

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 *As Engrossed: H3/9/01 H3/13/01 H3/20/01 H3/27/01*

2 83rd General Assembly

A Bill

Act 1555 of 2001

3 Regular Session, 2001

HOUSE BILL 2244

4

5 By: Representative Files

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For An Act To Be Entitled

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AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS
INSURANCE CODE; AND FOR OTHER PURPOSES.

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11

12

Subtitle

13

*THE ARKANSAS INSURANCE DEPARTMENT PROPERTY
AND CASUALTY OMNIBUS BILL.*

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

18

19 SECTION 1. Arkansas Code 23-65-103 is amended to read as follows:

20 23-65-103. Report and tax of independently procured coverages.

21 (a) Every insured or self-insured who in this state directly procures,
22 causes to be procured, or continues or renews insurance in an unauthorized
23 ~~foreign insurer, or any self-insurer who in this state so procures or~~
24 ~~continues excess loss, catastrophe, or other insurance,~~ upon a subject of
25 insurance resident, located, or to be performed within this state, ~~other than~~
26 including surplus line insurance ~~whether~~ when procured ~~through~~ without use of
27 a surplus lines broker pursuant to the surplus lines law of this state ~~or~~
28 ~~exempted from such law under § 23-65-302,~~ within thirty (30) days after the
29 date the insurance was so procured, continued, or renewed, shall file a
30 written report ~~of the same~~ with the commissioner on forms designated by the
31 commissioner and furnished to the insured upon request.

32 (1) The report shall show the name and address of ~~the insureds,~~
33 each named insured, name and address of the insurer, the subject of the
34 insurance, a general description of the coverage, the amount of premium
35 currently charged, and such additional pertinent information as is reasonably
36 requested by the commissioner.

1 (2) If any insurance also covers subjects of insurance resident,
2 located, or to be performed outside this state, a proper pro rata portion of
3 the entire premium payable for all the insurance shall be allocated as to the
4 subjects of insurance resident, located, or to be performed in this state,
5 for the purposes of this section.

6 (b) Any insurance in an unauthorized insurer procured through
7 negotiations or an application in whole or in part occurring or made within
8 or from within this state, or for which premiums in whole or in part are
9 remitted directly or indirectly from within this state, shall be deemed to be
10 insurance procured, or continued or renewed, in this state within the intent
11 of subsection (a) of this section.

12 (c) For the general support of the government of this state there is
13 levied upon the obligation, chose in action, or right represented by the
14 premium charged or payable for the insurance a tax at the rate of two percent
15 (2%) of the ~~gross~~ net direct amount of the premium. The insured shall
16 withhold the amount of the tax from the amount of premium charged by and
17 otherwise payable to the insurer for the insurance, and within thirty (30)
18 days after the insurance was so procured, continued, or renewed, and
19 coincidentally with the filing with the commissioner of the report provided
20 for in subsection (a) of this section, the insured shall pay the amount of
21 the tax to the Treasurer of State through the commissioner.

22 (d) If the insured fails to withhold from the premium the amount of
23 tax levied pursuant to this section, the insured shall be liable for the
24 amount thereof and shall pay the amount to the commissioner within the time
25 stated in subsection (c) of this section.

26 (e) The tax imposed pursuant to this section if delinquent shall bear
27 interest at the rate of six percent (6%) per annum, compounded annually.

28 (f) The tax shall be collectible from the insured by civil action
29 brought by the commissioner.

30 (g) This section does not abrogate or modify and shall not be
31 construed or deemed to abrogate or modify any provision of § 23-65-101, which
32 is unauthorized insurance transactions prohibited, or § 23-65-102, which is
33 suits by unauthorized insurers prohibited, or any other provision of this
34 code.

35 (h) This section does not apply to life or ~~disability~~ insurance
36 accident and health insurance.

1 (i) The tax specified in subsection (c) of this section shall not be
2 due and payable to this state in the event the unlicensed or unauthorized
3 insurer reports and pays premium tax to this state pursuant to § 26-57-603 et
4 seq., or other applicable premium tax laws for these independently procured
5 coverages. Upon receipt of duplicate payment of tax from the insured and the
6 unlicensed or unauthorized insurer, this state shall refund to the insured
7 the amount of the duplicate payment.

8
9 SECTION 2. Arkansas Code 23-65-104 is amended to read as follows:
10 23-65-104. Records produced on order.

