

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

A Bill

ACT 774 OF 1997
HOUSE BILL 1894

4
5 By: Representatives Faris, Rodgers, Maddox, Miller, Cunningham, Purdom, Wagner, Wilkinson, Newman, Johnson, Dietz, and George
6 By: Senator Hopkins

For An Act To Be Entitled

7
8
9 "AN ACT TO AMEND VARIOUS SECTIONS OF 23-73-101 ET SEQ.
10 PERTAINING TO FARMERS' MUTUAL AID ASSOCIATIONS, AND FOR
11 OTHER PURPOSES."

Subtitle

12
13
14 "FARMERS' MUTUAL AID ASSOCIATIONS CODE
15 REVISION"

16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18
19 SECTION 1. Chapter 73 of Title 23 is hereby amended As follows:

20 "23-73-101. Definition.

21 As used in this chapter, unless the context otherwise requires, farmer
22 means a farm tenant or any person who owns or cultivates or superintends the
23 cultivation of a farm.

24

25 23-73-102. Scope.

26 (a) This chapter applies only to domestic farmers' mutual aid companies
27 and associations.

28 (b) Nothing in the insurance laws of this state shall be deemed to apply
29 to or govern either directly or indirectly farmers' mutual aid companies or
30 associations except as contained in or referred to in this chapter.

31

32 23-73-103. Associations existing as of January 1, 1960.

33 Any company or association lawfully organized and existing and lawfully
34 doing business and insuring property as a farmers' mutual aid association or
35 company as of January 1, 1960, is not required to reorganize or comply with
36 the provisions of this chapter applicable to organization of a farmers' mutual

1 aid association or company.

2

3 23-73-104. Other provisions applicable.

4 In addition to the provisions of this chapter, farmers' mutual aid
5 companies or associations shall also be subject to the following chapters and
6 provisions of this code to the extent so applicable:

7 (1) Sections 23-60-101 - 23-60-108 and 23-60-110, scope of code;

8 (2) Subchapters 1-3 of chapter 61 of this title, the Insurance
9 Commissioner;

10 (3) Chapter 65 of this title, unauthorized insurers;

11 (4) Sections 23-66-201 - 23-66-214, 23-66-301 - 23-66-306, 23-66-308 -
12 23-66-311, 23-66-313, and 23-66-314, trade practices and frauds;

13 (5) Section 23-79-208, suits against insurers - damages and attorney
14 fees, loss claims;

15 (6) Sections 23-68-101 - 23-68-113 and 23-68-115 - 23-68-132,
16 rehabilitation and liquidation;

17 (7) Sections 23-63-601 - 23-63-613, assets and liabilities of insurance
18 companies, except that § 23-63-605 in regard to unearned premium reserve shall
19 not apply;

20 (8) Sections 23-63-801 - 23-63-833 and 23-63-835, investments;

21 (9) Section 23-62-205, reinsurance-~~i~~;

22 (10) Section 23-69-134, maintenance of home office and records;

23 (11) Chapter 64 of this title, agents, brokers, solicitors, adjusters,
24 and consultants; however, company or association officers and directors that
25 also act as agents for their company or association, shall not be required to
26 license as agents, if said officers and directors do not receive commissions
27 for policy sales.

28 (12) Sections 23-61-701 - 23-61-705, State Insurance Department Trust
29 Fund fees;

30 (13) Section 23-79-109, filing and approval of forms; and

31 (14) Sections 23-88-101, valued policy law and 23-88-102, paying costs
32 of volunteer fire department services.

33

34 23-73-105. Organization - Membership - Insurance coverage.

35 (a) Twenty (20) or more farmers, all of whom shall be residents of this
36 state, may make mutual pledges and give valid obligations to each other for

1 their insurance against loss or damage by fire, tornado, lightning, cyclone,
 2 windstorm, hail, explosion with or without fire ensuing, smoke, or direct loss
 3 or damage to insured property caused by moving vehicles and airplanes, riot,
 4 riot attending a strike, and civil commotion.

