

Hall of the House of Representatives
84th General Assembly - Regular Session, 2003
Amendment Form

Subtitle of House Bill No. 2729
"OMNIBUS INSURANCE PRODUCER ACT."

Amendment No. 1 to House Bill No. 2729.

Amend House Bill No. 2729 as originally introduced:

Delete everything after the enacting clause and substitute the following:

“SECTION 1. Arkansas Code § 8-7-805(b)(2), concerning Arkansas license or permit bonds for individuals to be certified for the installation or testing of an underground storage tank, is amended to read as follows:

(2) The bond must be issued by a company licensed to do business in the State of Arkansas and executed by ~~a resident~~ an Arkansas agent. ~~The mere countersigning by an Arkansas agent will not suffice.~~

SECTION 2. Arkansas Code § 23-64-202(a) and (b), concerning general qualifications for licensure, is amended to read as follows:

(a) For the protection of the people of this state, the Insurance Commissioner shall not, at or before completion of application processing, issue, continue, or permit to exist any license as to insurance unless the licensee is in compliance with this chapter and other applicable laws of this state, and as to any individual who does not also meet the following qualifications:

(1) To obtain a license as an agent or broker, he or she shall have complied with § 23-64-501 et seq. and subsection (b) of this section; and

(2) To obtain a license as an adjuster or insurance consultant, he or she must be:

(A) Of legal age of majority, or must have had disabilities of minority removed for all general purposes and provide evidence of same;

(B)(i) A resident of this state, or of a city or town through which passes the boundary of this state, qualified as to residence under § 23-64-102(2)(B) and must have been a resident for not less than the thirty (30) days immediately prior to the date of application for the license;

(ii) However, upon written request by the applicant, the commissioner in his or her discretion may waive the thirty-day residence requirement as to any applicant for license who is a bona fide resident of this state, and who furnishes proof satisfactory to the commissioner that he



or she is, and intends to be, a permanent resident of Arkansas; and

(C)(i) Deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation, and these qualifications must continue in order to remain licensed.

(ii) The commissioner may require a credit report and a background check, including fingerprinting, of all resident applicants for licensure.

(iii) The commissioner may rely upon fingerprints for the resident applicant that are accessible from any state or federal authority, including the Federal Bureau of Investigation, the National Association of Securities Dealers, or the Securities and Exchange Commission.

(b) All applicants for a license as an agent, broker, adjuster, or insurance consultant shall:

(1) Pass a written examination for the license if required under this chapter and attest that he or she is familiar with the insurance laws of this state and will keep himself or herself familiar despite changes in the law; and

(2)(A)(i) Before licensure or examination, if examination is required, complete specific courses of instruction in the field of insurance as the commissioner shall by regulation prescribe for the license.

(ii) Proof of completion must be presented before testing is administered.

(iii)(a) The courses of instruction shall in the aggregate consist of not less than thirty-six (36) hours of ~~classroom~~ instruction; at least eighteen (18) of which are classroom hours.

(b) All instruction shall be administered by or under the supervision of persons qualifying with and approved by the commissioner for that purpose.

(c) An instructor deemed qualified and approved by the commissioner shall monitor attendance and participation and shall sign a certificate evidencing the licensee's completion of nonclassroom hours that are taken via computer or other electronic media.

(d) Applicants for adjuster and consultant licenses are exempt from prelicensing education, as are nonresident applicants for producer licenses from states that engage in reciprocal licensing with Arkansas.

(iv) Successful completion of the courses of instruction shall be certified to the commissioner, on forms prescribed by him or her, by the person under whose supervision the instruction was administered.

(v) The courses of instruction shall provide the applicant with basic knowledge of the broad principles of insurance, licensing and regulatory laws of this state, and the obligations and duties of an agent, broker, or consultant.

(vi) Programs of instruction may be provided by any authorized insurer, agents' association, or trade association recognized by the commissioner or by any university, college, or any other institution in this state having a comprehensive course of instruction approved and certified by the commissioner.

(vii) The commissioner shall issue appropriate regulations to implement the educational requirements and standards

prescribed in this subdivision (b)(2) and to prescribe the general curriculum of courses of instruction.

(viii) The curriculum shall include not fewer than five (5) hours of instruction relative to the licensing of agents and insurance regulatory laws of this state, criteria for approval of the providers of the courses of instruction, and certifications contemplated hereunder.

(B) None of the provisions of this subsection shall apply to, and no examination or educational requirements contained in this subsection shall be required of, any applicant for a license presently exempted by law from an examination.

