

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
94th General Assembly
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A Bill

HOUSE BILL 1040

By: Representative Ray
By: Senator J. Dotson

For An Act To Be Entitled

AN ACT TO REPEAL THE ARKANSAS LEGAL INSURANCE ACT;
AND FOR OTHER PURPOSES.

Subtitle

TO REPEAL THE ARKANSAS LEGAL INSURANCE
ACT.

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

SECTION 1. Arkansas Code Title 23, Chapter 91, Subchapter 2, is repealed.

~~Subchapter 2 — Arkansas Legal Insurance Act~~

~~23-91-201. Title.~~

~~This subchapter shall be cited as the “Arkansas Legal Insurance Act”.~~

~~23-91-202. Construction and purposes.~~

~~This subchapter shall be interpreted liberally in order to achieve the following purposes:~~

~~(1) To encourage the development of effective and economically sound methods of making legal services more readily available;~~

~~(2) To protect the interests of the users of legal services and of the public of this state with a minimum of restrictions on experimentation with new forms of organization, administration, or benefits;~~

~~(3) To seek to have the risk inherent in experimentation borne by the promoters of new plans rather than by the consumers;~~



~~(4) To permit and encourage the providing of legal services through persons other than professional insurers subject to practical and reasonable financial and regulatory requirements;~~

~~(5) To permit and encourage fair and effective competition among the various systems of financing legal services; and~~

~~(6) To ensure that each person being provided with legal insurance has the right to seek performance of covered legal services by the attorney of his or her choice. The attorney shall be required to reasonably comply with the plan provisions.~~

~~23-91-203. Definitions.~~

~~As used in this subchapter:~~

~~(1) "Commissioner" means the Insurance Commissioner;~~

~~(2) "Insurer" means any person who obtains a certificate of authority under this subchapter;~~

~~(3)(A) "Legal insurance" means that assumption of a contractual obligation to provide, during a specified interval of time, specified legal services or reimbursement for legal expenses in consideration of a specified payment, regardless of whether the payment is made by the beneficiaries individually or by a third person for them, in such a manner that the total cost incurred by assuming the obligation is to be spread directly or indirectly among a group of persons. It does not include the provision of, or reimbursement for, legal services incidental to other insurance coverages. The following are not considered insurance under the insurance laws of this state:~~

~~(i) Retainer contracts made with individual clients with the fees based on estimates of the nature and amount of services that will be provided to the specific client and similar contracts made with a group of clients involved in the same or closely related legal matters such as class actions;~~

~~(ii) The providing of no benefits other than consultation and advice in connection with, or a part of, referral services;~~

~~(iii) The providing of limited legal services regarding simple legal matters on an informal basis, not involving a legally binding promise, in the context of an employment, educational, or similar relationship;~~

~~(iv) Legal services provided by unions or employee associations to their members in matters relating to employment or occupation; and~~

~~(v) Legal services provided by an agency of the federal or state government or a subdivision thereof to its employees.~~

~~(B) "Contractual obligation" in subdivision (3)(A) of this section includes any arrangement in which those persons for whom services are to be provided under the arrangement have reasonable expectations of enforceable rights; and~~

~~(4) "Person" means the definition as used in § 23-60-102.~~

~~23-91-204.—Applicability of insurance law.~~

~~(a) The provisions of the insurance law apply generally to legal insurance offered by insurers licensed to write other kinds of insurance. However, legal insurance sold by insurers under a certificate of authority obtained under this subchapter shall be regulated by the provisions of §§ 23-91-202, 23-91-203, 23-91-206, 23-91-208—23-91-212, 23-91-214, 23-91-219, 23-91-221, 23-91-224, and 23-91-226 instead of corresponding sections of the Arkansas Insurance Code.~~

~~(b) Orders or rules of the Insurance Commissioner issued under the provisions of this subchapter shall be subject to the provisions of the general insurance laws and the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq., relating to hearings and appeals.~~

~~(c) Except as otherwise provided in this subchapter, the provisions of the general insurance law shall not apply to insurers authorized under this subchapter.~~

~~23-91-205.—Applicability of unauthorized insurance law.~~

~~Subject to the provisions of this subchapter, the relevant and applicable provisions of the Unauthorized Insurers Process Act, § 23-65-201 et seq., and the provisions of §§ 23-65-101 and 23-65-102 apply to persons transacting the business of legal insurance.~~