5 (b) These associations shall not insure any property not owned by one
 6 (1) of its members.

7 (c) Directors of public school districts of any kind and trustees of
 8 ~~rural~~ churches may become members of such an association in their
 9 representative capacities, for the purpose of insuring ~~rural~~ school-houses and
 10 ~~rural~~ churches.

11 (d) These associations may write coverage, at their election, for
 12 collapse of buildings from the weight of ice and snow.

13 (e) An association shall file all forms, including policy forms,
 14 application forms, rider or endorsement forms, or forms of renewal certificate
 15 for the coverages contained in subsections (a) and (d) above with the
 16 commissioner. These filings shall be for informational purposes only.

17 ~~—— (e) (f)(1) The associations may also write burglary and theft, glass,~~
 18 ~~leakage, and fire extinguisher equipment, livestock, miscellaneous~~
 19 ~~coverage, and liability, and disability insurance, provided those~~
 20 ~~coverages are written as a supplement, or package commonly referred to~~
 21 ~~as a homeowner or farmowner policy, to a fire insurance policy, if the~~
 22 ~~commissioner approves the reinsurance agreement as to the liability~~
 23 ~~portions or obligations under these policies if the liability portions~~
 24 ~~or obligations under the policy are reinsured to the extent of one~~
 25 ~~hundred percent (100%) by an insurer duly authorized to do business in~~
 26 ~~this state.~~

27 (2) Before any association shall be authorized to write ~~these the~~
 28 coverages listed in subsection (f)(1) above, the policy form shall have prior
 29 approval of the commissioner, in accordance with § 23-79-109, and the
 30 association shall have and thereafter maintain a minimum surplus of fifty
 31 thousand dollars (\$50,000) to be deposited with the commissioner in the form
 32 of securities eligible for deposit under § 23-63-903. However, if the
 33 association reinsures its obligations under the coverages listed in subsection
 34 (f)(1) to the extent of one hundred percent (100%), the commissioner, in his
 35 discretion, may waive the deposit requirement under this section. The deposit
 36 shall be conditioned for the payment of creditors and the prompt payment of

1 all claims arising and accruing to any person in this state. The deposit shall
 2 be further subject to the conditions specified in § 23-63-909.

3 (3) Premiums received on policies sold containing ~~these coverages~~
 4 the coverages listed in subsection (f)(1) above shall be subject to the
 5 provisions of § 26-57-601, et seq. relating to premium taxes.

6

7 23-73-106. Articles of association.

8 (a) ~~Individuals proposing to form~~ Articles of association of any
 9 farmers' mutual aid company or association shall ~~subscribe and acknowledge~~
 10 ~~articles of association in duplicate~~ specifying:

11 (1) The name of the association or company;

12 (2) The purposes for which formed;

13 (3) The location of its principal or home office, which office
 14 shall be in this state;

15 (4) The names and addresses of the members of its first board of
 16 directors who shall manage the association until the first meeting of the
 17 members;

18 (5) The names, addresses, and places of residence of the
 19 organizers; and

20 (6) Provisions relating to amendment of the articles, as provided
 21 in § 23-73-111.

22 (b) The articles shall be executed in duplicate and filed with the
 23 commissioner.

24

25 23-73-107. Adoption of similar name prohibited.

26 No name shall be adopted by the company or association which is so
 27 similar to any name already in use by any existing company or association
 28 organized or doing business in Arkansas as to be confusing or misleading.

29

30 23-73-108. Bond. [Repealed.]

31 ~~— (a) At the time of filing articles of association as required under §~~
 32 ~~23-73-106, the organizers of a proposed association shall file with the~~
 33 ~~commissioner a qualifying bond in the sum of five thousand dollars (\$5,000),~~
 34 ~~with good and sufficient security, subject to the commissioner's approval.~~

35 ~~— (b) The bond shall be conditioned for the prompt return to members of~~
 36 ~~all money collected from them in advance and for payment of all indebtedness~~

1 ~~of the association if the organization of the company or association is not~~
 2 ~~completed within one (1) year after the date of the certificate provided for~~
 3 ~~in § 23-73-109.~~

4

5 23-73-109. Certificate to begin business. [Repealed.]

