

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
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H3/6/03
A Bill

HOUSE BILL 1753

5 By: Representative Biggs
6
7

8 **For An Act To Be Entitled**

9 AN ACT TO CLARIFY THE INSURANCE COMMISSIONER'S
10 AUTHORITY TO ISSUE CEASE AND DESIST ORDERS
11 AGAINST UNAUTHORIZED ENTITIES PROVIDING HEALTH
12 CARE BENEFITS; TO PROVIDE CIVIL AND CRIMINAL
13 PENALTIES AGAINST PERSONS WHO SELL OR REPRESENT
14 UNAUTHORIZED PRODUCTS; AND FOR OTHER PURPOSES.
15

16 **Subtitle**

17 AN ACT TO CLARIFY THE INSURANCE
18 COMMISSIONER'S AUTHORITY TO ISSUE CEASE
19 AND DESIST ORDERS AGAINST UNAUTHORIZED
20 ENTITIES PROVIDING HEALTH CARE BENEFITS
21 AND TO PROVIDE CIVIL AND CRIMINAL
22 PENALTIES.
23
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code § 23-61-501 is amended to read as follows:
28 23-61-501. Purpose.

29 The purpose of this subchapter is to:

30 (1) ~~Give~~ Enable the State of Arkansas ~~jurisdiction~~ to determine
31 jurisdiction over the providers of health care benefits ~~enumerated~~ described
32 in § 23-61-503;

33 ~~(2) Indicate how each provider of health care benefits may show under~~
34 ~~what jurisdiction it falls;~~

35 ~~(3)~~ (2) Allow for examinations by this state ~~if~~ unless the provider of
36 health care benefits is ~~unable~~ able to show it is ~~subject to another~~



1 ~~jurisdiction not subject to the jurisdiction of the State Insurance~~
 2 ~~Department; and~~

3 ~~(4)(3) Make the provider of health care benefits subject to the~~
 4 ~~applicable laws of this state if unless it cannot can show that it is subject~~
 5 ~~to another jurisdiction; and not subject to the jurisdiction of the~~
 6 ~~department.~~

7 ~~(5) Disclose to purchasers of health care benefits whether or not the~~
 8 ~~plans are fully insured.~~

9

10 SECTION 2. Arkansas Code § 23-61-503 is amended to read as follows:

11 23-61-503. Jurisdiction of State Insurance Department - Application of
 12 Arkansas Insurance Code.

13 *(a) Notwithstanding any other provision of law, and except as provided*
 14 *in this subchapter, any person, entity, multiple employer trust, or self-*
 15 *insured plan which or plan is reinsured or administered by a third party*
 16 *administrator which that provides coverage in this state for medical,*
 17 *surgical, chiropractic, physical therapy, speech pathology, audiology,*
 18 *professional mental health, dental, hospital, or optometric expenses, whether*
 19 *the coverage is by direct payment, reimbursement, or otherwise, shall be*
 20 *presumed to be subject to the jurisdiction of the State Insurance Department*
 21 *and shall also be subject to all other applicable provisions of the Arkansas*
 22 *Insurance Code, unless the person, or other entity, or plan enumerated*
 23 *described in this section shows that while providing the services it is*
 24 *subject to the jurisdiction of another agency of this state, any subdivisions*
 25 *thereof, or the federal government it is not subject to the jurisdiction of*
 26 *the department.*

27 *(b) This subchapter shall not apply to:*

28 *(1) A trust established under §§ 14-54-101 and 25-20-104 to*
 29 *provide benefits such as accident and health benefits, death benefits, dental*
 30 *benefits, and disability income benefits; or*

31 *(2) The Arkansas Comprehensive Health Insurance Pool, under §§*
 32 *23-79-501 through 23-79-513.*

33 SECTION 3. Arkansas Code § 23-61-504 is amended to read as follows:

34 23-61-504. Examination required - Exception.

