

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

SENATE BILL 351

By: Senator J. Bryant

For An Act To Be Entitled

AN ACT TO CREATE A CAUSE OF ACTION FOR BREACH OF AN
IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; AND
FOR OTHER PURPOSES.

Subtitle

TO CREATE A CAUSE OF ACTION FOR BREACH OF
AN IMPLIED COVENANT OF GOOD FAITH AND
FAIR DEALING.

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

SECTION 1. Arkansas Code Title 23, Chapter 66, Subchapter 2, is amended to add an additional section to read as follows:

23-66-216. Cause of action – Breach of implied covenant of good faith and fair dealing – Definition.

(a) As used in this section, "implied covenant of good faith and fair dealing" means an implied promise under an insurance contract to:

(1) Avoid acting in a way to prevent, hinder, or delay performance of an insurance contract; or

(2) Refrain from conduct that would impair a benefit or a right that is expected from a contractual relationship.

(b) In addition to any other available remedy under state law, a policyholder or a policyholder's assigns to an insurance contract may have a cause of action in tort against an insurer for a violation of the implied covenant of good faith and fair dealing.

(c) A person bringing suit under this section:

(1) Has the burden of proof to show by a preponderance of the



evidence that a violation of the implied covenant of good faith and fair dealing is a result of:

- (A) Negligence;
- (B) Reckless conduct; or
- (C) Intentional actions; and

(2) May recover:

- (A) Compensatory damages;
- (B) Consequential damages; and
- (C) Punitive damages under § 16-55-206 if the damages are

proven by clear and convincing evidence according to § 16-55-207.

(d) An insurer that is sued under this section has an affirmative defense if the express terms of the insurance contract allow the conduct for which the suit is brought.

(e) An insurer's refusal to pay an insurance claim or failure to pay an insurance claim is a breach of the implied covenant of good faith and fair dealing if the insurer:

(1) Does not conform to applicable insurance industry standards, customs, or practices when investigating, documenting, evaluating, communicating, or paying an insurance claim;

(2) Engages in prohibited unfair claims settlement practices as defined in § 23-66-206;

(3) Determines that an insurance claim is valid and refuses to pay the insurance claim;

(4) Alters or substitutes evidence in an insurance claim file for the purpose of avoiding liability on the insurance claim under the insurance contract;

(5) Has a pattern or practice of withholding or underpaying proceeds under an insurance contract based on an unreasonable interpretation of the insurer's insurance contract;

(6) Asserts a defense to payment of an insurance claim that violates applicable rules, statutes, or guidelines, including without limitation Rule 43 promulgated by the State Insurance Department;

(7) Misrepresents, omits, or conceals coverages available to a policyholder; or

(8) Delays or denies payment of proceeds under an insurance policy unreasonably or without proper cause.

(f) This section is remedial and shall be liberally construed to effectuate the purpose of the section.