6 ~~—— (a) If the commissioner finds that the articles of association and bond~~
 7 ~~filed with him comply with the provisions of this chapter, he shall endorse~~
 8 ~~his approval thereon, file the bond and one (1) set of the articles bearing~~
 9 ~~the endorsement in his office, and return the other endorsed set of articles~~
 10 ~~to the association, together with a certificate which shall be its authority~~
 11 ~~to begin business.~~

12 ~~—— (b) If the organization of the association is not completed within one~~
 13 ~~(1) year after the date of the certificate, the commissioner shall revoke and~~
 14 ~~cancel its certificate and its right to transact business.~~

15

16 23-73-110. Legal existence.

17 (a) The legal existence of the association begins from the date of the
 18 commissioner's certificate authorizing it to begin business.

19 (b) Thereupon the board of directors named in its articles may:

20 (1) Adopt bylaws which shall be filed with the commissioner within
 21 thirty (30) days after adoption;

22 (2) Accept applications for insurance; and

23 (3) Transact business of the association, except that it shall not
 24 insure any property or issue any policies until it has received a certificate
 25 of authority to transact insurance as provided for in this chapter.

26

27 23-73-111. Amendment of articles and bylaws.

28 (a) Articles of association may be amended as ~~may be~~ provided in the
 29 articles, and ~~all~~ any such amendments shall promptly be filed with the
 30 commissioner within thirty (30) days after its adoption.

31 (b) Bylaws may be amended, as provided in the bylaws, and any such
 32 amendment shall be filed with the commissioner within thirty (30) days after
 33 its adoption.

34

35 23-73-112. Qualifications for certificate of authority.

36 To qualify for and hold a certificate of authority to insure property or

1 issue policies, the company or association must:

2 (1) ~~Hold bona fide applications from~~ Have at least fifty (50) members
 3 ~~for the same kind of insurance who hold policies or certificates~~ upon at least
 4 fifty (50) separate risks, ~~which applications shall be subject to acceptance~~
 5 ~~by the company or association upon receiving a certificate of authority from~~
 6 ~~the commissioner; or~~ An association whose membership falls below fifty (50)
 7 members shall notify the commissioner immediately and shall have ninety (90)
 8 days from such date to bring its membership level back up to the requisite
 9 number of fifty (50) members. Failure to restore the membership level to
 10 fifty (50) members within the prescribed ninety (90) day period shall cause
 11 the commissioner to place such association into involuntary dissolution as
 12 contained in Section 20.

13 ~~(2) Have in force at least fifty (50) policies issued to at least fifty~~
 14 ~~(50) members for the same kind of insurance upon at least fifty (50) separate~~
 15 ~~risks, subject to the company or association receiving a certificate of~~
 16 ~~authority;~~

17 ~~(3) Have collected a payment upon each application and have on hand all~~
 18 ~~of such payments in cash or securities in which domestic insurers are~~
 19 ~~authorized to invest. The aggregate amount of the payments shall be equal to~~
 20 ~~not less than the maximum single risk assumed subject to one (1) loss;~~

21 ~~(4)~~ (2) Fully comply with and qualify according to the other provisions
 22 of this chapter.