35 Any person, entity, or other provider enumerated described in § 23-61-
 36 503 which is unable that fails to show under § 23-61-505 that it is subject

1 ~~to the jurisdiction of another agency of this state, any subdivision thereof,~~
2 ~~or the federal government~~ it is not subject to the jurisdiction of the State
3 Insurance Department shall submit to an examination or investigation by the
4 Insurance Commissioner to determine its organization, ~~and~~ solvency, ~~and to~~
5 ~~determine whether or not it complies~~ compliance with the applicable
6 ~~provisions of the Arkansas Insurance Code.~~

7
8 SECTION 4. Arkansas Code §§ 23-61-505 through 23-61-507 are repealed.

9 ~~23-61-505. Proof of alternate jurisdiction.~~

10 ~~Any person, entity, or other provider enumerated in § 23-61-503 may~~
11 ~~show that it is subject to the jurisdiction of another agency of this state,~~
12 ~~any subdivision thereof, or the federal government by providing to the~~
13 ~~Insurance Commissioner the appropriate certificate, license, or other~~
14 ~~document issued by the other governmental agency which permits or qualifies~~
15 ~~it to provide those services.~~

16
17 ~~23-61-506. Subjection to Arkansas Insurance Code—Exceptions.~~

18 ~~Any person, entity, or other provider enumerated in § 23-61-503 unable~~
19 ~~to show that it is subject to the jurisdiction of another agency of this~~
20 ~~state, any subdivision thereof, or the federal government shall be subject to~~
21 ~~all appropriate provisions of the Arkansas Insurance Code regarding the~~
22 ~~conduct of its business.~~

23
24 ~~23-61-507. Disclosure required.~~

25 ~~(a) Any production agency or administrator that advertises, sells,~~
26 ~~transacts, or administers the coverage in this state described in § 23-61-503~~
27 ~~and that is required to submit to an examination by the Insurance~~
28 ~~Commissioner under § 23-61-504, if the coverage is not fully insured or~~
29 ~~otherwise fully covered by an admitted life or accident and health insurer,~~
30 ~~nonprofit hospital service plan, or nonprofit health care plan, shall advise~~
31 ~~every purchaser, prospective purchaser, and covered person of this lack of~~
32 ~~insurance or other coverage.~~

33 ~~(b) Any administrator that advertises or administers the coverage in~~
34 ~~this state described in § 23-61-503 and which is required to submit to an~~
35 ~~examination by the commissioner under § 23-61-504 shall advise any production~~
36 ~~agency of the elements of the coverage, including the amount of "stop-loss"~~

1 ~~insurance in effect.~~

2
3 SECTION 5. Arkansas Code § 23-65-101 is amended to read as follows:
4 23-65-101. Unauthorized insurance transactions prohibited.

5 (a)(1) No person or entity ~~shall~~ in this state shall act as agent or
6 broker for, or otherwise represent or aid ~~on behalf of another~~, any insurer,
7 ~~or~~ health maintenance organization, multiple employer welfare arrangement,
8 multiple employer trust, association, or any other person or entity not then
9 ~~authorized to transact insurance in this state~~, in the solicitation,
10 negotiation, or effectuation of insurance, inspection of risks, fixing of
11 rates, investigation or adjustment of losses, collection of premiums, or in
12 any other manner in the transaction of insurance with respect to subjects of
13 insurance resident, located, or to be performed in this state if that person
14 or entity is not authorized or licensed by State Insurance Department for
15 those purposes.

16 (2)(A) No person or entity shall act as a ~~solicitor~~ producer,
17 adjuster, or consultant without first obtaining appropriate licensure or
18 registration as required by the insurance laws of this state for the
19 transaction of insurance with respect to subjects of insurance or self-
20 insurance resident, located, or to be performed in this state.