11 (a)(1) Every person as to whom insurance is placed with an
12 unauthorized insurer, upon the commissioner's order, shall produce for his
13 examination all policies and other documents evidencing the insurance and
14 shall disclose to the commissioner the amount of gross premiums paid or
15 agreed to be paid for the insurance.

16 (2) For each refusal to obey the order, the person shall be
17 liable to a fine of not more than ~~five hundred dollars (\$500)~~ one hundred
18 dollars (\$100) each day of disobedience.

19 (b) This section does not apply to life and disability insurances.
20

21 SECTION 3. Arkansas Code 23-65-305 is amended to add an additional
22 subdivision to read as follows:

23 (3) The soliciting agent or broker shall maintain written
24 documentation of compliance with these requirements.

25
26 SECTION 4. Arkansas Code 23-65-306 is amended to read as follows:

27 ~~(a) At the time of the procuring of the insurance, the soliciting~~
28 ~~agent or broker shall execute an affidavit on a form prescribed by the~~
29 ~~Insurance Commissioner and containing any information which he shall require,~~
30 ~~as well as setting forth facts referred to in § 23-65-305 and shall maintain~~
31 ~~the affidavit at his place of business.~~

32 ~~(b)~~(a) At the time of the procuring of the insurance, the surplus
33 lines broker shall execute an affidavit on a form prescribed by the
34 commissioner and containing any information which he shall require, as well
35 as setting forth facts referred to in §§ 23-65-313 and 23-65-314, and shall
36 promptly file the affidavit with the commissioner within sixty (60) days

1 following the end of the month in which the insurance was procured.

2 ~~(e)~~(b) Affidavits or reports filed under this section shall not be
3 subject to public inspection unless the commissioner determines that the
4 public interest or the welfare of the filing broker requires otherwise.

5
6 SECTION 5. Arkansas Code 23-65-307 is amended to read as follows:

7 Every insurance contract procured and delivered as surplus line
8 coverage pursuant to this law shall be initiated by or bear the name of the
9 surplus lines broker who procured it and shall ~~have stamped upon it~~ contain a
10 conspicuous statement substantially similar to the following:

11 "This contract is registered and delivered as a surplus line coverage
12 under the Surplus Lines Insurance Law, and it may in some respects be
13 different from contracts issued by insurers in the admitted markets, and,
14 accordingly, it may, depending upon the circumstances, be more or less
15 favorable to an insured than a contract from an admitted carrier might be.
16 The protection of the Arkansas Property and Casualty Guaranty Act does not
17 apply to this contract. A tax of four percent (4%) is required to be
18 collected from the insured on all surplus lines premiums."

19
20 SECTION 6. Arkansas Code 23-65-308 is amended to read as follows:

21 Any person, while licensed as a resident ~~agent or broker~~ insurance
22 producer of this state as to property, casualty, surety, and marine
23 insurance, who has held the license in this or another state, or both, for
24 three (3) years prior to application for a surplus lines broker's license,
25 and who is deemed by the Insurance Commissioner to be competent and
26 trustworthy, or a non-resident applicant holding a surplus lines broker
27 license in his a or country of residency, may be licensed as a surplus lines
28 broker as follows:

29 (1) Application to the commissioner for the license shall be made on
30 forms furnished by the commissioner;

31 (2) The license fee shall be in the amount stated in § 23-61-401(10)
32 for each license year during any part of which the license is in force and
33 shall be paid to the commissioner. The license year shall be from the date of
34 issuance of the license to January 1 next after its issue;

35 (3)(A) Prior to issuance of the license, the applicant shall file with
36 the commissioner a bond or other securities in favor of the State of Arkansas

1 in the penal sum of fifty thousand dollars (\$50,000), aggregate liability,
2 with unaffiliated entities approved by the commissioner. Thereafter for as
3 long as the license remains in effect, the applicant shall keep the bond or
4 other securities in force and unimpaired.

5 (B) The securities shall be conditioned that the broker will
6 conduct business under the license in accordance with the provisions of the
7 surplus lines insurance law and that he will promptly remit the taxes
8 provided by the law.

9 (C) No securities shall be terminated unless not less than sixty
10 (60) days' prior written notice thereof is filed with the commissioner.

11 (4) Prior to issuance of the license, the applicant must pass a
12 written examination as to his competence to act as a surplus lines broker,
13 which shall be required by the commissioner. No examination shall be required
14 of a non-resident applicant duly licensed in the applicant's state of
15 residency.