23

24 23-73-113. ~~Application for~~ Continuance of certificate of authority.
 25 ~~To apply for~~ For continuance of an original certificate of authority, a
 26 farmers' mutual aid company or association shall:-

27 ~~(1) File with the commissioner its request therefor showing:~~

28 ~~(A) Its name, home office location, organization date, and that~~
 29 ~~it is a farmers mutual aid company or association;~~

30 ~~(B) The kinds of insurance it proposes to transact; and~~

31 ~~(C) Additional information as the commissioner may reasonably~~
 32 ~~require;~~

33 ~~(2)~~ (1) File file with the commissioner:

34 ~~(A) An affidavit of its president and secretary showing it has~~
 35 ~~complied with § 23-73-112;~~

36 ~~(B)~~ (A) A concise statement of its financial condition,

1 management, and affairs on a form satisfactory to the commissioner; ~~and~~
 2 ~~_____ (C) (B)~~ Other documents or stipulations as the commissioner may
 3 reasonably require to evidence compliance with the provisions of this chapter;
 4 and
 5 ~~_____ (3) (C)~~ Pay any fees required by this code to be paid for filing the
 6 accompanying documents and for the certificate of authority if granted.

7

8 23-73-114. Examination- Sections 23-61-201 through 23-61-307
 9 applicable.

10 ~~_____ (a) The commissioner has power to examine any farmers' mutual aid~~
 11 ~~company or association once every three (3) years, or more often if he has~~
 12 ~~reason to believe that it is insolvent or is being fraudulently conducted or~~
 13 ~~that its assets are not sufficient for carrying on its business.~~

14 ~~_____ (b) The commissioner has authority to request the company or association~~
 15 ~~to furnish him with any information relative to its affairs that he may deem~~
 16 ~~reasonably necessary or proper, and the company or association shall furnish~~
 17 ~~the information to the commissioner as soon as reasonably possible. Sections~~
 18 23-61-201 - 23-61-307 shall be applicable to farmers mutual aid companies and
 19 associations.

20

21 23-73-115. Management and exclusive agency contracts.

22 (a)(1) No farmers' mutual aid company or association shall make any
 23 contract whereby any person is granted or is to enjoy in fact the management
 24 of the company or association to the substantial exclusion of its board of
 25 directors or to have the controlling or preemptive right to produce
 26 substantially all insurance business for the company or association unless the
 27 contract is filed with and approved by the commissioner.

28 (2) The contract shall be deemed approved unless disapproved by
 29 the commissioner within twenty (20) days after date of filing, subject to such
 30 reasonable extension of time as the commissioner may require by notice given
 31 within the twenty (20) days.

32 (3) Any disapproval shall be delivered to the company or
 33 association in writing, stating the grounds therefor.

34 (b) The commissioner shall disapprove any contract if he finds that it:

35 (1) Subjects the company or association to excessive charges; or

36 (2) Is to extend for an unreasonable length of time; or

1 (3) Does not contain fair and adequate standards of performance;
 2 or

3 (4) Contains other inequitable provisions which impair the proper
 4 interests of the company or association.

5 (c) The commissioner, in his discretion, may require submission of a
 6 contract for review at any time if he believes a review would be in the best
 7 interest of policyholders of the company or association.

8

9 23-73-116. Fees.

10 Farmers' mutual aid companies or associations shall pay no annual fees
 11 or other charges except as required under §§ 23-73-113, ~~and 23-73-114~~, and
 12 23-61-701 et seq.

13

14 23-73-117. Conversion to mutual insurer.

15 (a) A farmers' mutual aid association as provided for by this chapter
 16 may be converted to a mutual insurer, as defined in §23-69-102, under any plan
 17 or procedure which may be approved by the order of the Insurance Commissioner
 18 after a hearing thereon.

19 (b) The commissioner shall approve a plan or procedure if he finds that:

20 (1) The plan would not be contrary to law and would not be
 21 contrary to the interest of insureds or the public;

22 (2) The plan has been approved by a vote of not less than a
 23 ~~majority two-thirds~~ two-thirds of the members present or represented by proxy at the
 24 meeting voting at a duly called and held meeting at which a quorum was
 25 ~~present~~, or such greater majority as may be otherwise provided in the
 26 association's bylaws. Voting shall be conducted by written ballot which shall
 27 be signed by the member, on a ballot form approved by the commissioner prior
 28 to voting.