~~23-91-206.—Exemption.~~

~~(a)(1) This subchapter does not apply to any person not domiciled in this state but issuing only group, blanket, or franchise policies or~~

~~certificates to certificate holders or policyholders who reside in this state if fewer than twenty five percent (25%) of the certificate holders or policyholders reside in this state and the person is regulated to a comparable extent by another state in which a larger number of certificate holders or insureds reside.~~

~~(2)(A) However, any person who is exempt from the provisions of this subchapter pursuant to this section shall, prior to the issuance of any group, blanket, or franchise policies or certificates in this state, file these policies or certificates with the Insurance Commissioner for informational purposes, together with a document to support the person's exempt status under this section.~~

~~(B) Also, each person shall file annually with the commissioner, on or before April 15, a report to verify that the exemption is still valid.~~

~~(b)(1) Prior to administering a legal referral services program, or prior to enrollment of members in a program in this state, any person who is exempt from the provisions of this subchapter shall file with the commissioner program materials and documents to support the program's exempt status under this subchapter.~~

~~(2) Subsequent to the commissioner's approval of the exemption of the program from the provisions of this subchapter, the person shall promptly file documents referencing any modifications or changes in the program for the commissioner's review and determination as to whether the program as modified is exempt from the provisions of this subchapter.~~

~~23-91-207. Penalty provisions — Applicability of §§ 23-60-108 and 23-60-109.~~

~~The relevant and applicable provisions of §§ 23-60-108 and 23-60-109 apply to violations of this subchapter.~~

~~23-91-208. Authorization required.~~

~~(a) No person may transact the business of legal insurance in this state without first obtaining a certificate of authority under this subchapter.~~

~~(b)(1) Any person may apply to the Insurance Commissioner for, and obtain, a certificate of authority to transact the business of legal~~

~~insurance in compliance with this subchapter.~~

~~(2) This section does not by itself enlarge the powers of any corporation given by its articles of incorporation or charter but does authorize a corporation formed under the general business, insurance, or general nonprofit corporation laws of this state, including hospital service corporations, medical service corporations, and hospital and medical service corporations, to include in its power the authority to transact the business of legal insurance.~~

~~(c)(1) Any application shall be in a form prescribed by the commissioner. If the applicant is not domiciled in this state, the application must be accompanied by a power of attorney executed by the applicant appointing an Arkansas resident as its registered agent for service of process, to be filed in writing with the commissioner and his or her successors in office, as the true and lawful attorney of the applicant, in and for this state, upon whom all lawful process in any legal action or proceeding against the applicant, on a cause of action arising in this state, may be served.~~

~~(2) On and after January 1, 2003, all foreign and alien insurers licensed under this chapter shall file with the commissioner a designation of an Arkansas resident as an agent for service of legal process, and the commissioner shall maintain a listing in conformity with § 23-63-301 et seq.~~

~~23-91-209. Conditions for issuing certificate of authority.~~

~~(a) Upon receipt of an application for a certificate of authority, the Insurance Commissioner shall issue or deny a certificate pursuant to this subchapter within sixty (60) days of the application. This may be extended for an additional thirty (30) days by notice to the applicant prior to the expiration of the first sixty (60) days. A certificate of authority shall be issued upon payment of the application fee prescribed in § 23-91-225 if the commissioner is satisfied that the following conditions are met:~~

~~(1) The persons responsible for the conduct of the affairs of the applicant are competent, trustworthy, and of good reputation;~~

~~(2) The applicant has paid in capital in an amount not less than one hundred thousand dollars (\$100,000) and additional working capital or surplus funds in an amount deemed by the commissioner to be adequate in relation to the proposed plan of operation; and~~

~~(3) The applicant demonstrates the willingness and ability to assure that the promised benefits can be provided. In making this determination, the commissioner shall consider so far as applicable:~~

~~(A) Any agreements with lawyers or paralegal personnel for the provisions of legal services;~~

~~(B) The financial soundness of the applicant's arrangements for legal services and the schedule of rates proposed to be used in connection therewith;~~

