

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

91

By: Senator Hopkins

For An Act To Be Entitled

"AN ACT TO OVERCOME THE ARKANSAS SUPREME COURT'S HOLDING IN SOUTHERN_FARM_BUREAU_LIFE_INSURANCE_COMPANY_V._COWGER IN WHICH THE COURT OVERRULED PRIOR PRECEDENT AND HELD THAT AN INSURER MAY DEFEND A POLICY CLAIM ON THE GROUNDS OF MISREPRESENTATIONS EVEN THOUGH NOT NECESSARILY RELATED TO THE LOSS SUSTAINED; AND FOR OTHER PURPOSES."

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

SECTION 1. (a) All statements in any application for a life or disability insurance policy or annuity contract, or in negotiations therefor, by or in behalf of the insured or annuitant, shall be deemed to be representations and not warranties. Misrepresentations, omissions, concealment of facts, and incorrect statements shall not prevent a recovery under the policy or contract unless either:

(1) Material either to the acceptance of the risk or to the hazard assumed by the insurer; or

(2) The insurer in good faith would not have issued the policy or contract or would not have issued a policy or contract in as large an amount or at the same premium or rate or would not have provided coverage with respect to the hazard resulting in the loss if the facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.

(b) In any action to rescind any policy or contract or to recover thereon, if any misrepresentation with respect to a medical impairment is proved by the insurer and the insured or any other person having or claiming a right under the contract shall prevent full disclosure and proof of the nature of the medical impairment, then the misrepresentation shall be presumed to have been material.

SECTION 2. Arkansas Code 23-79-107 is hereby repealed.

SECTION 3. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 4. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 5. Emergency. It is hereby found and determined by the General Assembly that prior to Southern_Farm_Bureau_Life_Insurance_Company_v._Cowger, the Arkansas Supreme Court had established the principle that to deny recovery an insurer must show a causal connection between a fact misrepresented in an application and the subsequent loss; that the Court in the Cowger case has overruled the prior interpretation and now held that an insurer may defend a policy claim on the ground of a misrepresentation which caused the issuance of the policy but with respect to which the facts misrepresented were not necessarily related to the loss sustained; that the language of this Act attempts to avoid the Court issuing subsequent decisions following its Cowger holding; and that this Act should go into effect immediately in order to avoid unfair and inequitable consequences. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.