29 (c) Upon conversion, the association shall possess and thereafter
 30 maintain unimpaired surplus as regards policyholders of not less than ~~three~~
 31 ~~hundred thousand dollars (\$300,000)~~ seven hundred fifty thousand dollars
 32 (\$750,000).

33 (d) Upon conversion to a mutual insurer as provided for herein, the
 34 association shall be subject to and comply with all laws and regulations
 35 applicable to mutual insurers ~~except it shall not be subject to the coverage~~
 36 ~~limitations specified in § 23-69-112, and it shall not be required to~~

1 ~~maintain surplus of more than three hundred thousand dollars (\$300,000) as~~
 2 ~~provided in subsection (c) of this section.~~

3 (e) Any association so converted shall be authorized to write ~~all kinds~~
 4 ~~of both property and casualty insurance except automobile and workers'~~
 5 ~~compensation insurance~~ only those lines for which it was authorized to write
 6 as a farmers' mutual aid association. However, the converted company may seek
 7 to have its certificate of authority amended to write additional lines.

8 (f) The association shall have a period of time which shall be specified
 9 in the commissioner's order to complete the conversion.

10 (g) Any association converted to a mutual insurer under the provisions
 11 of this section shall be designated as a ~~qualified~~ mutual insurer, and that
 12 designation shall appear immediately following its name on all policies,
 13 financial statements, and other documents where its name appears.

14

15 23-73-118. Membership requirements.

16 The total membership of the association shall be at all times not less
 17 than the number of members required by §23-73-112.

18

19 23-73-119. Prohibited formation.

20 No farmers' mutual aid association or company shall be formed or
 21 incorporated after the effective date of this Act, other than as provided in
 22 Section 22.

23

24 23-73-120. Dissolution.

25 (a) Voluntary - An association or company may at any meeting of its
 26 members, due notice of the time, place and purpose of which shall have been
 27 given to its members and the commissioner, by a vote of two-thirds (2/3) of
 28 the members present or represented by proxy at the meeting, discontinue its
 29 operations and settle its affairs. Voting shall be conducted by written
 30 ballot which shall be signed by the member, on a ballot form approved by the
 31 commissioner prior to voting. Thereupon it shall designate a committee of
 32 three (3) of its members who shall, on behalf of the association or company,
 33 and under the supervision of the commissioner, liquidate its assets, pay its
 34 debts and expenses, and divide any remaining surplus among the existing
 35 members and those who were members within the preceding three (3) years, as
 36 they may be entitled. Upon final settlement of all the affairs of the

1 association by the committee, it shall make a final report and accounting of
2 the proceedings of the dissolutions which shall be signed by its members and
3 filed with and approved by the commissioner. If the commissioner approves the
4 final report, the commissioner shall transmit to the committee a certificate
5 of approval and thereupon the association shall be deemed dissolved and shall
6 cease to exist. The commissioner shall certify the dissolution to the
7 Secretary of State. The committee shall have their necessary and reasonable
8 expenses reimbursed in the dissolution of the association or company as
9 approved by the commissioner.

10 (b) Involuntary - An association or company shall be statutorily
11 dissolved in accordance with the provisions of Sections 23-68-101 through
12 23-68-113 and 23-68-115 through 23-68-132 of this code.

13

14 23-73-121. Licensing of agents.

15 Agents shall be licensed and issued a limited line license in accordance
16 with Chapter 64 of this title.

17

18 23-73-122. Merger.

19 Two (2) or more farmers' mutual aid associations or companies may merge
20 as provided herein.

21 To effect a merger, it shall be necessary:

22 (1) That the board of directors of each of the associations shall
23 propose a plan of merger and pass a resolution to the effect that the merger
24 is advisable and containing the proposed name of the association, as merged,
25 its principal office, and the names of its first board of directors and
26 officers;

27 (2) That at an annual or special meeting of the policyholders of each
28 of the associations shall be held, a notice of which meeting shall be mailed
29 to each of the policyholders thereof at least thirty (30) days prior to the
30 holding thereof, and which notice shall embody the resolution adopted by the
31 board of directors, as provided in subsection (1);

32 (3) That a majority of the policyholders of each of the associations
33 present or represented at these meetings shall, by resolution, approve and
34 ratify the action of the directors, as provided for in clause (1);

35 (4) That the plan of merger, proceeding and resolutions be filed with
36 and approved by the commissioner.