~~(C) Any agreement with another person authorized under this subchapter, an insurer licensed under the general insurance laws to do business in this state, a reinsurer eligible under the laws or rules of this state to provide reinsurance, or an agency of the federal or state government for insuring the payment of the cost of legal services or the provision for automatic applicability of an alternative coverage in the event the insurer is unable to perform its obligation;~~

~~(D) Any deposit of securities, in kind and an amount determined to be appropriate by the commissioner, as a guarantee that the obligations to provide the promised benefits will be performed; and~~

~~(E) If the applicant is licensed as an insurer under other insurance laws, whether the applicant has complied with the requirements of those laws.~~

~~(b) A certificate of authority shall be issued in accordance with this subchapter and may be continued within the applicable provisions of § 23-63-211, but reference therein to § 23-63-216 and payment of taxes shall instead refer to the applicable provision of this subchapter.~~

~~23-91-210. Regulation of policy forms.~~

~~(a)(1) Each contractual obligation for legal insurance shall be evidenced by a policy or master policy.~~

~~(2) Legal insurance may be written on an individual, group, blanket, or franchise basis.~~

~~(3) Each person insured under a group policy must be issued a certificate of coverage.~~

~~(4) No legal insurance policy or certificate of any kind may be issued or delivered in this state unless and until a copy of the form thereof has been filed with the Insurance Commissioner and approved by him or her~~

~~except as provided in § 23-91-206.~~

~~(b) The forms must meet the following requirements:~~

~~(1) Policies must contain a detailed list and description of the legal services promised or the legal matters for which expenses are to be reimbursed and the amount of reimbursement;~~

~~(2) Policies and certificates must indicate prominently the name of the insurer and the full address of its principal place of business;~~

~~(3) Certificates issued under group policies may summarize the terms of the master contract but must contain a full and clear statement of the benefits provided; and~~

~~(4)(A) No policy shall unreasonably restrict the right of any person covered by legal insurance to seek performance of legal services by the attorney of his or her choice in a matter covered by the policy.~~

~~(B)(i) If the policy contemplates the use of a prearranged panel of attorneys to render the legal services covered under the policy, the commissioner shall not approve that policy unless the policy also authorizes payment for covered services rendered by an insured's attorney who is not a member of the panel.~~

~~(ii) Payments to attorneys who are not members of the panel shall be reasonably equivalent to the cost incurred by the insurer when similar services are rendered by attorneys who are members of any panel.~~

~~(c) The commissioner may disapprove a form if the commissioner finds that it:~~

~~(1) Does not meet the requirements of subsection (b) of this section;~~

~~(2) Is unfair, unfairly discriminatory, misleading, obscure, or encourages misrepresentation or misunderstanding of the contract, including cases in which the form:~~

~~(A) Provides coverage or benefits that are too restricted to achieve the purposes of which the policy is designed;~~

~~(B) Fails to attain a reasonable degree of readability, simplicity, and conciseness; or~~

~~(C) Is misleading, deceptive, or obscure because of its physical aspects such as format, typography, style, color, material, or organization;~~

~~(3) Provides coverage or benefits or contains other provisions~~

~~that would endanger the solidity of the insurer; or~~

~~(4) Is contrary to law.~~

~~23-91-211. Regulation of rates.~~

~~(a) Rate filings shall be subject to the following procedures and requirements:~~

~~(1) Every insurer shall file with the Insurance Commissioner every manual of classifications, rules, and rates, every rating plan, and every modification of any of the foregoing which it proposes to use;~~

~~(2) Every filing shall state the proposed effective date thereof and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports the filing and the commissioner does not have sufficient information to determine whether the filing meets the requirements of this subchapter, the commissioner may require the insurer to furnish the information upon which it supports the filing. Any filing may be supported by:~~

~~(A) The experience or judgment of the insurer or rating organization making the filing;~~

~~(B) The experience of other insurers or rating organizations; and~~

~~(C) Any other factor which the insurer or rating organization deems relevant; and~~

~~(3) A filing and any supporting information shall be open to public inspection after the filing becomes effective.~~

~~(b) The rates must meet the following requirements:~~

~~(1) They must be established and justified in accordance with generally accepted insurance principles, including, but not limited to, the experience or judgment of the insurer making the rate filing or actuarial computations; and~~

~~(2) They may not be excessive, inadequate, or unfairly discriminatory in relation to the benefits offered. Rates are not unfairly discriminatory because they are averaged broadly among persons insured under group, franchise, or blanket policies.~~