16 (A) The commissioner shall give, conduct, and grade all
17 examinations, or he may arrange to have examinations administered and graded
18 by an independent testing service as specified by contract in a fair and
19 impartial manner and without unfair discrimination between individuals
20 examined.

21 (B) The commissioner may require a reasonable waiting period
22 before reexamination of an applicant who failed to pass a previous similar
23 examination.

24 (C) The examination fee shall be the same as that charged an
25 applicant for license as an agent, broker, or solicitor under § 23-61-401.

26

27 SECTION 7. Arkansas Code 23-65-313(a) is amended to read as follows:

28 (a) Each surplus lines broker shall keep in his office ~~in this state~~ a
29 full and true record of each Arkansas surplus lines contract procured by him,
30 including a copy of the daily report, if any, and showing such of the
31 following items as may be applicable:

- 32 (1) Amount of the insurance;
33 (2) Gross premium charged;
34 (3) Return premium paid, if any;
35 (4) Rate of premium charged upon the several items of property;
36 (5) Effective date of the contract, and the terms thereof;

- 1 (6) Name and address of the insurer;
- 2 (7) Name and address of the insured;
- 3 (8) Brief general description of property insured and where
- 4 located; and
- 5 (9) Other information as may be required by the commissioner.

6

7 SECTION 8. Arkansas Code 23-65-315(a) is amended to read as follows:

8 (a) ~~Coincident with the filing of the affidavit required under § 23-~~
9 ~~65-306, and no~~ No later than sixty (60) days following the end of the month
10 in which surplus line insurance was procured, the surplus lines broker shall
11 remit to the Treasurer of State, through the commissioner, as a tax imposed
12 for the privilege of transacting business as a surplus lines broker in this
13 state, a tax of four percent (4%) on the direct premiums written, less return
14 premiums and exclusive of sums collected to cover state or federal taxes, on
15 surplus lines insurance subject to tax transacted by the surplus lines broker
16 during the preceding months as shown by his affidavit filed with the
17 commissioner.

18

19 SECTION 9. Arkansas Code 23-65-317(a) is ~~hereby~~ amended to read as
20 follows:

- 21 (a) The commissioner shall revoke any surplus lines broker's license:
- 22 (1) If the broker fails to file his annual statement or to remit
 - 23 the tax as required by law; or
 - 24 (2) If the broker fails to maintain an office ~~in this state~~, or
 - 25 to keep records, or to allow the commissioner to examine his records as
 - 26 required by law; or
 - 27 (3) For any of the causes for which an agent's license may be
 - 28 revoked.

29

30 SECTION 10. Arkansas Code 23-67-203 is amended to read as follows:
31 23-67-203. Scope.

32 This chapter applies to all kinds of insurance written on risks in this
33 state by any insurers authorized to do business in this state, except:

- 34 (1) Life insurance;
- 35 (2) Annuities;
- 36 (3) Disability, including accident and health, insurance;

- 1 (4) Ocean marine insurance;
- 2 (5) Reinsurance;
- 3 (6) Aircraft insurance;
- 4 (7) Title insurance;
- 5 (8) Workers' compensation and employers' liability insurance;
- 6 except that the following provisions shall apply to these lines: §§ 23-66-
- 7 206; 23-67-202(1), (4)-(6) and (9)-(12); 23-67-204; 23-67-205; 23-67-208; 23-
- 8 67-214; 23-67-215(a) and (c); 23-67-216; 23-67-218; 23-67-219; 23-67-221
- 9 [repealed; and the Publisher's Note to Title 23, Chapter 67; ~~or~~
- 10 (9) Motor vehicle service contracts, for so long as the motor
- 11 vehicle service contract providers' exposures to their customers are fully
- 12 insured by an insurer that is authorized to transact property and casualty
- 13 insurance business in this state; or
- 14 (10) Surplus lines insurance.

15

16 SECTION 11. Arkansas Code 23-70-105(a) concerning surplus required of

17 domestic reciprocal insurers, is amended to read as follows:

18 (a) A domestic reciprocal insurer formed pursuant to this chapter, if

19 it has otherwise complied with the applicable provisions of this code, may be

20 authorized to transact insurance if it has and maintains surplus funds as

21 follows:

22 (1) To transact property insurance, surplus funds of not less

23 than ~~one hundred thousand dollars (\$100,000)~~ the amount required of a foreign

24 reciprocal insurer under § 23-63-205;

25 (2) To transact casualty insurance, surplus funds of not less

26 than ~~one hundred thousand dollars (\$100,000)~~ the amount required of a foreign

27 reciprocal insurer under § 23-63-205.