(C) The provisions of subdivision (b)(2)(A) of this section shall not apply to persons making application for license as an agent or broker for crop hail insurance, mobile home physical damage insurance, mortgagor's decreasing term life and disability insurance, prepaid legal insurance, and fire and marine insurance written in connection with credit transactions, or any line exempted by law, for which only a limited license is issued, nor any other insurance for which only a limited license may be issued and the commissioner, by order or regulation, exempts from the educational requirements of subdivision (b)(2)(A) of this section.

SECTION 3. Arkansas Code § 23-64-216(a) as it appears on page 312 of Title 23 of the Arkansas Code, concerning sanctions for insurance producer, broker, or producer misconduct, is amended to read as follows:

(a) The Insurance Commissioner may suspend for up to thirty-six (36) months, or may revoke or refuse to continue, or may place in probationary status, any license issued by him or her if, after notice to the licensee and after hearing, he or she finds any one (1) or more of the following causes exist:

(1) In the case of an ~~agent~~ insurance producer or broker licensed as an insurance producer, for any of the causes under § 23-64-512; or

(2) In the case of an adjuster or insurance consultant licensed under this subchapter:

(A) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

(B) Violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner;

(C) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(D) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business;

(E) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(F) Having been convicted of a felony;

(G) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(H) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;

(I) Having an insurance producer, insurance consultant, or adjuster license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

(J) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(K) Improperly using notes or any other reference material to complete an examination for an insurance license;

(L) Knowingly accepting insurance business from an individual who is not licensed;

(M) Failing to comply with an administrative or court order imposing a child support obligation; or

(N) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

SECTION 4. Arkansas Code § 23-64-216, concerning the suspension or revocation of an insurance license, is amending by adding an additional subsection to read as follows:

(h) For purposes of this section, "probationary status" means the suspended imposition of insurance license sanctions which the commissioner may impose by law or by informed consent on a licensee subject to this chapter, upon disclosed terms and for a specified period, contingent upon the compliance and good conduct of the licensee during that period, and which would result in imposition of insurance license sanctions upon the licensee's failure to successfully complete the specified period.

SECTION 5. Arkansas Code § 23-64-217(a), concerning notice to insurance producers regarding licensing sanctions, is amended to read as follows:

(a)(1) Upon the suspension or revocation of a license, the Insurance Commissioner shall immediately notify the licensee of the suspension or revocation either in person or by mail addressed to the licensee at the licensee's address last of record with the commissioner, or by electronic notice.

(2) Notice by mail or by electronic mail shall be deemed effectuated when so mailed.

(3) The commissioner shall give like notice to the insurers represented by the agent in the case of an agent's license. Upon receipt of notice from the commissioner that the license has been revoked, each insurer represented by the agent shall take appropriate and prompt action necessary to:

(A) Retrieve from the agent all solicitation materials, policy applications, binders, and any and all other materials in the possession of the agent which are the property of such an insurer; and

(B) Retrieve the agent's policyholder files and records for policies in force at the time such an insurer receives notice of the revocation.

SECTION 6. Arkansas Code § 23-64-219 is amended to read as follows:

23-64-219. Appointment of agent - Continuation ~~and~~ or termination of appointment.

(a) Each insurer appointing an agent in this state shall file with the Insurance Commissioner the initial appointment setting out the kinds of

insurance to be transacted by the agent and pay the fee therefor. The appointment means the notification filed with the commissioner that an insurer has established an agency relationship with a producer. The appointing insurer's appointment of an agent shall be an indication to the commissioner that the insurer has reviewed the agent's background and fitness to be an agent.

~~(b) Subject to a biennial continuation by the insurer not later than June 1, commencing on January 1, 1988, for life and accident and health insurers and commencing on January 1, 1989, for all other insurers, each~~ Each appointment shall remain in effect until the agent's license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the insurer or agent.

(c)(1) Biennially, prior to June 1 of each even-numbered year, each insurer maintaining a certificate of authority to transact life and accident and health insurance and, prior to June 1 of each odd-numbered year, all other insurers maintaining a certificate of authority to transact insurance in this state shall file with the commissioner an alphabetical list of the names and addresses of all its agents whose appointments in this state are to remain in effect, accompanied by payment of the biennial continuation of appointment fee as provided in § 23-61-401. At the same time, the insurer shall also file with the commissioner an alphabetical list of the names and addresses of all its agents whose appointments in this state are not to remain in effect, accompanied by any documentation the commissioner shall require.

(2) The procedures for renewal and termination of appointments under subsection (c) of this section shall terminate on December 31, 2003.