~~(c) By written order, the commissioner may suspend or modify the requirement of filing for any risk or group or class of risk, the rates for which cannot practically be filed before they are used.~~

~~23-91-212. Approval of forms and rates.~~

~~(a) If the Insurance Commissioner determines that any form reviewed under § 23-91-210 or any schedule of rates reviewed under § 23-91-211 complies with the requirements of those sections, the commissioner shall approve the filing within thirty (30) days, which may be extended for an additional thirty (30) days by notice in writing to the person making the filing prior to the expiration of the first thirty (30) days.~~

~~(b) If the commissioner disapproves a filing, the commissioner shall notify the person making it in writing specifying therein the reasons for his or her disapproval.~~

~~(c) A hearing shall be granted within thirty (30) days after a request in writing by any person aggrieved by the decision of the commissioner.~~

~~(d) If the commissioner does not disapprove a form or schedule of rates within thirty (30) days of the filing or an extension thereof as provided in subsection (a) of this section, it shall be deemed approved.~~

~~(e) After notice and hearing, the commissioner may disapprove any rate that has been previously approved or deemed approved.~~

~~(f) The commissioner may require the submission of additional relevant information reasonably necessary to determine whether to approve or disapprove a filing made pursuant to § 23-91-210 or § 23-91-211.~~

~~23-91-213. Segregated accounts required — Exception.~~

~~Except for employee welfare benefit plans regulated by the Employee Retirement Income Security Act of 1974, persons transacting the business of legal insurance, and any other business than insurance shall transact legal insurance wholly within a segregated account in accordance with the following requirements:~~

~~(1) The segregated account must satisfy the financial requirements for issuance of a certificate of authority;~~

~~(2)(A)(i) Except under subdivisions (6) and (7) of this section, the income and assets attributable to a segregated account shall always remain identifiable with the account.~~

~~(ii) However, unless the Insurance Commissioner so orders, the assets need not be kept physically separate from other assets of the person.~~

~~(B) The income, gains, and losses, whether or not realized, from assets attributable to a segregated account shall be credited to or charged against the account without regard to other income, gains, or losses of the person;~~

~~(3) Except under subdivision (4) of this section, assets attributable to a segregated account shall not be chargeable with any liabilities arising out of any other business of the person, nor shall any assets not attributable to the account be chargeable with any liabilities arising out of it;~~

~~(4) Claims remaining unpaid after completion of any liquidation under the applicable and relevant provisions of §§ 23-68-111 and 23-68-112 shall have liens on the interests of shareholders, if any, in all of the person's assets that are not liquidated. The segregated account shall be deemed an insurer within the meaning of § 23-68-102;~~

~~(5) Assets allocated to segregated accounts are the property of the person, which is not and shall not hold itself out to be a trustee of the assets;~~

~~(6) A person may allocate a portion or part of a particular asset to the segregated account; and~~

~~(7) By an identifiable act, the person may transfer assets to or from the segregated account if:~~

~~(A) The terms are fair and reasonable; and~~

~~(B) The books, accounts, and records of each party are maintained so as to clearly and accurately disclose the precise nature and details of the transaction.~~

~~23-91-214. Management and exclusive agency contracts.~~

~~(a) No insurer may enter into any exclusive agency contract or management contract unless the contract is first filed with the Insurance Commissioner and not disapproved under this section within thirty (30) days after filing or after such reasonable extended period as the commissioner may specify by notice given within the thirty (30) days.~~

~~(b) The commissioner shall disapprove a contract under subsection (a) of this section if the commissioner finds that:~~

~~(1) It subjects the insurer to excessive charges;~~

~~(2) The contract extends for an unreasonable period of time;~~

~~(3) The contract does not contain fair and adequate standards of performance;~~

~~(4) The persons empowered under the contract to manage the insurer are not sufficiently trustworthy, competent, experienced, and free from conflict of interest to manage the insurer with due regard for the interests of its insureds, creditors, or the public; or~~

~~(5) The contract contains provisions which impair the interests of the insurer's insureds or creditors of the public in this state.~~

~~23-91-215. Annual report.~~

~~Each insurer shall annually, on or before March 1, file with the Insurance Commissioner a report verified by at least two (2) principal officers. The report shall be on forms prescribed by the commissioner and shall include:~~