28 (3) The surplus funds required in this subsection shall be

29 deposited or adjusted by the July 1 following the filing of the annual

30 statement.

31

32 SECTION 12. Arkansas Code 23-77-106 is amended to read as follows:

33 (a) Every club or association desiring to commence operations within

34 the state shall, prior to the commencement of operations, file applications

35 with and receive a certificate of authority from the Insurance Commissioner.

36 (b) No foreign or alien automobile club or association shall be

1 authorized to operate in Arkansas which:

2 (1) Has not furnished the commissioner with evidence that it has
3 been organized and actively engaged in the automobile club or association
4 business in the state of its incorporation for a period of three (3) years
5 prior to the date of its application to be admitted and authorized to do
6 business in the State of Arkansas;

7 (2) However, this subsection shall not apply to a foreign or
8 alien automobile club or association which is:

9 (A) The wholly owned subsidiary of an automobile club or
10 association or an insurance company admitted and authorized to do business in
11 the State of Arkansas; or

12 (B) The continuing corporation resulting from a merger or
13 consolidation of automobile clubs or associations or insurance companies, at
14 least one (1) of which is in good standing in its state or country of
15 domicile and has been organized and actively engaged in the automobile club
16 or association business in the state or country of ~~its organization~~ domicile
17 for at least three (3) years prior to the date of the application of that
18 corporation to be admitted and authorized to do business in the State of
19 Arkansas.

20 (3) The commissioner may accept evidence of the applicant's good
21 standing and operation for three (3) years under licensure in its state or
22 country of domicile, or under licensure in another state or port of entry
23 state, so long as the laws of that jurisdiction regulating automobile clubs
24 or associations are substantially similar to the laws of this state, with
25 forms and certifications as are specified.

26 (c) An automobile club or association must pay to the commissioner one
27 hundred dollars (\$100) as an annual license fee. The license fee shall be
28 paid to the commissioner on or before April 1 of each year.

29 (d)(1) The following documents and information shall be filed with the
30 application of all automobile clubs and associations:

31 (A) Certification that upon full licensure it shall
32 deposit ~~The~~ the sum of twenty thousand dollars (\$20,000) in cash or
33 securities as approved by the commissioner and having at all times a market
34 value of not less than twenty thousand dollars (\$20,000), ~~or, in lieu of that~~
35 ~~sum, a surety bond payable to the commissioner in the sum of twenty thousand~~
36 ~~dollars (\$20,000) executed by the applicant with surety approved by the~~

1 commissioner, conditioned upon full compliance with this chapter;

2 (B) Appointment of an agent, including the agent's name
3 and address for service of process who shall be a resident of the State of
4 Arkansas or, in lieu thereof, the insurance commissioner;

5 (C) A copy of the proposed form of membership application,
6 membership certificate, articles of incorporation or organization or
7 partnership agreement, bylaws, contracts for service, advertising material,
8 and any other data requested by the commissioner;

9 (D) References as to the character, ability, and integrity
10 of the organizers, manager, agent, and any other person through whom the
11 applicant proposes to issue contracts, membership certificates, membership
12 cards, or other documents in return for membership fees or dues; and

13 (E) A full and true statement of its financial condition,
14 transactions, and affairs as of the December 31 next preceding the date of
15 the application. The statement shall be on a calendar year basis. The
16 statement shall be verified by oath of two (2) officers or directors of the
17 automobile club or association, one (1) of which shall be its president, or
18 vice president ~~and~~ or secretary. Financial statements that are consolidated
19 with other affiliates or subsidiaries of the applicant are not acceptable,
20 except for good cause and subsequent approval by the commissioner. Beginning
21 after December 31, 2002, each applicant shall file an audited financial
22 statement for three (3) calendar years prior to the date of its application
23 in this state.

24 (2) If the commissioner is satisfied that the applicant is
25 qualified and meets all the requirements of this chapter, he shall issue to
26 the applicant a certificate of authority to conduct the business of the
27 automobile club or association within this state.