~~(d)(1) Subject to the terms of the agency contract, an insurer may terminate an agent's appointment at any time. The insurer shall promptly give written notice of such termination to the commissioner and thirty (30) days' advance notice to the agent by certified mail, return receipt requested. The return receipt shall be retained as part of the insurer's records. However, less than thirty (30) days' notice of cancellation may be given to the agent when the termination is for cause relating to the misconduct of the agent.~~

~~(2) Any information as to the cause of termination of any such appointment furnished the commissioner as part of the notice of termination shall be deemed a privileged communication and shall not be admissible in evidence in any action or proceedings other than those brought by the commissioner, nor shall any agent whose appointment has been so terminated have a cause of action against the insurer or any of its officers, directors, or employees by reason of the furnishing of such information to the commissioner.~~

(d) Beginning January 1, 2004, the following annual procedures apply for appointment terminations and renewals only:

(1)(A) No later than June 1, 2004, and no later than June 1 annually thereafter, while maintaining a certificate of authority to transact insurance in the state, the insurance company shall terminate any appointments the company does not desire to continue by use of written or electronic notice to the commissioner on forms prescribed by the commissioner.

(B) The terminations shall be transmitted after the insurer reviews its own agent or agency appointments via the State Insurance

Department website, the National Association of Insurance Commissioners producer database, or a list requested of the department's Information Systems Division;

(2)(A) After June 1, 2004, and after June 1 annually thereafter, the State Insurance Department shall issue a written or electronic payment invoice to the insurer, based on all agent appointments the insurer chose to renew and keep active after June 1, 2004, and annually thereafter, in the procedures set out in subdivision (d)(1) of this section.

(B) The invoice under this section may not be altered or amended, or used for appointing or terminating producers;

(3)(A) The insurer shall return monetary payment for the department invoices to the commissioner no later than thirty (30) days after the department issues the invoice, unless, at the request of the appointing insurer, the commissioner grants an extension for good cause in writing.

(B) An insurer's failure to remit timely invoice payments in the correct amount may be penalized by the commissioner with a monetary penalty in an amount not to exceed double the appointment fee; and

(4)(A) If the insurer disagrees with the annual invoice amount for the renewed agent appointments, it shall timely remit the invoice amount to the department, but may mail or electronically mail under separate cover adequate documentation to substantiate its proposed invoice for the department's review.

(B) If the insurer underpaid, it shall promptly remit the monetary balance due the department.

(C) If the insurer overpaid, it shall so state in a written filing to the commissioner.

(D) If the department determines that the insurer is correct as to the overpayment amount, the department shall process a refund of the excess fees to the prevailing insurer.

(E) However, if the department determines the insurer is not correct, then the department may issue a written notice to the insurer.

(e) ~~The insurer shall promptly give written notice of non-renewal of the agent's appointment to the agent by certified mail, return receipt requested, and the return receipt shall be retained as part of the insurer's records.~~ The insurer shall give notice, in any written or electronic method prescribed by the commissioner, of nonrenewal or termination of agent or producer appointments to the commissioner and to the producer, and shall retain the notices or electronic transmittals as part of the insurer's records for compliance under this section and under § 23-64-515.

SECTION 7. Arkansas Code § 23-64-221(a), concerning insurance producer licenses for vending machines, is amended to read as follows:

(a) A licensed ~~resident-agent~~ producer may solicit applications for and issue policies of personal travel and accident insurance by means of mechanical vending machines supervised by him or her and placed at airports, railroad stations, bus stations, hotels, and similar places of convenience to the traveling public if the Insurance Commissioner finds that:

(1) The policy to be so sold provides reasonable coverage and benefits, is reasonably suited for sale and issuance through vending machines, and that use of such a machine therefor in a particular proposed location would be of material convenience to the public;

(2) The type of vending machine proposed to be used is

reasonably suitable and practical for the purpose;

(3) Reasonable means are provided for informing the prospective purchaser of the policy of the coverage and restrictions of the policy; and

(4) Reasonable means are provided for refund to the applicant or prospective applicant of money inserted in defective machines and for which no insurance, or a less amount than that paid for, is actually received.

SECTION 8. Arkansas Code § 23-64-222 is repealed.

