

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representative M. Wilson**

A Bill

HOUSE BILL

For An Act To Be Entitled

8 "AN ACT TO AMEND CHAPTER 63 OF TITLE 23 OF THE ARKANSAS
9 INSURANCE CODE, BY ADDING NEW SUBCHAPTER 11 ENTITLED _THE
10 BUSINESS TRANSACTED WITH PRODUCER CONTROLLED
11 PROPERTY/CASUALTY INSURER ACT_; AND FOR OTHER PURPOSES."

Subtitle

14 "_THE BUSINESS TRANSACTED WITH PRODUCER CONTROLLED
15 PROPERTY/CASUALTY INSURER ACT_."

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

19 SECTION 1. Title 23, Chapter 63 of the Arkansas Code is hereby amended,
20 by adding new Subchapter 11, to read as follows:

21 "23-63-1101. Short title.

22 This Act may be cited as _The Business Transacted with Producer
23 Controlled Property/Casualty Insurer Act._

25 23-63-1102. Definitions.

26 As used in this subchapter:

27 (a) _Accredited State_ means a state in which the insurance department
28 or regulatory agency has qualified as meeting the minimum financial regulatory
29 standards promulgated and established from time to time by the National
30 Association of Insurance Commissioners (NAIC).

31 (b) _Control_ or _Controlled_ has the meaning set out in §23-63-503(2).

32 (c) _Controlled Insurer_ means a licensed insurer which is controlled,
33 directly or indirectly, by a producer.

34 (d) _Controlling Producer_ means a producer who, directly or
35 indirectly, controls an insurer.

1 (e) Licensed Insurer or Insurer means any person, firm, association
2 or corporation duly licensed to transact a property/casualty insurance
3 business in this state. The following, inter alia, are not licensed insurers
4 for the purposes of this subchapter:

5 (1) All risk retention groups as defined in the Superfund Amendments
6 Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) and the
7 Risk Retention Act, 15 U.S.C. Section 3901 et seq. (1982 & Supp. 1986) and
8 Ark. Code Ann. §23-94-101 - §23-94-303;

9 (2) All residual market pools and joint underwriting authorities or
10 associations; and

11 (3) All captive insurers (i.e., insurance companies owned by another
12 organization whose exclusive purpose is to insure risks of the parent
13 organization and affiliated companies or, in the case of groups and
14 associations, insurance organizations owned by the insureds whose exclusive
15 purpose is to insure risks of member organizations and/or group members and
16 their affiliates).

17 (f) Producer means an insurance broker or brokers or any other
18 person, firm, association or corporation, when, for any compensation,
19 commission or other thing of value, such person, firm, association or
20 corporation act or aids in any manner in soliciting, negotiating or procuring
21 the making of any insurance contract on behalf of an insured other than the
22 person, firm, association or corporation.

23

24 23-63-1103. Applicability.

25 This subchapter shall apply to licensed insurers as defined in
26 §23-63-1102(e) either domiciled in this state or domiciled in a state that is
27 not an accredited state having in effect a substantially similar law. All
28 provisions of §§ 23-63-501, et seq., to the extent they are not superseded by
29 the provisions of this subchapter, shall continue to apply to all parties
30 within holding company systems subject to the provisions of this subchapter.

31

32 23-63-1104. Minimum standards.

33 (a) (1) The provisions of this section shall apply if, in any calendar
34 year, the aggregate amount of gross premium on business placed with a
35 controlled insurer by a controlling producer is equal to or greater than five

1 percent (5%) of the admitted assets of the controlled insurer, as reported in
2 the controlled insurer's quarterly statement filed as of September 30 of the
3 prior year.

4 (2) Notwithstanding subdivision (1) of this subsection, the
5 provisions of this section shall not apply if:

6 (A) The controlling producer:

7 (i) Places insurance only with the controlled insurer, or
8 only with the controlled insurer and a member or members of the controlled
9 insurer's holding company system, or the controlled insurer's parent,
10 affiliate or subsidiary and receives no compensation based upon the amount of
11 premiums written in connection with such insurance; and

12 (ii) Accepts insurance placements only from non-affiliated
13 subproducers, and not directly from insureds; and

14 (B) The controlled insurer, except for insurance business
15 written through a residual market facility, accepts insurance business only
16 from a controlling producer, a producer controlled by the controlled insurer,
17 or a producer that is a subsidiary of the controlled insurer.

18 (b) A controlled insurer shall not accept business from a controlling
19 producer and a controlling producer shall not place business with a
20 controlling insurer unless there is a written contract between the controlling
21 producer and the insurer specifying the responsibilities of each party, which
22 contract has been approved by the board of directors of the insurer and
23 contains the following minimum provisions:

24 (1) The controlled insurer may terminate the contract for cause,
25 upon written notice to the controlling producer. The controlled insurer shall
26 suspend the authority of the controlling producer to write business during the
27 pendency of any dispute regarding the cause for the termination;

28 (2) The controlling producer shall render accounts to the controlled
29 insurer detailing all material transactions, including information necessary
30 to support all commissions, charges and other fees received by, or owing to,
31 the controlling producer;

32 (3) The controlling producer shall remit all funds due under the
33 terms of the contract to the controlled insurer on at least a monthly basis.
34 The due date shall be fixed so that premiums or installments thereof collected
35 shall be remitted no later than ninety (90) days after the effective date of

1 any policy placed with the controlled insurer under the contract;

2 (4) All funds collected for the controlled insurer's account shall
3 be held by the controlling producer in a fiduciary capacity, in one or more
4 appropriately identified bank accounts in banks that are members of the
5 Federal Reserve System. However, funds of a controlled producer not required
6 to be licensed in this state shall be maintained in compliance with the
7 requirements of the controlling producer's domicile;