~~(1) A financial statement of the insurer's legal insurance business including:~~

~~(A) Its balance sheet; and~~

~~(B) Its receipts and disbursements for the preceding year;~~

~~(2) Any material changes in the information submitted pursuant to § 23-91-209;~~

~~(3) Such information about the number of persons protected and terminated as may be prescribed by the commissioner; and~~

~~(4) Such other information relating to the performance of the insurer as is necessary to enable the commissioner to carry out his or her duties under this subchapter.~~

~~23-91-216. Reserves required.~~

~~An insurer must maintain the reserves necessary for the sound operation of the business including unearned premium reserves, and the amount and manner of calculating these reserves shall be determined by the provisions of § 23-63-601 et seq.~~

~~23-91-217. Investment of assets.~~

~~The investable funds generated through the transaction of the business of legal insurance by persons who are not licensed to transact other lines of insurance shall be invested in securities or other investments permitted by~~

~~the laws of this state for the investment of assets of life insurers or in such other securities or investments as the Insurance Commissioner shall permit.~~

~~23-91-218. Trade practices.~~

~~The Trade Practices Act, § 23-66-201 et seq., and §§ 23-66-301—23-66-314 and 23-66-316 apply to persons transacting the business of legal insurance except as is inconsistent with this subchapter.~~

~~23-91-219. Licensing of agents.~~

~~(a) Agents shall be licensed in accordance with such provisions as the Insurance Commissioner in his or her discretion deems applicable under § 23-64-101 et seq., §§ 23-64-201—23-64-205, 23-64-207, 23-64-209, 23-64-210, 23-64-214—23-64-221, 23-64-223—23-64-227, and the Producer Licensing Model Act, § 23-64-501 et seq.~~

~~(b) The commissioner may develop and administer to license applicants such examination as he or she deems appropriate.~~

~~23-91-220. Examination of insurer's affairs.~~

~~(a) The Insurance Commissioner shall make an examination of the affairs of any insurer as often as the commissioner deems it necessary for the protection of the interests of the people of this state.~~

~~(b) The following sections shall apply to examinations conducted pursuant to subsection (a) of this section:~~

- ~~(1) Examination of managers and promoters, § 23-61-202;~~
- ~~(2) Examiners, § 23-61-203;~~
- ~~(3) Examination—Records and appraisals, § 23-61-204;~~
- ~~(4) Examination reports, § 23-61-205; and~~
- ~~(5) Examination expense, § 23-61-206.~~

~~23-91-221. Professional ethics.~~

~~The Insurance Commissioner shall report to the Attorney General for reference to the Supreme Court any information which the commissioner considers to be of substance and of possible violation of the Arkansas Rules of Professional Conduct as adopted by the Supreme Court.~~

~~23-91-222.—Revocation of certificate of authority.~~

~~The Insurance Commissioner may suspend, revoke, or refuse to renew any certificate of authority issued to a person transacting the business of legal insurance under this subchapter pursuant to and consistent with the relevant provisions of §§ 23-63-212—23-63-215.~~

~~23-91-223.—Rehabilitation and liquidation.~~

~~The relevant provisions of §§ 23-68-101—23-68-113 and 23-68-115—23-68-132 shall apply to a person transacting the business of legal insurance under the provisions of this subchapter.~~

~~23-91-224.—Authority to promulgate rules.~~

~~The Insurance Commissioner may promulgate such reasonable rules as are necessary or proper to carry out the provisions of this subchapter.~~

~~23-91-225.—Fees.~~

~~Every person subject to this subchapter shall pay to the Insurance Commissioner the fees required by the applicable and relevant provisions of § 23-61-401.~~

~~23-91-226.—Taxation.~~

~~(a) Taxation on legal insurance premiums shall be fixed at the rate of two and one-half percent (2.5%) of direct written premium income in Arkansas, after deduction for dividends paid to policyholders and returned premiums, and shall be due and payable in estimated quarterly installments and reconciled annually at the time of filing the insurer's annual report as required by § 23-91-215.~~

~~(b) The Insurance Commissioner shall deposit all premium taxes collected under this section in the State Treasury as general revenues.~~

~~23-91-227.—Public documents.~~

~~All applications, filings, and reports required under this subchapter shall be treated as public documents.~~