1 (5) When full copies of these proceedings have been filed with the
2 commissioner, which copies shall be certified by the president and secretary
3 of the respective associations and duly verified by these officers, and
4 approved of by him, the merger of these companies shall be deemed to be
5 complete, and the company so continuing the business shall be deemed to have
6 fully assumed all of the obligations, liabilities, and risks and to be the
7 owner of all the assets of the associations so merging.

8 If this merger is made under any new name, the filings of these
9 proceedings and the approval of same by the commissioner shall be sufficient
10 to constitute the merged company an association, with all the powers and
11 privileges, and subject to all the limitations, of a farmers' mutual aid
12 association or company under the laws of the state.

13

14 23-73-123. Indemnification.

15 (a) A company or association may indemnify a person made or threatened
16 to be made a party to a proceeding by reason of the former or present official
17 capacity of the person against judgements, penalties, fines, including,
18 without limitation, excise taxes assessed against the person with respect to
19 an employee benefit plan, settlements, and reasonable expenses, including
20 attorneys' fees and disbursements, incurred by the person in connection with
21 the proceeding if, with respect to the acts or omissions of the person
22 complained of in the proceeding, the person:

23 (1) Has not been indemnified by another organization or employee
24 benefit plan for the same judgments, penalties, fines, including, without
25 limitation, excise taxes assessed against the person with respect to an
26 employee benefit plan, settlements, and reasonable expenses, including
27 attorneys' fees and disbursements incurred by the person in connection with
28 the proceeding with respect to the same acts or omissions;

29 (2) Acted in good faith;

30 (3) Received no improper personal benefit;

31 (4) In the case of a criminal proceeding, had no reasonable cause
32 to believe the conduct was unlawful; and

33 (5) Reasonably believed that the conduct was in the best
34 interests of the company or association, or reasonably believed that the
35 conduct was not opposed to the best interests of the company or association.

36 If the person's acts or omissions complained of in the proceeding relate to

1 the conduct as a director, officer, trustee, employee, or agent of an employee
 2 benefit plan, the conduct is not considered to be opposed to the best
 3 interests of the company or association if the person reasonably believed that
 4 the conduct was in the best interests of the participants or beneficiaries of
 5 the employee benefit plan.

6 (b) Insurance. A company or association may purchase and maintain
 7 insurance on behalf of a person who is or was a director, officer, employee,
 8 or agent of the corporation or who, while a director, officer, employee, or
 9 agent of the association, is or was serving at the request of the company or
 10 association as a director, officer, partner, trustee, employee, or agent of
 11 another organization or employee benefit plan against any liability asserted
 12 against and incurred by the person in or arising from that capacity, whether
 13 or not the company or association would have been required to indemnify the
 14 person against the liability under the provisions of this section.

15 (c) Indemnification of other persons. Nothing in this section shall be
 16 construed to limit the power of the company or association to indemnify other
 17 persons by contract or otherwise."

18

19 SECTION 2. All provisions of this Act of a general and permanent nature
 20 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
 21 Revision Commission shall incorporate the same in the Code.

22

23 SECTION 3. If any provision of this Act or the application thereof to
 24 any person or circumstance is held invalid, such invalidity shall not affect
 25 other provisions or application of the Act which can be given effect without
 26 the invalid provision or application, and to this end the provisions of the
 27 Act are declared to be severable.

28

29 SECTION 4. All laws and parts of laws in conflict with this Act are
 30 hereby repealed.

31

32

33

APPROVED:3-24-97

34