28
29 SECTION 13. Arkansas Code 23-79-307(6) is amended to read as follows:

30 (6) When an insurer ~~has filed a revision of rates or rules which~~
31 revises its rates or rules and the revision results in a premium increase
32 equal to or greater than twenty-five percent (25%) on any renewal policy
33 issued for a term of twelve (12) months or less, the insurer shall mail or
34 deliver to the insured's agent not less than thirty (30) days prior to the
35 effective date of renewal, and to the insured not less than ten (10) days
36 prior to the effective date of renewal, notice specifically stating the

1 insurer's intention to increase the premium by an amount equal to or greater
2 than twenty-five percent (25%). If the notice is not given as stated in this
3 subdivision (6), the insurer is required to extend the existing policy thirty
4 (30) days from the date such notice is mailed or delivered. The premium for
5 the policy as extended in such circumstances shall be no more than the pro
6 rata premium of the existing policy.

7
8 SECTION 14. Arkansas Code 23-79-307 is amended to add an additional
9 subdivision to read as follows:

10 (7) Except in the case of nonpayment of premium, an insurer
11 shall renew a policy unless a written notice of nonrenewal is mailed at least
12 sixty (60) days prior to the expiration date of the policy, or for a policy
13 for a term longer than one (1) year and not having a fixed expiration date,
14 sixty (60) days prior to the anniversary date.

15
16 SECTION 15. Arkansas Code 23-79-307, concerning minimum standards for
17 commercial property and casualty insurance policies, is amended to add an
18 additional subdivision to read as follows:

19 (7) Policies containing an exclusion for punitive damages must
20 include a definition of punitive damages substantially similar to the
21 following: "Punitive damages are damages that may be imposed to punish a
22 wrongdoer and to deter others from similar conduct.

23
24 SECTION 16. Arkansas Code 23-89-303 is amended to read as follows:
25 23-89-303. Grounds for cancellation.

26 (a) A notice of cancellation of a policy shall be effective only if it
27 is based on one (1) or more of the following reasons:

28 (1) Nonpayment of premium;

29 (2) The named insured or any driver of the insured vehicle shall
30 be convicted of:

31 (A) Driving while intoxicated;

32 (B) Homicide or assault arising out of the use of a motor
33 vehicle;

34 (C) Three (3) separate convictions of speeding or reckless
35 driving, or any combination of the two, during the policy period, including
36 three (3) months prior to the effective date of the policy;

1 (3) The driver's license or motor vehicle registration of the
2 named insured or of any other operator who either resides in the same
3 household or customarily operates an automobile insured under this policy has
4 been under suspension or revocation during the policy period or, if the
5 policy is a renewal, during its policy period or the one hundred eighty (180)
6 days immediately preceding its effective date;

7 (4) Fraud or misrepresentation of a material fact, the knowledge
8 of which would have caused the insurer to decline to issue a policy; or

9 (5) Nonpayment of membership dues where they are a requirement
10 in the bylaws, agreements, or other legal instruments of a company before
11 issuance and maintenance of a policy under this subchapter.

12 (b) This section shall not apply to any policy or coverage which has
13 been in effect less than sixty (60) days at the time notice of cancellation
14 is mailed or delivered by the insurer, unless it is a renewal policy.

15 ~~(c) Modification of automobile physical damage coverage by the~~
16 ~~inclusion of a deductible not exceeding one hundred dollars (\$100) shall not~~
17 ~~be deemed a cancellation of the coverage or of the policy.~~

18 ~~(d)(c)~~ This section shall not apply to nonrenewal.

19 ~~(e)(1)(d)(1)~~ However, an insurer shall not be able to rescind bodily
20 injury or property damage liability coverage under an insurance policy for
21 fraud or misrepresentation with respect to any injury to a third party when
22 suffered as a result of the insured's negligent operation of a motor vehicle.

23 (2) Nothing in this subsection is intended to negate an
24 insurer's right to rescind other coverages in the insurance policy purchased
25 by the insured.

26
27 SECTION 17. Arkansas Code Title 23, Chapter 91, the Title is amended
28 to read as follows:

29 CHAPTER 91

30 ~~PROFESSIONAL LIABILITY INSURANCE~~

31 PRE-PAID LEGAL INSURANCE

32
33 SECTION 18. Arkansas Code 23-94-213(B)(2)(b) is amended to read as
34 follows:

35 (b) First obtain a resident Arkansas surplus line broker's license, or
36 a ~~nonresident~~ non-resident Arkansas surplus line broker's license ~~restricted~~

1 ~~to registered purchasing groups only~~, prior to placing the group's coverage
2 with the surplus line insurer.

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/s/ Files

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