21 (B) No person or entity shall act as a multiple employer
22 trust or, multiple employer welfare arrangement, ~~collectively bargained or~~
23 ~~self insurance plan, or any other type of employee welfare benefit plan~~
24 ~~providing accident and health benefits to citizens of this state without~~
25 ~~first obtaining appropriate registration as requested by § 23-92-101.~~
26 ~~Provided, however, this provision, while requiring registration and proof of~~
27 ~~their bona fides, shall not be deemed to authorize regulation of multiple~~
28 ~~employer trusts or multiple employer welfare arrangements, collectively~~
29 ~~bargained or self insurance plans, or any other type of employee welfare~~
30 ~~benefit plan that is in fact exempt from regulation by this state under the~~
31 ~~Employee Retirement Income Security Act of 1974, as amended~~ or licensing as
32 required by § 23-92-101.

33 (C) No person or entity shall act as a third-party
34 administrator for a multiple employer trusts trust, multiple employer welfare
35 ~~arrangements,~~ arrangement, collectively bargained ~~trusts trust~~, ~~or~~ self-
36 insurance ~~plans plan,~~ or any other plan providing accident and health

1 insurance benefits to the citizens of this state without first obtaining
2 appropriate registration as required by § 23-92-201 et seq.

3 (D) Any producer who knows or has reason to know that a
4 health plan is not licensed in accordance with the Arkansas Insurance Code
5 shall immediately report the health plan to the State Insurance Department.

6 ~~(3)(b)(1)(A) Whenever the Insurance Commissioner shall have reason to~~
7 ~~believe that:~~ The Insurance Commissioner may summarily order a person or
8 entity to cease and desist from an act or practice when the commissioner has
9 reason to believe that any person or entity has not complied with the
10 requirements of this section or any other provision of the Arkansas Insurance
11 Code.

12 ~~(A) Any person has been acting as an unauthorized insurer~~
13 ~~in this state, as defined in § 23-60-102(12), in violation of §§ 23-60-110~~
14 ~~and 23-63-201; or~~

15 ~~(B) Any person has been acting as an agent or broker for,~~
16 ~~or otherwise aiding on behalf of another, an unauthorized insurer, or a~~
17 ~~health maintenance organization in this state in violation of subdivision~~
18 ~~(a)(1) of this section;~~

19 ~~or~~

20 ~~(C) Any person has been acting as an unauthorized licensee~~
21 ~~or registrant in violation of subdivision (a)(2) of this section, and that an~~
22 ~~action by him or her in respect thereto would be in the best interests of the~~
23 ~~public, he or she shall issue and serve upon such a person by certified mail,~~
24 ~~return receipt requested, an order containing a statement of the charges in~~
25 ~~that respect and requiring the person immediately to cease and desist from~~
26 ~~the acts, methods, or practices stated. The commissioner may, in his or her~~
27 ~~discretion, order the immediate suspension of any license or registration~~
28 ~~issued by him or her pending further proceedings under subdivision (a)(4) of~~
29 ~~this section.~~

30 ~~(4) The order shall contain a provision that, within twenty (20) days~~
31 ~~from receipt of the order, the person shall have an opportunity to be heard~~
32 ~~in person or by counsel and to show cause why those acts, methods or~~
33 ~~practices are not in violation of the Arkansas Insurance Code and why the~~
34 ~~commissioner should modify or set aside any order issued by him or her under~~
35 ~~this section. Upon good cause shown, the commissioner shall permit any~~
36 ~~person to intervene, appear, and be heard by counsel or in person at the~~

1 ~~hearing.~~

2 (B) Upon the entry of the cease and desist order, the
3 commissioner shall promptly notify the person or entity named that the order
4 has been entered, the reasons therefor, and of the person's or entity's right
5 to a hearing on the order.

6 (2)(A) A hearing shall be held on the written request of the
7 person or entity named in the cease and desist order if the commissioner
8 receives the request within thirty (30) days of the date of the entry of the
9 order, or if otherwise ordered by the commissioner.

10 (B) If no hearing is requested, and none is ordered by the
11 commissioner, the order will remain in effect until it is modified or vacated
12 by the commissioner.

