

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

SENATE BILL 545

5 By: Senator J. Bryant
6 By: Representative G. Hodges
7

For An Act To Be Entitled

9 AN ACT TO CREATE STANDARDS FOR THE EVALUATION OF
10 CLAIMS; TO ENSURE GOOD FAITH AND FAIR DEALING IN THE
11 BUSINESS OF INSURANCE; AND FOR OTHER PURPOSES.
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Subtitle

15 TO CREATE STANDARDS FOR THE EVALUATION OF
16 CLAIMS; AND TO ENSURE GOOD FAITH AND FAIR
17 DEALING IN THE BUSINESS OF INSURANCE.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code Title 23, Chapter 66, Subchapter 2, is
23 amended to add additional sections to read as follows:

24 23-66-216. Standards for the documentation, investigation, evaluation,
25 communication, and payment of claims.

26 (a)(1) The claim files of an insurer, including a health carrier, are
27 subject to examination by the Insurance Commissioner or his or her designee.

28 (2) Claim files shall be documented so that pertinent events and
29 the dates of such events can be reconstructed at a later date, including
30 without limitation all evidence supporting any decision made on a claim.

31 (3) All evidence supporting a claim decision shall be documented
32 in an insurer's claim file in the event of a future examination by the
33 commissioner.

34 (4) An insurer shall not:

35 (A) Misrepresent evidence when documenting a claim;

36 (B) Substitute values unsupported by competent evidence



1 when documenting a claim; or

2 (C) Alter evidence in a claim file.

3 (5) An insurer shall document:

4 (A) All potential elements of damages a claimant is
5 legally entitled to recover; and

6 (B) An amount to pay for all elements of damages a
7 claimant is legally entitled to recover.

8 (b)(1) The commissioner shall establish standards for the prompt
9 investigation of a claim under Rule 43 promulgated by the State Insurance
10 Department.

11 (2)(A) Every insurer shall complete investigation of a claim
12 within forty-five (45) calendar days after notification of claim, unless the
13 investigation cannot reasonably be completed within that time.

14 (B)(i) If an investigation cannot be completed within the
15 forty-five (45) days under subdivision (b)(2)(A) of this section, an insurer
16 shall notify claimants that additional time is required.

17 (ii) An insurer shall include with the notification
18 under subdivision (b)(2)(B)(i) of this section the reason additional time is
19 required.

20 (iii) However, an extension after the initial forty-
21 five (45) days under subdivision (b)(2)(A) of this section shall not exceed
22 thirty (30) days.

23 (C) If a claim investigation exceeds seventy-five (75)
24 total days, the claim shall be admitted unless delayed by action of the
25 insured.

26 (D)(i) If a delay is caused by the insured, the insurer
27 shall notify the insured and state specifically what the insurer needs to
28 complete the claim investigation.

29 (ii) A claim shall be admitted if the claim
30 investigation extends beyond thirty (30) days following the insurer's
31 receiving all specific information requested from the insured.

32 (iii) An insurer shall not deny a claim solely
33 because it cannot complete its claim investigation within the time periods
34 under this subdivision (b)(2).

35 (3) A claim investigation undertaken by an insurer shall be
36 thorough, fair, prompt, unbiased, and conducted at the insurer's expense

1 before making any payment decisions.

2 (4) An insurer shall:

3 (A) Promptly complete any necessary follow-up
4 investigation of a claim and give due consideration to any additional
5 findings; and

6 (B) Investigate all potential elements of damages a
7 claimant is legally entitled to recover.

8 (5)(A) If an insured asserts a contractual right to appraisal,
9 the insurer shall complete the appraisal process within sixty (60) days
10 unless the insured gives written consent to an extension.

11 (B) An insurer shall not refuse to participate in the
12 appraisal process on the basis of disputing coverage.

13 (6) An insurer shall have no more than seventy-five (75) days
14 total to complete an appraisal.

15 (c)(1) The commissioner shall establish standards for the prompt,
16 fair, and equitable settlements applicable to an insurer under Rule 43
17 promulgated by the department.

18 (2) An insurer shall:

19 (A) Pay all amounts not in dispute within thirty (30) days
20 following the evaluation of a claim or a reevaluation of a claim; and

21 (B) Pay all elements of damages an insured is legally
22 entitled to recover under an insurance policy.

23 (3) An insurer shall not:

24 (A) Refuse to pay a claim based on information that is
25 biased, speculative, invalid, or unreliable; or

26 (B) Provide incentives, financial or otherwise, for the
27 insurer's claims employees to reduce the cost of investigating claims,
28 denying claims, or underpaying claims.

29 (d)(1) The commissioner shall establish standards for the evaluation
30 of a claim under Rule 43 promulgated by the department.

31 (2) An insurer shall:

32 (A) Treat its policyholder's interest with equal regard as
33 it does the insurer's own interest;

34 (B) Make an objective evaluation of the facts and
35 circumstances surrounding a claim;

36 (C) Evaluate all potential elements of damages a claimant

1 is legally entitled to recover under an insurance policy;

2 (D) Reevaluate a claim as new material information becomes
3 available;

4 (E) Only consider the opinions of unbiased and qualified
5 consultants when evaluating a claim;

6 (F) Acknowledge evidence supporting a claim during a claim
7 evaluation;

8 (G) Evaluate a claim based on the uniqueness of each
9 individual claim; and

10 (H) Fully, fairly, and promptly evaluate a claim.

