

1 State of Arkansas  
2 94th General Assembly  
3 Regular Session, 2023  
4  
5 By: Senator J. Bryant  
6

# A Bill

SENATE BILL 351

## For An Act To Be Entitled

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

## Subtitle

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

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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 66, Subchapter 2, is  
22 amended to add an additional section to read as follows:

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

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

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

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

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

35 (c) A person bringing suit under this section:

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



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

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

6 (2) May recover:

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

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

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

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

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

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

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

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

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

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

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

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

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

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