8 (5) The controlling producer shall maintain separately identifiable
9 records of business written for the controlled insurer;

10 (6) The contract shall not be assigned in whole or in part by the
11 controlling producer;

12 (7) The controlled insurer shall provide the controlling producer
13 with its underwriting standards, rules and procedures, manuals setting forth
14 the rates to be charged, and the conditions for the acceptance or rejection of
15 risks. The controlling producer shall adhere to the standards, rules,
16 procedures, rates and conditions. The standards, rules, procedures, rates and
17 conditions shall be the same as those applicable to comparable business placed
18 with the controlled insurer by a producer other than a controlling producer;

19 (8) The rates and terms of the controlling producer's commissions,
20 charges or other fees and the purposes for those charges or fees. The rates
21 of the commissions, charges and other fees shall be no greater than those
22 applicable to comparable business placed with the controlled insurer by
23 producers other than controlling producers. For purposes of this subdivision
24 and subdivision (7) of this subsection, examples of `comparable business'
25 includes the same lines of insurance, same kinds of insurance, same kinds of
26 risks, similar policy limits, and similar quality of business;

27 (9) If the contract provides that the controlling producer, on
28 insurance business placed with the insurer, is to be compensated contingent
29 upon the insurer's profits on that business, then such commission shall not be
30 determined and paid until at least five (5) years after the premiums on
31 liability insurance are earned and at least one (1) year after the premiums
32 are earned on any other insurance. In no event shall the commissions be paid
33 until the adequacy of the controlled insurer's reserves on remaining claims
34 has been independently verified pursuant to subsection (c) of this section;

35 (10) A limit on the controlling producer's writings in relation to

1 the controlled insurer's surplus and total writings. The insurer may
2 establish a different limit for each line or sub-line of business. The
3 controlled insurer shall notify the controlling producer when the applicable
4 limit is approached and shall not accept business from the controlling
5 producer if the limit is reached. The controlling producer shall not place
6 business with the controlled insurer if it has been notified by the controlled
7 insurer that the limit has been reached; and

8 (11) The controlling producer may negotiate but shall not bind
9 reinsurance on behalf of the controlled insurer on business the controlling
10 producer places with the controlled insurer, except that the controlling
11 producer may bind facultative agreements if the contract with the controlled
12 insurer contains underwriting guidelines including, for both reinsurance
13 assumed and ceded, a list of reinsurers with which such automatic agreements
14 are in effect, the coverages and amounts or percentages that may be reinsured
15 and commission schedules.

16 (c) Every controlled insurer shall have an Audit Committee of the Board
17 of Directors composed of independent directors. The Audit Committee shall
18 annually meet with management, the insurer's independent certified public
19 accountants, and an independent casualty actuary or other independent loss
20 reserve specialist acceptable to the commissioner to review the adequacy of
21 the insurer's loss reserves.

22 (d) (1) In addition to any other required loss certification, the
23 controlled insurer shall annually, on April 1 of each year, file with the
24 commissioner an opinion of an independent casualty actuary (or such other
25 independent loss reserve specialist acceptable to the commissioner) reporting
26 loss ratios for each line of business written and attesting to the adequacy of
27 loss reserves established for losses incurred and outstanding as of year-end
28 (including incurred but not reported) on business placed by the producer; and

29 (2) The controlled insurer shall annually report to the commissioner
30 the amount of commissions paid to the producer, the percentage such amount
31 represents of the net premiums written and comparable amounts and percentage
32 paid to noncontrolling producers for placements of the same kinds of
33 insurance.

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35 23-63-1105. Disclosure.

1 The producer, prior to the effective date of the policy, shall deliver
2 written notice to the prospective insured disclosing the relationship between
3 the producer and the controlled insurer; except that, if the business is
4 placed through a subproducer who is not a controlling producer, the
5 controlling producer shall retain in his records a signed commitment from the
6 subproducer that the subproducer is aware of the relationship between the
7 insurer and the producer and that the subproducer has or will notify the
8 insured.

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10 23-63-1106. Penalties.

11 (a) (1) If the commissioner believes that the controlling producer or
12 any other person has not materially complied with this subchapter, after
13 notice and hearing, the commissioner may order the controlling producer to
14 cease placing business with the controlled insurer; and

15 (2) If it was found that because of such material non-compliance
16 that the controlled insurer or any policyholder thereof has suffered any loss
17 or damage, the commissioner may maintain a civil action or intervene in an
18 action brought by or on behalf of the insurer or policyholder for recovery of
19 compensatory damages for the benefit of the insurer or policyholder or other
20 appropriate relief.

21 (b) If an order for liquidation or rehabilitation of the controlled
22 insurer has been entered pursuant to §§ 23-68-101, et seq., and the receiver
23 appointed under that order believes that the controlling producer or any other
24 person has not materially complied with this subchapter, and the insurer
25 suffered any loss or damage therefrom, the receiver may maintain a civil
26 action for recovery of damages or other appropriate sanctions for the benefit
27 of the insurer.

28 (c) Nothing contained in this section shall affect the right of the
29 commissioner to impose any other penalties provided for in this code.

30 (d) Nothing contained in this section is intended to or shall in any
31 manner alter or affect the rights of policyholders, claimants, creditors or
32 other third parties."

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34 SECTION 2. Effective Date. Compliance with this Act shall be required
35 on and after January 1, 1994.

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SECTION 3. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 5. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 6. Emergency. It is hereby found and determined by the General Assembly of the State of Arkansas that there is no present law governing business transacted with producer controlled property/casualty insurers and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

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