13 (C) If a hearing is requested or ordered, after notice of
14 an opportunity for hearing, the commissioner may affirm, modify, or vacate
15 the cease and desist order.

16 (3)(A) The commissioner may, after issuance of an order under
17 subdivision (b)(1)(B) of this section, apply to the Circuit Court of Pulaski
18 County to temporarily or permanently enjoin the act or practice and to
19 enforce compliance with the Arkansas Insurance Code or any rule or order
20 under the Arkansas Insurance Code.

21 (B) However, the commissioner may apply directly to the
22 Circuit Court of Pulaski County for a temporary or permanent injunction under
23 subdivision (b)(3)(A) of this section.

24 (C) Upon a proper showing, the court shall enter a
25 permanent or temporary injunction, restraining order, or writ of mandamus.

26 (D) The commissioner shall not be required to post a bond.

27 (c) The commissioner may also seek and the appropriate court may grant
28 any other ancillary relief which may be in the public interest, including the
29 appointment of a receiver, temporary receiver, conservator, declaratory
30 judgment, obtaining an accounting, disgorgement, assessment of a fine, or
31 other relief as may be appropriate in the public interest.

32 (d) This section does not prohibit or restrict the informal
33 disposition of a proceeding by stipulation, settlement, consent, or default.

34 (e) Any insurance producer licensed in this state, or any other
35 person, who knowingly sells, solicits, or negotiates a product of an
36 unauthorized person or entity in violation of this section, or who knowingly

1 represents or aids an unauthorized person or entity in violation of this
2 section, shall be guilty of a Class D felony.

3 (f) Any insurance producer licensed in this state, or any other
4 person, who sells, solicits, or negotiates a product of an unauthorized
5 person or entity in violation of this section, or who represents or aids an
6 unauthorized person or entity in violation of this section, may be personally
7 liable for all damages caused by the unauthorized person or entity, including
8 claims unpaid by the unauthorized person or entity.

9 ~~(b)~~(g) Any person or entity who violates or otherwise fails to comply
10 with a cease and desist order of the commissioner under this section while
11 that order is in effect may be subject, at the discretion of the
12 commissioner, to any one (1) or more of the following:

13 (1) A monetary penalty of not more than ten thousand dollars
14 (\$10,000);

15 (2) Suspension or revocation of the person's or entity's license
16 or registration; and

17 (3) Upon the commissioner's petition filed in the Circuit Court
18 or Chancery Court of Pulaski County, and, upon good cause shown, that court
19 may order injunctive relief.

20 ~~(e)~~(h) The following shall be applicable to hearings held by and
21 orders issued by the commissioner under this section:

22 (1) The provisions of § 23-61-301, as to witnesses and evidence;

23 (2) The provisions of §§ 23-61-302 and 23-66-214, as to immunity
24 from prosecution;

25 (3) The provisions of §§ 23-61-303, 23-61-304, and 23-61-305, as
26 to hearings;

27 (4) The provisions of §§ 23-61-306 and 23-61-307, as to orders
28 on hearings and appeals of orders; and

29 (5) The provisions of § 23-66-212, as to judicial review of
30 cease and desist orders.

31 ~~(d)~~(i) The commissioner may promulgate such reasonable rules and
32 regulations as are necessary to carry out the provisions of this section.

33 ~~(e)~~(j)(1) The commissioner shall have the power to examine and
34 investigate into the affairs of every person or entity suspected of engaging
35 in activities which are prohibited by this section or by any other provision
36 of the Arkansas Insurance Code, § 23-60-101 et seq.

1 (2) All licensees of the commissioner shall assist the
 2 commissioner in examinations and investigations conducted under this section.

3 ~~(f)~~(k) The powers vested in the commissioner by this section shall be
 4 additional to any other powers to enforce any penalties, fines, or
 5 forfeitures authorized by law or other provisions of the Arkansas Insurance
 6 Code with respect to activities which are prohibited by this section or the
 7 Arkansas Insurance Code.

