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2 93rd General Assembly
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4

A Bill

HOUSE BILL 1243

5 By: Representative Lowery
6 By: Senator J. Hendren
7

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.
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Subtitle

16 TO MODIFY THE DEFINITION OF "POLICY
17 CANCELLATION"; AND TO CLARIFY THE MINIMUM
18 NOTICE REQUIREMENTS FOR CANCELLATION OF
19 CERTAIN PROPERTY AND CASUALTY POLICIES.
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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)(B) 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.