11 (3) An insurer shall not:

12 (A) Treat a claim evaluation as an adversarial or
13 competitive process;

14 (B) Consider factors in a claim evaluation for which there
15 is no evidence;

16 (C) Alter evidence in a claim file in the evaluation of a
17 claim;

18 (D) Substitute values in the evaluation of a claim that
19 are unsupported by competent evidence; or

20 (E) Misrepresent facts or policy provisions in the
21 evaluation of a claim.

22 (e)(1) The commissioner shall establish standards for the
23 communication of the payment of a claim to an insured under Rule 43
24 promulgated by the department.

25 (2) Following the report of a loss, an insurer shall
26 communicate:

27 (A) To an insured, or other person for whom coverage may
28 apply, all potential coverages that may be applicable to the loss;

29 (B) The amount the insurer will pay for each element of
30 damages a claimant is legally entitled to recover on a claim; and

31 (C)(i) The insurer's claim decisions in writing.

32 (ii) If the claim is not paid in full, the insurer
33 shall:

34 (a) Communicate all the reasons the insurer
35 believes full payment is not justified; and

36 (b) Direct the insured, or other person for

1 whom coverage may apply, to the evidence supporting the insured's
2 justification for not making full payment on the claim.

3 (3) An insurer shall not:

4 (A) Conceal or fail to disclose how the insurer:

5 (i) Interprets the insurer's policy provisions; or

6 (ii) Handles similarly situated claims; or

7 (B) Misrepresent facts or policy provisions when
8 communicating about claims.

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10 23-66-217. Standards for appraisal arbitration – Legislative intent –
11 Definition.

12 (a) It is the intent of the General Assembly that this section only
13 applies to:

14 (1) First party property claims and no other lines of insurance;

15 (2) When the insured invokes a contractual right to appraisal
16 arbitration in a first-party property insurance contract; and

17 (3) When the amount in dispute between the insurer and insured
18 is greater than ten thousand dollars (\$10,000).

19 (b) As used in this section, "umpire" means a neutral and impartial
20 party selected by the appraisers for the insurer or the insured.

21 (c)(1) An appraiser employed to arrive at a valuation of damages for
22 insurance purposes, including the scope of damages and the pricing of each
23 item within that scope, shall be fair, impartial, disinterested, and
24 independent.

25 (2) An appraiser in the appraisal process shall not have a
26 direct, material interest in the amounts determined by the appraisal process.

27 (3) The appraiser shall:

28 (A) Disclose any known fact to all parties that a
29 reasonable person would consider likely to affect the appraiser's valuation
30 of the insured property; and

31 (B) Continue to disclose to all parties to the appraisal
32 of any facts, including any contingency arrangement for the payment of the
33 appraiser, that the appraiser learns after accepting the appointment that a
34 reasonable person would consider likely to affect the appraiser's valuation
35 of the insured property.

36 (4) An insurer, insured, or a representative of an insurer or a

1 representative of an insured, may directly communicate with their own
2 appraiser.

3 (5) An insurer, insured, or a representative of an insurer or a
4 representative of an insured, including an adjuster or attorney, shall not
5 directly communicate with the other party’s appraiser without the written
6 consent and participation of both parties or their representatives.

7 (6) The appraisers may directly communicate with each other as
8 part of the appraisal process to reach an agreed-upon settlement amount.

9 (d)(1) An umpire employed to arrive at a valuation of damages for
10 insurance purposes, including the scope of damages and the pricing of each
11 item within that scope, shall be fair, impartial, neutral, and paid for
12 equally by both the insurer and insured.

13 (2) An umpire is considered fair, impartial, and neutral if the
14 umpire does not have:

15 (A) An existing direct or material relationship with a
16 party to the appraisal; and

17 (B) A direct or material interest in the outcome of an
18 appraisal proceeding.

19 (3) An umpire shall disclose to all parties to an appraisal
20 process:

21 (A) Any known facts a reasonable person would consider
22 likely to affect the impartiality of the umpire, including:

23 (i) A financial or personal interest in the outcome
24 of the appraisal; and

25 (ii) A current or previous relationship with a party
26 to the agreement to appraise or a party to the appraisal proceeding or with
27 their counsel or representatives, including adjusters, witnesses, or either
28 of the appraisers; and

29 (B) Any facts the umpire learns after accepting the
30 appointment that a reasonable person would consider likely to affect the
31 impartiality of the umpire.

32 (4) An insurer, insured, or a representative of the insurer or a
33 representative of the insured, including adjusters, attorneys, and
34 appraisers, shall not have ex parte communications with the umpire during the
35 appraisal process.

36 (5) The umpire shall not have ex parte communications with the

1 insurer, including adjusters, the insured, the representative of the insurer,
2 or the representative of the insured, including attorneys.

3 (6) If the appraisers cannot agree on an umpire, a person shall
4 be designated as an umpire by a court.

5 (7) An umpire is charged with resolving issues the appraisers
6 are unable to agree upon during the course of an appraisal.

7 (e) An insurer shall not:

8 (1) Offer or sell an insurance policy that makes the insurer's
9 participation in the appraisal process optional if requested by the insured
10 under the terms of the applicable insurance policy; or

11 (2) Deny participation in an appraisal by asserting there is a
12 dispute as to coverage.

13 (f) If an insured asserts a contractual right to appraisal, the
14 insurer shall complete the appraisal process within sixty (60) days.

15 (g) An award that is issued by an appraisal panel is binding on both
16 insurer and insured unless it was:

17 (1) Made without authority;

18 (2) Made as the result of fraud; or

19 (3) Not issued in substantial compliance with the terms of the
20 applicable insurance policy.

21 (h) The appraisal arbitration process shall be completed within sixty
22 (60) days from the date the matter is presented to the umpire unless the
23 insured consents in writing to a reasonable extension of time.

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