8 ~~(g)~~(1) This section shall not apply to:

9 (1) Acceptance of service of process by the commissioner under §
 10 23-65-203; and

11 (2) Surplus lines insurance and other transactions as to which a
 12 certificate of authority is not required of an insurer, as stated in § 23-63-
 13 201.

14
 15 SECTION 6. Arkansas Code § 23-92-101 is amended to read as follows:
 16 23-92-101. Registration or licensure required.

17 (a) "Multiple employer welfare arrangement" has the same meaning as
 18 under 29 U.S.C. § 1002(40), as it existed on January 1, 2003.

19 ~~(a)~~(b)(1) Every fully insured multiple employer trust ~~or~~ and fully
 20 insured multiple employer welfare arrangement self-insured plan that intends
 21 to provide accident and health benefits to citizens of this state shall
 22 register with the Insurance Commissioner prior to soliciting or enrolling
 23 members or prior to conducting any other business activity in Arkansas.
 24 ~~maintain a current registration with the Insurance Commissioner in such form~~
 25 ~~and manner as the commissioner shall prescribe.~~

26 (2)(A) Each fully insured multiple employer trust and fully
 27 insured multiple employer welfare arrangement under this section that is
 28 conducting any business activity in Arkansas as of the date this subdivision
 29 (b)(2) becomes effective shall register with the commissioner no later than
 30 July 1, 2003.

31 (B) After the initial registration, each fully insured
 32 multiple employer trust and fully insured multiple employer welfare
 33 arrangement under this section that conducts business in Arkansas shall
 34 thereafter register with the commissioner no later than January 1 of each
 35 year for as long as it continues to do business in Arkansas.

36 ~~(b)(1) Every multiple employer trust or self-insured plan shall~~

1 ~~register prior to any solicitation or enrollment of members or the conduct of~~
2 ~~any other business activity in this state.~~

3 ~~(2) Every multiple employer trust or self-insured plan included~~
4 ~~in this section shall thereafter register with the commissioner annually, on~~
5 ~~or before January 1, as long as it continues to do business in this state.~~

6 (c)(1) A multiple employer trust or multiple employer welfare
7 arrangement that is not fully insured must obtain a certificate of authority
8 pursuant to §§ 23-63-201 through 23-63-218 before doing business in Arkansas.

9 (2) In order to remain licensed, a multiple employer trust or
10 multiple employer welfare arrangement that is not fully insured must comply
11 with all Arkansas laws that are not inconsistent with the Employee Retirement
12 Income Security Act of 1974, as it existed on January 1, 2003.

13
14 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the
15 General Assembly of the State of Arkansas that unauthorized insurance
16 products are a danger to Arkansas insurance consumers; that unauthorized
17 persons and entities have collected premiums from Arkansas insurance
18 consumers but have not paid claims; that the sale of unauthorized insurance
19 products has resulted in hundreds of thousands of dollars in unpaid medical
20 bills in Arkansas; that Arkansas insurance consumers should be able to rely
21 on their insurance producers to sell them products authorized to be sold in
22 Arkansas; and that unauthorized products continue to be sold in Arkansas; and
23 that these changes are immediately necessary to enable the State Insurance
24 Department to take immediate action against unauthorized persons and entities
25 and to require insurance producers to ensure that the products they sell are
26 authorized. Therefore, an emergency is declared to exist, and this act being
27 immediately necessary for the preservation of the public peace, health, and
28 safety, shall become effective on:

29 (1) The date of its approval by the Governor;

30 (2) However, if the bill is neither approved nor vetoed by the
31 Governor, the expiration of the period of time during which the Governor may
32 veto the bill; or

33 (3) If the bill is vetoed by the Governor and the veto is overridden,
34 it shall become effective on the date that last house overrides the veto.

35
36 /s/ Biggs