greater of (1) the amount of coverage remaining in the expiring policy aggregate, or (2) fifty percent (50%) of the aggregate at policy inception. The insurer may offer to increase the original amount of the aggregate limit of liability applicable during the period of the extended reporting period endorsement.

(g) A retroactive date may only be advanced with the written consent of the first named insured and upon one or more of the following conditions:

- (1) if there is a change in insurer other than another insurer within the same insurance holding company or group;
- (2) if there is a substantial change in the insured's operations which would have been a material factor in the insurer's acceptance or declination of the risk; or
- (3) at the request of the first named insured.

Prior to advancement of the retroactive date under any of the above, the insured must receive a disclosure form for his signature that acknowledges that he has been advised of his right to purchase an extended reporting period endorsement.

(h) The insurer must provide the following loss information to the named insured within thirty (30) days of the insured's request and within fifteen (15) days after notice of cancellation or non-renewal is issued:

- (1) Description of closed claims including the date and description of occurrence, amount of payments, if any; and
- (2) Description of open claims including the date and

description of occurrence, amount of payment, if any, and an estimate of reserves, if any; and

(3) Information on notices of occurrence including the date and an estimate of reserves, if any.

SECTION 5. Any commercial property and casualty insurance policy, contract, rider, or endorsement issued after the effective date of this Act and otherwise valid which contains any condition or provision not in compliance with the requirements of this Act, shall be construed and applied in accordance with the provisions of this Act.

SECTION 6. PENALTIES.

(a) Whenever the Commissioner shall have reason to believe that any person has violated any provision of this Act, he shall issue and serve upon such person a statement of the alleged violations and a notice of hearing as provided by Section 7.

(b) If, after a hearing, the Commissioner determines that the person has violated a provision of this Act, he shall issue a written order which, in his discretion, may do one or more of the following: (1) revoke the Certificate of Authority of the insurer or the license of the rate service organization; (2) suspend the Certificate of Authority of the insurer or the license of the rate service organization; (3) require the payment of a monetary penalty of not more than one thousand dollars (\$1,000.00) for each violation, or, if the Commissioner has found willful violations, a penalty of not more than ten thousand dollars (\$10,000.00) for each violation.

SECTION 7. ADMINISTRATIVE PROCEDURES.

(a) Administrative procedures exercised by the Commissioner under this Act shall be in accordance with Sections 38 through 41 of Act 148 of 1959, as amended.

(b) Appeals from orders of the Commissioner made under this Act shall be made in accordance with section 42 of Act 148 of 1959, as amended.

SECTION 8. The Commissioner may promulgate such reasonable rules and regulations as are necessary to carry out the provisions of this Act.

SECTION 9. All laws and parts of laws in conflict with this Act are hereby repealed. This Act shall be deemed cumulative of prior laws, and no prior law or part of a law shall be deemed to be in conflict with this Act unless failure to so determine would prevent giving effect to an explicit provision of this Act.

SECTION 10. Any section or provision of this Act held by a court to be invalid or unconstitutional will not affect the validity of any other section or provision of this Act.

SECTION 11. It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in the subject of this Act are inadequate for the protection of the public and the immediate passage of this Act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist, and this act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval.

/s/Bobby Newman

