

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001  
4

As Engrossed: H4/6/01

# A Bill

HOUSE BILL 2438

5 By: Representatives Ledbetter, R. Smith, Bradford, Childers  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO AUTHORIZE THE STATE INSURANCE  
10 COMMISSIONER TO CREATE A LONG-TERM CARE LIABILITY  
11 INSURANCE PLAN; AND FOR OTHER PURPOSES.  
12

## Subtitle

13  
14 AN ACT TO AUTHORIZE THE STATE INSURANCE  
15 COMMISSIONER TO CREATE A LONG-TERM CARE  
16 LIABILITY INSURANCE PLAN.  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 SECTION 1. Arkansas Code Title 23, Chapter 91 is amended by adding an  
22 additional subchapter to read as follows:  
23

### Subchapter 3.

#### 23-91-301. Purpose.

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27 (a)(1) The purpose of this subchapter is to provide for the  
28 establishment of a plan for a Long-term Care Liability Insurance Plan, if the  
29 Insurance Commissioner determines, after a hearing, that long-term care  
30 liability insurance is not reasonably available in this state.

31 (2) If the commissioner makes such a determination, he shall  
32 prepare a voluntary plan which will provide that insurance coverage.

33 (b) The plan shall provide coverage for professional liability for any  
34 long-term care providers licensed by the State or Arkansas.

35 (c) The plan shall provide insurance for long-term care providers, as  
36 set forth herein; but shall not reduce or eliminate the liability of the

1 long-term care providers for the matters covered by the plan other than to  
2 provide insurance therefor.

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4 23-91-302. Governing board.

5 (a) There is created a governing board of five (5) members to be  
6 appointed by the Governor which shall meet as necessary to review and  
7 prescribe operating procedures and rules to implement any plan promulgated  
8 pursuant to this subchapter. The governing board shall be comprised of the  
9 following members:

10 (1) Two (2) representatives from insurers licensed to operate in  
11 this state;

12 (2) One (1) representative who is a licensed insurance agent in  
13 this state;

14 (3) One (1) consumer representative; and

15 (4) One (1) representative from the long-term care industry.

16 (b) In addition, there shall be four (4) ex-officio members of the  
17 governing board who shall be the Insurance Commissioner, the Director of the  
18 Department of Human Services, and a member of the State Senate appointed by  
19 the President Pro Tempore of the Senate and a member of the State House of  
20 Representatives appointed by the Speaker of the House.

21  
22 23-91-303. Plan for coverage - Contents.

23 (a) The plan shall:

24 (1) Give consideration to:

25 (A) The need for adequate and readily accessible coverage;

26 (B) Optional methods of improving the market affected;

27 (C) The inherent limitations of the insurance mechanism;

28 (D) The need for reasonable underwriting standards; and

29 (E) The requirement and immediate implementation of  
30 reasonable loss prevention measures;

31 (2) Establish procedures for participants to have their  
32 grievances reviewed by the board; and

33 (3) Establish a rating plan which shall be actuarially sound.

34 (b) The plan may, on behalf of its participants:

35 (1) Issue policies of insurance to participants;

36 (2) Underwrite, adjust, and pay losses on insurance issued by

1 the plan;

2 (3) Appoint a service company or companies to perform the  
3 functions enumerated in this subsection, including the functions of a plan  
4 administrator;

5 (4) Obtain reinsurance for any part or all of its risks; and

6 (5) Obtain excess of loss coverages.

7 (c) The plan shall provide for:

8 (1) The method of classifying risks including appropriate  
9 consideration of quality assurance procedures in effect, such as gathering  
10 and maintaining reports and statistics concerning compliance therewith,  
11 voluntary and permissive use of monitoring devices by the facilities, and  
12 other procedures;

13 (2) The making, filing, and approval authority of rates which  
14 are not excessive, inadequate, or unfairly discriminatory and policy forms  
15 applicable to the risks insured by the plan;

16 (3) The adjusting and processing of claims;

17 (4) The commission rates to be paid to agents or brokers for  
18 coverages written by the plan;

19 (5) Any other insurance or investment functions that are  
20 necessary for the purpose of providing adequate and readily accessible  
21 coverage;

22 (6) The method of operation of the plan;

23 (7) The examination of the plan, including the activities of the  
24 plan administrator;

25 (8) The establishment of procedures to conduct necessary  
26 analyses at reasonable intervals to appropriately evaluate the Arkansas long-  
27 term care liability insurance market;

28 (9) The establishment of procedures and guidelines to prevent a  
29 company from transferring and causing to be transferred substantially all of  
30 its long-term care liability exposure to the plan, unless the commissioner  
31 finds after notice and hearing that it is in the best interests of Arkansas  
32 citizens to allow such a practice; and

33 (10) Other matters as may be necessary and proper for the  
34 execution of the board's powers, duties, and obligations under this  
35 subchapter.