~~23-64-222. Payment of commissions.~~

~~(a) No insurer shall directly or indirectly pay, and no person shall so receive, any fee, commission, or other compensation for services as agent or broker in connection with any insurance of a subject resident, located, or to be performed in this state, or for obtaining any such insurance, unless at the time of the service to which the compensation is related, the person was licensed and appointed as an agent or licensed as a broker or licensed as a nonresident broker or licensed and appointed as a nonresident agent.~~

~~(b) No licensee shall directly or indirectly share his or her commission or other compensation received or to be received on account of a transaction under his or her license with any person not also licensed under this chapter as to the same kinds of insurance involved in the transaction. This provision shall not affect payment of the regular salaries due employees of the licensee or the distribution in regular course of business of compensation and profits among members or stockholders if the licensee is a firm, limited liability company, or corporation.~~

~~(c) If a licensed nonresident broker or nonresident agent resides in a state which requires its resident agents to retain all or a stipulated percentage of the commission on coverages placed in such a state by nonresident agents or brokers, the Arkansas agent shall retain not less than a like percentage of the commission for his or her services for like coverage placed in Arkansas by residents of the other state.~~

~~(d) This section shall not apply as to those transactions with surplus line brokers that are lawful under § 23-65-310 nor to life or accident and health insurance placed as provided in § 23-64-225.~~

SECTION 9. Arkansas Code § 23-64-304, concerning the failure to report and maintain mandated educational requirements for insurance licensees, is amended by adding an additional subsection to read as follows:

(e)(1) Any licensee fined under subsection (d) of this section may request that the commissioner seal the licensee's records regarding the fine.

(2) The underlying conduct of any licensee whose record has been sealed under this section shall be deemed as a matter of law to have never occurred, and the licensee may state that the conduct or fine ever occurred.

SECTION 10. Arkansas Code § 23-64-506 is amended to read as follows:

23-64-506. Application for license. [Effective July 1, 2002 - provisional date.]

(a) A person applying for a resident insurance producer license shall make application to the Insurance Commissioner on the Uniform Application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the individual:

(1) Is at least eighteen (18) years of age;
(2)(A) Has not committed any act that is a ground for denial, suspension, or revocation set forth in § 23-64-512~~+~~.

(B) The commissioner may require a credit report and a background check, including the fingerprinting of all resident applicants for licensure.

(C) The commissioner may rely upon fingerprints for the resident applicant that are accessible from any state or federal authority, including the Federal Bureau of Investigation, the National Association of Securities Dealers, or the Securities and Exchange Commission;

(3) Where required by the commissioner, has completed a pre-licensing course of study for the lines of authority for which the person has applied;

(4) Has paid the fees set forth in § 23-61-401 and any existing or future rule and regulation; and

(5) Has successfully passed the examinations for the lines of authority for which the person has applied.

(b) A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the Uniform Business Entity Application. Before approving the application, the commissioner shall find that:

(1) The business entity has paid the fees set forth in § 23-61-401 and any existing or future rule and regulation; and

(2) The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state.

(c) The commissioner may require any documents reasonably necessary to verify the information contained in an application.

(d) Each insurer that sells, solicits, or negotiates any form of limited line credit insurance shall provide to each individual whose duties will include selling, soliciting, or negotiating limited line credit insurance a program of instruction that may be approved by the commissioner.

(e) To obtain or renew an insurance producer's license, a resident applicant or producer must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation.

SECTION 11. Arkansas Code § 23-64-512(a) and (b), concerning the license, denial, nonrenewal, or revocation of an insurance producer's license, is amended to read as follows:

(a) The Insurance Commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with § 23-64-216 or any combination of actions, for any one (1) or more of the following causes:

(1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the commissioner or of another state's insurance commissioner;

(3) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(4) Improperly withholding, misappropriating, or converting any

moneys or properties received in the course of doing insurance business;

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(6) Having been convicted of a felony;

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, lack of good personal or business reputation, or financial irresponsibility ~~in the conduct of business in this state or elsewhere~~;

(9) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

(10) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(11) Improperly using notes or any other reference material to complete an examination for an insurance license;

(12) Knowingly accepting insurance business from an individual who is not licensed;

(13) Failing to provide a written response after receipt of a written inquiry from the commissioner or his representative as to transactions under the license within thirty (30) days after receipt thereof, unless the timely written response is knowingly waived in writing by the commissioner;

(14) Failing to comply with an administrative or court order imposing a child support obligation; or

(15) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

(b) In the event that the action by the commissioner is to nonrenew or to deny an application for a license, the commissioner shall notify the applicant or licensee and advise, in writing, by mail or electronic mail, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand by mail or electronic mail upon the commissioner within thirty (30) days for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within thirty (30) days and shall be held pursuant to § 23-64-217 and the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

SECTION 12. Arkansas Code § 23-64-513(d), concerning the payment and sharing of insurance producer commissions and fees, is amended to read as follows:

(d) An insurer or insurance producer may pay or assign commissions, service fees, brokerages, or other valuable consideration to an insurance agency or to persons who do not sell, solicit, or negotiate insurance in this state, unless the payment would ~~violate the Trade Practices Act, § 23-66-201 et seq. or § 23-66-301 et seq. so long as the payment is not allowed by any provisions of the federal Gramm Leach Bliley Act of 1999, Pub. L. 106-102, 113 Stat. 1338.~~ constitute:

(1) A rebate, in violation of § 23-66-206(10) or § 23-66-308;

(2) A violation of §§ 23-66-201 – 23-66-214, commonly referred to as the Trade Practices Act, or a violation of miscellaneous trade

practices under §§ 23-66-301 – 23-66-316; or

(3) A violation of the federal Gramm-Leach-Bliley Act, Pub. L. 106-102.

SECTION 13. Arkansas Code § 23-65-308(3), concerning required surplus line broker deposits, is amended to read as follows:

(3)(A) Prior to issuance of the license, ~~the~~ a resident applicant shall file with the commissioner ~~a bond or other securities acceptable to the commissioner~~ in favor of the State of Arkansas in the penal sum of fifty thousand dollars (\$50,000), aggregate liability, with unaffiliated entities approved by the commissioner. Thereafter for as long as the license remains in effect, the resident applicant shall keep the ~~bond or other securities~~ in force and unimpaired.

(B) The securities shall be conditioned that the broker will conduct business under the license in accordance with the provisions of this subchapter and that he or she will promptly remit the taxes provided by the law.

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

(D) No security shall be required of a nonresident applicant licensed in the applicant's state of residency.

SECTION 14. Arkansas Code § 23-66-513, is amended to read as follows:

23-66-513. Initial appointment investigation. [Effective July 1, 2002 - provisional date.]

(a)(1)~~(A)~~ Prior to the approval of any application or request for appointment by an insurer or company to be added to the license obtained by an individual resident agent or producer who has had no previous appointments on his or her Arkansas license prior to this request, the insurer shall conduct or secure at its expense an investigation as to the applicant's identity, residence, experience, or instruction as to the kinds of insurance to be transacted, and as to the agent's or producer's character, financial condition, and financial history.

(B) The commissioner may accept a background check performed by the National Association of Securities Dealers for any required broker or producer background check required by this section.

(2) The investigation shall include, at a minimum, the following information disclosed by the investigation:

(A) Whether the applicant has been convicted of a felony, and, if so, the date and nature of the conviction, the name and location of the court, and the penalty imposed or other disposition of the case, for review in compliance with the provisions of § 23-66-502(c) and other applicable state or federal laws;

(B) Whether, at the time of the application, the agent or applicant is a named party in any lawsuit, and, if so, the style of the lawsuit, a brief description of the litigation, and the name and location of the court;

(C) Whether a judgment for monetary damages has been entered against the applicant within the last five (5) years, and, if so, the date of the judgment, the amount of the judgment, whether the judgment has been paid or otherwise satisfied, the name and location of the court, and the style of the case; and

(D) Such other information as the Insurance Commissioner shall require.

(3) The forms and the requirements of this subsection shall not apply to:

(A) Any limited or restricted license as defined in § 23-64-502(7) or (9), any limited or restricted license which the commissioner may exempt, or any temporary license the commissioner may issue;

(B) Corporations, partnerships, limited liability companies, and partnerships licensed as insurance agencies under this chapter; and

(C) Any individual requesting a renewal license or requesting his or her second or subsequent insurer appointments added after the first-time license or appointment.

(b) The requirements for broker or producer background checks of subdivisions (a)(1) and (2) of this section shall apply to each first-time original license applicant for a resident broker's or producer's license in this state. However, those requirements shall not be required for any renewal broker's or producer's license, and all filings shall exclude appointment forms for first or renewal licenses for brokers or producers.

SECTION 15. Arkansas Code § 23-69-114, concerning licensure of non-life mutual insurer agents, is amended to read as follows:

(e) Solicitation for qualifying applications for insurance shall be by licensed agents of the corporation, and the commissioner shall, upon the corporation's application therefor, issue temporary agent's licenses expiring on the date specified pursuant to subdivision (c)(3) of this section to individuals qualified as for a ~~resident~~ an agent's or producer's license except as to the taking or passing of an examination. The commissioner may suspend or revoke any license for any of the causes and pursuant to the same procedures as are applicable to suspension or revocation of licenses of agents and producers in general under §§ 23-64-101 ~~et seq~~ through 23-64-232 and §§ 23-64-501 through 23-64-519."

The Amendment was read _____
By: Representative Matayo
AAF/CDS - 031320031506
CDS378

Chief Clerk