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1           23-91-304 Coverages provided.

2           (a) The plan shall provide insurance for professional liability for long-  
3           term care providers for actual damages and non-economic compensatory damages.

4           (b) The plan shall not provide coverage for punitive damages, nor  
5           shall it cover such other standard exceptions in liability contracts.

6           (c) The risks assumed by the plan shall include the obligation to pay  
7           all actual damages, non-economic compensatory damages, and costs of defense.

8           (d) The plan shall provide insurance on an occurrence basis, with  
9           limitations of one million dollars (\$1,000,000) per occurrence and three  
10           million dollars (\$3,000,000) annual aggregate, with such deductibles as shall  
11           be specified in the individual coverage contract.

12           (e) The plan administrator shall have the sole and exclusive right to  
13           defend all covered claims and to make all determinations as to settlement of  
14           covered claims.

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16           23-91-305 Funding.

17           (a) As a precondition to establishing the plan, the plan shall be  
18           capitalized from independent sources, including participants, in an amount  
19           sufficient to fund the initial consulting, actuarial, legal and other  
20           professional expenses necessary to establish the plan.

21           (b) The plan shall be established and maintained through a periodic  
22           premium payment by the participants in an amount determined by the governing  
23           board of the plan to be sufficient to render the plan self-supporting and  
24           actuarially sound to fund the plan risks assumed by the plan and to fund  
25           expenses of the plan.

26           (c)(1) Provision shall be made for adjustment of contributions for  
27           participants based on experience-rating adjustments for participants based on  
28           their loss experience.

29           (2) The information provided to the plan for the purpose of  
30           making this determination shall be submitted in the form provided by the  
31           Commissioner and the form shall be confidential and not discoverable or  
32           admissible at trial and no waiver of objection or privilege shall be implied  
33           from the submission; except that any document or fact contained in or  
34           referred to in such submission which is otherwise discoverable or admissible  
35           under the prevailing rules of evidence shall continue to be discoverable or  
36           admissible notwithstanding the previous provisions of this subsection.

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2 23-91-306. Information for individuals.

3 The plan or its agent shall provide to any person seeking the insurance  
4 available in each plan information about the services prescribed in the plan,  
5 including full information on the requirements and procedures for  
6 participation in the plan.

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8 23-91-307. No liability in creating plan.

9 There shall be no liability on the part of and no cause of action shall  
10 arise against the commissioner, his representatives, or any plan, its  
11 participants, or its employees for any good faith action taken by them in the  
12 performance of their powers and duties in creating any plan pursuant to this  
13 subchapter.

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15 23-91-308. Rules and regulations.

16 The commissioner shall have the authority to promulgate rules and  
17 regulations consistent with this subchapter and necessary to effectuate the  
18 purpose of this subchapter.

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20 23-91-309 Termination.

21 (a) If the board finds after investigation that there is sufficient  
22 availability and competition in the marketplace, the board shall request that  
23 the commissioner hold a public hearing to determine if it is in the best  
24 interest of Arkansas citizens to suspend operation of or dissolve the plan.  
25 If after the hearing the commissioner determines that there is sufficient  
26 availability and competition in the voluntary long-term care liability  
27 insurance market and it is in the best interest of Arkansas citizens, the  
28 commissioner may:

29 (1) Suspend operations of the plan;

30 (2) Suspend policy issuance by the plan; or

31 (3) Dissolve the plan.

32 (b) If the commissioner determines that funds remain in the plan after  
33 termination, and all claims have been paid, the commissioner shall apportion  
34 the remaining funds amongst the participants in an equitable manner.

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36 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General

1 Assembly that an emergency exists due to the unavailability of professional  
2 liability insurance for long-term care facilities; that such unavailability  
3 could jeopardize the stability of those facilities; that it is imperative to  
4 have adequate long-term care facilities within this state; and this act will  
5 provide a mechanism for helping assure the continued viability of those  
6 facilities. Therefore, an emergency is declared to exist and this act being  
7 immediately necessary for the preservation of the public peace, health and  
8 safety shall become effective on the date of its approval by the Governor.  
9 If the bill is neither approved nor vetoed by the Governor, it shall become  
10 effective on the expiration of the period of time during which the Governor  
11 may veto the bill. If the bill is vetoed by the Governor and the veto is  
12 overridden, it shall become effective on the date the last house overrides  
13 the veto.

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15 /s/ Ledbetter, et al.  
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